


# **Procurement Procedure Manual**

## **10.3.35**

**Prepared By:**

**Contracts & Procurement and Material**

**Date: October 23, 2023**

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**ISSUING DEPARTMENT:**

Contracts & Procurement and Material

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**APPROVED BY:**

Kevin Hurley  
Interim, Chief Financial Officer

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88034276264040C...  
Signature

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**SUPERSEDES:**

10.3.37, 10.1.66

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## VERSION HISTORY

Version #	Implemented By	Approved By	Revision Date	Description
1.0	L. DeGrace	G.L. Hutchinson	1/29/2015	<ul style="list-style-type: none"><li>Updated Delegation of Authority</li></ul>
2.0	L. DeGrace	G.L. Hutchinson	8/6/2015	<ul style="list-style-type: none"><li>FTA Contract Clause Checklist</li></ul>
3.0	L. DeGrace	G.L. Hutchinson	8/18/2016	<ul style="list-style-type: none"><li>Procurement Process Checklist for FTA Funded Procurements</li><li>Delegation of Authority</li></ul>
4.0	L. DeGrace	G.L. Hutchinson	10/24/2016	<ul style="list-style-type: none"><li>Chapter 4 Delivery and Performance</li><li>Chapter 7 7.4 (8) Solicitation Requirements</li><li>Chapter 10 10.3 Requirements for Micro-Purchases</li><li>Chapter 14 14.8 Contract Modifications</li><li>Chapter 24 24.6 Piggybacking 24.7 Revenue Contracts 24.8 State/Local Government Purchasing Schedules 24.9 Oversight of Sub-Recipients 24.10 Preference for U.S. Property-Buy America 24.11 Violations &amp; Penalties</li></ul>

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Version #	Implemented By	Approved By	Revision Date	Description
5.0	L. DeGrace	G.L. Hutchinson	1/11/2017	<ul style="list-style-type: none"><li>Chapter 8 Contracts Process Checklist for FTA</li><li>Chapter 24<ul style="list-style-type: none"><li>24.11 Standards of Conduct</li><li>24.12 Out of Scope Changes</li><li>24.13 Time Limits on Rolling Stock Contracts</li><li>24.14 Unnecessary Experience and Excessive Bonding</li></ul></li></ul>
6.0	L. DeGrace	G.L. Hutchinson	4/9/2018	<ul style="list-style-type: none"><li>24.15 Notification of Claims</li></ul>
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8.0	J. Holland	E.M. O'Neill	03/25/2020	<ul style="list-style-type: none"><li>Update to Chapter 5. Added Section 5.15, Work Order Procedures</li><li>Update to Chapter 23 Protests, New Protest Policy</li><li>Update to Chapter 9 Architect-Engineer and Related Services -Section 9.4 Work Order Procedure</li></ul>

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9.0	J. Holland	E.M. O'Neill	05/22/2020	<ul style="list-style-type: none"><li>• Chapter 4 Update to Section 4.1.E – Responsibilities</li><li>• Chapter 6 Added new Section to 6.3- Procurement and Qualification of New Chemical Commodities. Section 6.3.B</li><li>• Chapter 8 Update to Section 8.10.D - Request for Proposals (RFP) Process</li><li>• Chapter 14, Added New Section to 14.6 – Contract Files, sections H &amp; I.</li><li>• Chapter 14, Update to Section 14.12.A &amp; Added New Section 14.12.B.4 - Additional Contract Compliance</li><li>• Chapter 19, Added New Section to 19.1 - MARTA Responsibilities, 9 &amp; 10.</li></ul>
10.0	J. Holland	Raj Srinath	04/26/2022	<ul style="list-style-type: none"><li>• Chapter 7 Update to Section 7.29 – Price Analysis is Required for Sealed Bids</li><li>• Chapter 8 Update to section 8.5 – Late Proposals</li><li>• Chapter 8 Update to section 8.6 - Determining Reasonableness of Price</li><li>• Chapter 8, Update to Section 8.10.U.- Request for Proposals (RFP) Process</li></ul>



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				<ul style="list-style-type: none"><li>• Chapter 14, Update to section 14.8 H., 7&amp;8 Contract Modifications</li><li>• Chapter 14, Update to section 14.11 A. - Terminations</li><li>• Chapter 15, Update to Section 15.1., 1&amp;2 - Audit Support</li></ul>
11.0	J. Holland	Raj Srinath	07/01/2022	<ul style="list-style-type: none"><li>• Chapter 10, Update to section 10.0 A. – Small Purchases threshold for locally funded purchases</li></ul>
12.0	J. Holland	Raj Srinath	11/01/2022	<ul style="list-style-type: none"><li>• Chapter 7 Update to Section 7.29 – Price Analysis is Required for all Procurements</li><li>• Chapter 14, Update to section 14.8 H., 8 Contract Modifications</li><li>• Chapter 15, Update to Section 15.1., 2 - Audit Support</li></ul>
13.0	J. Holland	Raj Srinath	9/29/2023	<ul style="list-style-type: none"><li>• Chapter 1, Update to section 1.10 – Procurement Statement</li><li>• Chapter 2, Update to Section 2.0 – Procurement Integrity and Control</li><li>• Chapter 4, Update Section 4.21 – Independent Cost Estimates</li><li>• Chapter 7, Update Section 7.33 – Single or Non-Responsive Bid</li><li>• Chapter 14, Update Section 14.8 – Contract Modifications and Change Orders</li></ul>



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14.0	J. Holland	Kevin Hurley	10/23/2023	<ul style="list-style-type: none"><li>Chapter 24, Update Section 24.6 – Piggybacking</li></ul>
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## HOW TO USE AND TO RECOMMEND CHANGES TO THE PROCUREMENT PROCEDURE MANUAL


The Manual is divided into chapters with Chapter 1 as the Procurement Statement and the remaining Chapters based upon selected subject areas.

The Manual contains hyperlinks in blue underlined text. Press the CTRL key and double click the mouse on the marked text to move to the requested item.

The Table of Contents can be used to immediately access requested Chapters and Sections. From the menu at the top of the screen, select View Settings, then Navigation Pane. The pane appears on the left side of the document. Click on the requested Section and the document will be immediately transitioned to the appropriate place.


Proposed changes, corrections or additions to the Manual should be sent to the Head of the Office of Contracts & Procurement and Material/Administrative Services (Head of CPM) who is responsible for maintaining the Manual. The Head of CPM will assign or coordinate as necessary the proposed changes or additions with the appropriate office




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	If the contract permits the Contractor to retain title, and the Contractor elects to retain title to an invention, MARTA shall attempt to retain a nonexclusive, non-transferable, irrevocable, royalty free license to use or have used, for or on behalf of MARTA, any invention made in the performance of work under a contract.....	150
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## Definitions

**ACCEPTANCE:** The formal written acceptance of an offer by MARTA.

**ACQUISITION** - The acquiring by contract of goods and services by and for the use of MARTA through purchase or lease, whether the goods or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when MARTA's needs are established and includes the analysis and description of requirements, solicitation and selection of sources, award of contracts, contract financing, contract performance and administration, and those technical and management functions directly related to the process of fulfilling MARTA's needs by contract. The Office of Contracts & Procurement and Material/Administrative Services (CPM) serves as the central procurement arm for the Authority.

**ACQUISITION PLANNING** - The process by which the efforts of all personnel responsible for an acquisition are integrated through a comprehensive plan for fulfilling agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

**ACTUAL COSTS:** Costs incurred by a Contractor in the performance of work on a contract, as distinguished from forecasted or estimated costs.

**ADDENDUM/ADDENDA:** Written interpretation(s) or revision(s) to the Invitations for Bids or Request for Proposals issued by MARTA before the bid opening or proposal receipt, which are incorporated into the Contract Documents.

**ADMINISTRATIVE NOTICE TO PROCEED (ANTP):** Used primarily for construction contracts when the Contractor must provide permits or other documents or information to MARTA after award but prior to commencing work.

**ALLOWABLE COSTS:** Costs a Contractor actually incurred that were determined to be reimbursable on a cost reimbursement contract or usable in pricing a fixed price contract based on reasonableness, allocability, and generally accepted accounting principles and practices in accordance with contract terms.

**APPROVED EQUAL:** A substitute offered by a prospective Contractor which is accepted by MARTA.

**AUTHORITY:** Metropolitan Atlanta Rapid Transit Authority (MARTA).

**AWARD:** (Contract Award) - The action by the Board of Directors or the General Manager/CEO, or his/her delegate to enter into and execute a contract on behalf of MARTA.


**BID:** Offer of a Contractor to provide goods, services or work in response to an Invitation for Bids.

**BID/PROPOSAL SAMPLES:** Sample required by the Invitation for Bids/Request for Proposals, to be furnished by a Contractor/Proposer as part of its Bid/Proposal to show the characteristics of a product offered in its Bid/Proposal to assure procurement of an acceptable product.

**BID SECURITY:** A certified or cashier's check, Letter of Credit or Bid Bond accompanying the bid submitted by the Contractor. Cash will not be accepted as bid security.

**BID TABULATION (BID SUMMARY SHEET):** The written record of prices and other relevant information pertaining to the Bids submitted in response to a Bid Solicitation Package.

**BLANKET PURCHASE ORDER:** A pre-contractual agreement with a Contractor that establishes an agreement

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for the purchase of supplies or services.

**BOARD OF DIRECTORS:** Board of Directors of MARTA consisting of a Chairperson and members who exercise and perform the functions pursuant to Section 6 of the MARTA Act.

**BRAND NAME PRODUCT:** A product described by brand name and make, model number, or other appropriate nomenclature by which the product is offered for sale to the public by the particular manufacturer, producer or distributor. The brand name is used by MARTA only for the purpose of establishing identification and a general description of the item and to establish the essential, salient characteristics of an item to be acquired.

**CAPITAL EQUIPMENT:** Equipment having a useful life of at least one (1) year, which costs a minimum of \$5,000.00.

**CENTRALIZED PROCUREMENT:** The Office of Contracts and Procurement and Material/Administrative Services (CPM) handles all purchasing requirements for the Authority from requisition through payment.

**CERTIFIED COST AND PRICING DATA:** All facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Certification requires the Proposer/Contractor to certify such data as being current, accurate and complete as of the day price agreement is reached.

**CERTIFIED DISADVANTAGED BUSINESS ENTERPRISE:** A Contractor certified as a disadvantaged business enterprise by the Department of Diversity and Equal Opportunity or GDOT.

**CHANGE DIRECTIVE:** An alternate mechanism for directing the Contractor to perform additional work to the contract when time and/or cost of the work is not in agreement between MARTA and the Contractor.

**CHANGE NOTICE:** A written notice issued to the Contractor by the CPM Agent specifying a change in the work within the general scope of the contract.

**CHANGE ORDER:** A written bilateral document issued by MARTA incorporating changes in the work and/or adjustments in the total contract price and schedule.

**COMPETITIVE RANGE:** Parameters, which include offers in response to an RFP that have been determined to have a reasonable chance of being selected for award based on cost or price and other factors that were stated in the Solicitation Package.


**CONE OF SILENCE:** Accomplished by an undertaking of involved parties not to disclose any confidential matters regarding a specified solicitation.

**CONSTRUCTION:** Any work of improvement of MARTA performed by Contractors which supply material or goods and apply or install the work or improvement to constitute an improvement to real property or a fixture thereon, e.g., more than just a "plug in" of moveable goods such as furniture.

**CONSTRUCTION COST:** Contractor costs for labor, material, equipment, and services; Contractors overhead and profit; and other direct and indirect construction costs. Construction cost does not include the compensation paid to the architect and engineer and consultants, the cost of the land, rights-of-way or other costs which are defined in the Contract Documents as being the responsibility of the owner.

**CONSTRUCTION DOCUMENTS:** A term used to represent all drawings, specifications, addenda, and other pertinent construction information associated with the construction of a specific project.

**CONSULTANT:** A firm or individual, which is awarded a contract for specialized services and advice in financial,

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economic, accounting, engineering, legal or administrative matters who are specially trained, experienced and competent.

**CONTRACT:** A written agreement executed by MARTA and an individual, firm or corporation, which thereby becomes the Contractor. The contract sets forth the rights or obligations of the parties in connection with the furnishing of goods or services (including construction).

**CONTRACT ADMINISTRATION:** A system for ensuring that Contractors conform to the terms, conditions, and specifications of the contract and for the conduct of any MARTA administrative requirements during the life of the contract. These include, but are not limited to: Monitoring Contractor Performance, Quality Surveillance of the Product or Service During Contract Performance, Inspection and Acceptance of the Product or Service, Contract Modifications and Changes, Dispute and Claims Resolution, Authorizing Payment and Contract Closeout.

**CONTRACT CLOSEOUT:** A formal process ending the life of a contract and closeout of any open issues related to payment and services.

**CONTRACT DRAWINGS:** The plans, showing locations, character, and dimensions of the work to be performed under the contract, pursuant to the contract specifications or amendments thereto.

**CONTRACT MODIFICATIONS:** Written alterations in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by a mutual action of the parties to the contract.

**CONTRACTOR:** Any individual, firm, partnership, corporation, or combination thereof submitting an offer for the work solicited in a Request for Quotations (RFQ), Invitation for Bids or Request for Proposals, acting directly or through a duly authorized representative.

**CONTRACTORS LIST:** A compilation of names of prospective Contractors for a particular solicitation consisting of firms that requested and/or were sent a copy of the Solicitation Package.

**COST ANALYSIS:** Review and evaluation of cost data submitted by a Contractor in support of a contract price, or a Contractor in support of a contract modification, including review and evaluation of the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion of the degree to which the proposed costs represent what performance should cost.


**COST CONTRACT:** A cost-reimbursement contract under which the Contractor receives no fee.

**COST-PLUS-FIXED FEE:** A cost-reimbursement type contract which provides for the payment of a fixed fee to the Contractor. The fixed fee, once negotiated, does not vary with actual cost, but it may be adjusted as a result of a change order or change directive.

**COST-REIMBURSEMENT CONTRACT:** A contract, which provides for payment of allowable costs incurred in the performance of a contract to the extent prescribed in the contract. This type of a contract establishes an estimate of total cost for the purpose of obligating funds, and establishes a ceiling which the Contractor may not exceed (except at its own risk) without prior approval.

**COTR:** Contracting Officer's Technical Representative from the Requestor Department in the contract award and administration process. The COTR helps ensure that Contractors fulfill contract terms and conditions, and that Authority dollars are prudently spent.

**CPM:** The Office of Contracts & Procurement and Material/Administrative Services. The centralized procurement arm of the Authority with responsibility for procuring all Authority requirements.

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**CPM AGENT:** A Contracts & Procurement and Material/Administrative Services staff person with responsibility for the procurement and administration of requested goods or services on behalf of the Authority.

**DEBARMENT:** Entities that are listed on the Federal and State of Georgia debarred list which excludes the entities from doing business with MARTA.

**DESCRIPTIVE LITERATURE:** Information such as catalog cuts, illustrations, drawings, and brochures which show the characteristics of construction of a product or explain its operation. The Descriptive Literature may be furnished by a Contractor as part of its Bid or Proposal to describe the products offered in its Bid or Proposal and required only when MARTA deems such literature is needed to enable it to determine whether the products offered meet the specifications and to establish exactly what the Contractor proposes to furnish.

**DISADVANTAGED BUSINESS ENTERPRISE:** A for-profit small business concern which is at least 51% owned by one or more socially and economically disadvantaged individuals or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**EQUAL:** A substitute for a brand name product identified in the specifications which is offered by a prospective Contractor and which is accepted by MARTA, in accordance with procedures stipulated in the Solicitation Package, as equal to or better than a manufacturer's brand-name product.

**FACILITIES:** Something designed built or installed to afford a specific convenience or service.

**FINAL ACCEPTANCE:** Final acceptance of the Scope of Work under a contract occurs when the work is fully, completely, and finally accomplished in full, absolute, and strict compliance with the Contract Documents.

**FIRM-FIXED-PRICE CONTRACT:** A fixed price contract provides a price that is not subject to any adjustment on the basis of the Contractor's cost experience in fulfilling the contract terms. This type of contract places maximum risk and full responsibility for all costs and resulting profit or loss upon the Contractor, and provides maximum incentive for the Contractor to control costs and perform effectively.

**FIXED-UNIT PRICE CONTRACT:** This kind of contract is based on estimated quantities of items included in the project and their unit prices. The final price of the project is dependent on the quantities needed to carry out the work. In general this contract is only suitable for construction and supplier projects where the different types of items, but not their numbers, can be accurately identified in the Contract Documents.

**FORMAL ADVERTISING (SEALED BIDDING):** The procurement process by which sealed bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible Contractor whose Bid, conforming with all the material terms and conditions of the Solicitation Package, is lowest in price.


**FTA:** Federal Transit Administration.

**FULL AND OPEN COMPETITION** - When used with respect to a contract action, means that all responsible sources are permitted to compete.

**GRANTEE:** MARTA as a recipient of an outside source of funds, usually FTA funding.

**IMPROPER INFLUENCE:** Any influence that induces or tends to induce a MARTA employee or officer to give consideration or to act regarding a MARTA contract on any basis other than the merits of the matter.

**INCENTIVE CONTRACT:** A contract that provides for relating the amount of profit or fee payable under the contract with the Contractor's performance in order to obtain specific procurement objectives.

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**INDEFINITE DELIVERY – INDEFINITE QUANTITY (IDIQ) CONTRACT:** Indefinite delivery-indefinite quantity contracts provide for an indefinite quantity of services for a fixed time. They are used when a Requestor can't determine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period. IDIQs help streamline the contract process and speed service delivery.

**INDEPENDENT COST ESTIMATE (ICE):** The Independent Cost Estimate (ICE) is the estimate of costs that a contractor may incur in performing services and/or providing supplies to achieve the Authority's objectives. It serves as the basis for reserving funds during acquisition planning; it provides the basis for comparing costs or prices proposed by Contractors; and it serves as an objective basis for determining price reasonableness of the Quote, Bid or Proposal being evaluated and is required for all procurements regardless of dollar amount.

**INDIVIDUAL SURETY:** A person, as distinguished from a business entity, who is liable for the entire penal amount of a bond.

**INSTALLATION:** the act or process of making equipment ready to be used in a certain place.

**INSTRUCTION TO CONTRACTORS:** The portion of the Solicitation Package which provides prospective Contractors with instructions for submitting bids.

**INSURANCE:** A contract that provides that, for a stipulated consideration, the insurer undertakes to indemnify the insured party against risk of loss, damage, or liability arising from an unknown or contingent event.

**INVITATION FOR BIDS (IFB):** The formal request by the Authority for submission of bids on a particular contract.

**LABOR-HOUR CONTRACT:** A contract that is a variant of the time and materials type contract differing only in that the Contractor does not supply materials.

**LIQUIDATED DAMAGES:** An amount fixed in the contract, which is assessed against a Contractor when it breaches the delivery provision of a contract (e.g., it fails to complete delivery, installation, services, or the work specified in a contract within the contract period of performance or schedule) where the extent of actual damages would be difficult or impossible to determine. Liquidated damages are a predetermined, set amount and are included in the contract in lieu of attempting to measure actual damages.

**MANUAL:** A user's guide which is a technical communication document intended to give assistance to people using the MARTA Procurement System.

**MATERIAL COSTS:** Costs of items such as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the Contractor, which may include such collateral items as inbound transportation and in transit insurance.


**MARTA:** The Metropolitan Atlanta Rapid Transit Authority.

**MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM MBE/WBE):** An MBE enterprise is at least 51% owned by one or more members in the following presumptive groups: Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Asian-Indian Americans. A WBE enterprise is at least 51% owned by one or more women; and one or more women who own it control its management and daily business operations.

**NEGOTIATION:** Negotiation is a procedure that includes the receipt of proposals from Offerors. It permits bargaining, and usually affords Offerors an opportunity to revise their offer before award of a contract.

**NEGOTIATION MEMORANDUM:** A memorandum prepared by MARTA at the conclusion of each negotiation, detailing the elements of negotiation (special clauses, specifications, costs, etc.).



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**NON-COMPETITIVE NEGOTIATION:** The procurement process by which a proposal is solicited from only one source or, after solicitation of multiple prospective entities, only one entity submits a responsive and responsible proposal; negotiations may be held with the entity in MARTA's sole discretion.

**NOTICE OF AWARD (NOA):** Letter issued to the successful Contractor stating that the contract has been awarded to it and stating the effective date of the contract. For non-construction contracts, the Notice of Award usually authorizes the Contractor to commence performance; for construction contracts, the Notice of Award is usually simply a notification and does not necessarily authorize the Contractor to commence work. Usually MARTA must issue a Notice to Proceed before the Contractor is authorized to begin work.

**NOTICE TO PROCEED:** Written direction to commence delivery, installation, services, or the work provided for in the contract. It is sent to the Contractor post award and states that the Contractor is authorized to commence work as of a specific date.

**OFFER:** A response to a solicitation promising to conform to its mandatory requirements that, if accepted, would bind the Offeror to perform the resultant contract.

**OVERHEAD:** Costs, which cannot be specifically identified by a Contractor as definitely attributable to contract work, usually, the general costs of running the business.

**PAYMENT BOND (LABOR AND MATERIAL):** A bond assuring payment by the prime Contractor as required by law of all subcontractors supplying labor and material in the execution of the work provided for under a contract.

**PERFORMANCE BOND:** A bond securing fulfillment of all the Contractor's obligations under a contract, generally by paying a penal amount specified or by completion of the work.

**PERIOD OF PERFORMANCE:** The period of performance is the period of time allowed in the Contract Documents for completion of the work from the effective date through the final date.

**PIGGYBACKING (ASSIGNMENT):** The post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.


**POSTMARK:** A printed, stamped, or otherwise placed impression (exclusive of a postage meter impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service.

**POWER OF ATTORNEY:** The authority given to a person or corporation to act for and obligate another as specified in the instrument creating the power. In corporate surety, an instrument under seal, which appoints an attorney-in-fact to act on behalf of a surety company in signing bonds.

**PRE-BID/PRE-PROPOSAL CONFERENCE:** A conference during which representatives of CPM, the Requestor Department, Project Manager, COTR, D&I, Department of Safety and Quality Assurance, and Department of Legal Services discuss preparation of bids or proposals. Responses to questions raised (if any) are not binding and must be submitted in writing and distributed to all holders of Solicitation Packages.

**PRE-CONSTRUCTION MEETING (KICKOFF MEETING):** For a construction project, a meeting with representatives of the Contractor and MARTA after award and before beginning the construction work. "Kickoff Meeting" is also used to mean a meeting convened by the CPM Agent and attended by the PM and COTR which will include a brief presentation by the Project Manager on the project Scope of Work.

**PRE-CONTRACT COSTS:** Costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when those costs are necessary to comply with the proposed

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contract delivery schedule.

**PRE-SOLICITATION ANNOUNCEMENT:** The advertised notice of a proposed solicitation.

**PRICE:** The amount that MARTA anticipates it will pay the Contractor for full performance under the terms of a contract, including costs and profit.

**PRICE ANALYSIS:** Process of examining and evaluating the reasonableness of a Contractor's price without evaluation of the separate cost elements and proposed profit of the Contractor.

**PRIME CONTRACTOR:** See "Contractor".

**PROGRESS PAYMENTS:** Reimbursement to a Contractor for costs incurred by it at a percentage or stage of completion of the work, primarily used when the contract requires a long time period for completion of contract performance and there are definitive milestones.

**PROJECT MANAGER:** The person responsible for the overall management of leading a contract from its inception to execution. This includes planning, execution and managing the people, resources and scope of the contract. The project champion, sponsor and stakeholder are not the same as a project manager.

**PROPOSAL:** A written response to a Request for Proposals, which contains an offer and the information requested by the Request for Proposals.

**PROPOSER/PROPONENT/OFFEROR:** Any individual, firm, partnership, corporation or combination thereof submitting a proposal for the work solicited by a Request for Proposals or other similar document.

**PROPRIETARY INFORMATION:** Information, including trade secrets, data, formula, patterns, compilations, programs, devices, methods, techniques, or processes that a company wishes to keep confidential.

**PROTEST:** A written objection or complaint by an interested party to the terms, conditions or form of a proposed procurement or the proposed or actual award of a contract.

**PURCHASE ORDER:** A contractual document in which a promise to pay is offered in exchange for an acceptance effectuated by performance, e.g., the delivering of goods, generally used for inventory replenishment items or other acquisitions for which MARTA assumes a minimum exposure to liability, thereby negating the need for extensive non-standard terms and conditions.

**QUALIFIED PRODUCTS LIST:** An established list of standardized products which assures efficiency, economy, compatibility and/or maintenance reliability of MARTA purchased products.


**QUOTATION:** A citation of price and delivery terms or a period of performance by a Contractor in response to a CPM Agent's request on procurements that are less than \$200,000 for small purchase transactions permitted by MARTA.

**RECEIVING REPORT:** Written documentation of supplies delivered or services performed as noted by the CPM Agent or other authorized MARTA personnel.

**REQUEST FOR PROPOSALS (COMPETITIVE NEGOTIATIONS):** The procurement process by which a Request for Proposal is issued, soliciting proposals from a number of sources, and negotiations may be conducted with one or more sources submitting offers (in MARTA's sole discretion) for the award of a contract.

**REQUEST FOR PROPOSALS (RFP):** The competitive proposal method of procurement that solicits proposals from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost type Contract is awarded.



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**REQUEST FOR QUALIFICATIONS (RFQ):** A competitive selection process when selection is based primarily on the qualifications as part of a single-step or multi-step procurement process.

**REQUESTOR DEPARTMENT (REQUESTOR):** The term used for any organizational entity within MARTA that initiates a request for procurement action and that will ultimately benefit from the goods or services acquired.

**REQUISITION:** A form used by a Requestor Department to initiate procurement action for materials, supplies, and/or services.

**RESPONSIBLE CONTRACTOR/PROPOSER:** A Contractor/Proposer determined by MARTA to have the financial resources, judgment, skill, integrity, experience and ability to successfully fulfill the requirements of the contract.

**RESPONSIVE BID:** A Bid which conforms to all technical, business and legal requirements of the Bid Solicitation Package, e.g., Invitation for Bids.

**SCOPE OF WORK:** Complete description clearly defining the supplies or services being procured, either through performance specifications, plans, means, and/or methods, that set forth the minimum acceptable performance standards expected of the end product, or through a description of tasks to be performed and products to be delivered. Development of the Scope of Work is the responsibility of the Requestor.

**SEALED BIDDING:** See “Invitation for Bids”.

**SITE VISIT:** MARTA conducted tour of project site to acquaint prospective Contractors of the existing conditions at the site of the proposed work.

**SMALL BUSINESS ENTERPRISE (SBE):** SBE enterprise is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals; and whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it and whose combined net worth of the individuals that own and control the firm does not exceed \$250,000 excluding the value of their personal residence(s) and the value of the applicant firm.

**SMALL PURCHASES:** Services, supplies, equipment and material procurements which do not exceed \$200,000, the small purchase threshold.

**SOLE SOURCE CONTRACT:** A contract for the acquisition of goods or services from the only Contractor capable, authorized, or available to provide the goods or services.


**SOLICITATION PACKAGE:** A set of documents issued by MARTA to procure the intended work.

**STANDARD CONTRACT TERMS AND CONDITIONS:** A part of the Contract Documents. These clauses set forth the rights and responsibilities of the contracting parties and are standard in all contracts of a specific type, e.g., construction, service, purchase or repair.

**SUPPLEMENTARY TERMS AND CONDITIONS:** A part of the Contract Documents. These clauses set forth legal, business and technical requirements that are particular to a specific contract.

**TECHNICAL EVALUATION MEMORANDUM:** A document prepared by the Requestor Department supporting the analysis of the Contractors’/Proposers’ technical qualifications and responsiveness to the Solicitation Package.

**THIRD-PARTY CONTRACT:** As used in FTA guidelines and grants, any contract or contract modification between MARTA and another person or firm. Use of the term is generally limited to a contract which is to be funded

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in whole or in part by the FTA government. The original grant agreement related to a project or to the work to be performed is entered into between the FTA government or other body and its grantee; if the grantee then contracts to have the work performed by another individual or firm, that contract is referred to as a "third party contract".

**TIME AND MATERIALS CONTRACT:** A type of contract that provides for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which include wages, overhead, general and administrative expenses, and profit) and materials at cost.

**TRADE DISCOUNT:** A price allowance or deduction, usually as a percentage allowed to different classes of customers.

**TRADE SECRET:** Information which includes, but is not limited to, formulas, plans, patterns, processes, tools, mechanisms, compounds, procedures, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors.

**TWO-STEP SEALED BIDDING:** A method of contracting designed to obtain the benefits of competitive sealed bidding when adequate specifications are not available. Two-step sealed bidding is especially useful in acquisitions requiring technical proposals, particularly those for complex items.

The two steps involved in two-step sealed bidding are the following:

1. In the first step, technical proposals are obtained, and discussions held; and
2. In the second step, Contractors with technically acceptable proposals from the first step are invited to submit bids based on their individual proposal. An award is then made to the lowest Contractor in the same way as it would have been made under a sealed bidding procedure.


**UNALLOWABLE COST:** Any cost which, under the provisions of any pertinent law, regulation or contract, cannot be included in prices, cost-reimbursements, or settlements under a MARTA contract to which it is allocable.

**UNAUTHORIZED COMMITMENT** - An agreement, commitment or obligation between a MARTA employee and a third party that is not binding on MARTA because the person who made it lacked the authority to make such commitment or obligation on behalf of MARTA.

**U.S. DEPARTMENT OF TRANSPORTATION-FEDERAL TRANSIT ADMINISTRATION:** FTA grantor agency referred to in the Contract Documents as "FTA", under whose grants of financial assistance and grant contracts, work or services are performed or materials are provided by third parties.

**WORK:** The completed performance required by the Contract Documents, and includes all necessary labor and materials and equipment incorporated or to be incorporated in such performance.

**WORK ORDERS:** Scheduled or un-scheduled orders to perform specific services over a specific contract period, for filling MARTA's requirements and used where MARTA anticipates recurring requirements but cannot predetermine precise services to be provided and it is inadvisable for MARTA to commit itself to a minimum compensation. Funds are obligated by each order, and not by the contract itself. Such orders must be within the general Scope of Work.

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## Procurement System

### PROCUREMENT OVERVIEW

The Procurement Manual consolidates all Metropolitan Atlanta Rapid Transit Authority (MARTA) procurement procedures into a comprehensive reference book for Authority personnel and outside parties having an interest in the Authority's procurement process. The Manual includes a Statement (Chapter 1) and implementing procedures.


### PURPOSE

The Procurement Statement accomplishes the following goals:

- Establishes a centralized procurement system for the Authority;
- Provides guiding principles of the MARTA Procurement System;
- Identifies procurement standards;
- Establishes limits on the use of non-competitive procurement methods in conducting acquisitions, including the responsibilities of authorized Contracts & Procurement and Material/Administrative Services (CPM) Agents of MARTA; and
- Identifies threshold levels for Board and management approval of contracting actions.
- Establishes a supplier diversity program.

### APPLICATION

The Procurement Statement and associated procedures making up the Manual applies to all Authority and Board personnel engaged in the acquisition process.

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## Chapter 1 – Procurement Statement

### 1.0 Purpose and Scope

- A. MARTA’s Procurement Statement establishes the broad framework for MARTA’s acquisition and contract administration processes.
- B. The Procurement Statement sets forth the Board's direction on conducting MARTA’s acquisition and contract administration activities and provides guidance that will govern the conduct of all MARTA Departments and those personnel engaged in such activities.


### 1.1 Guiding Principles of the MARTA Procurement System

The following is the Statement of Guiding Principles of the MARTA Procurement System:

- A. MARTA has a centralized procurement system.
- B. The goal of every MARTA acquisition is to procure and receive delivery of goods and services to support the Authority’s activities in a timely and cost efficient manner.
- C. MARTA acquisitions are team efforts, and the participants in the acquisition process include representatives of Contracts & Procurement and Material/Administrative Services (CPM) Department, MARTA client departments, all MARTA support departments and functions including, but not limited to, Diversity and Equal Opportunity, Engineering, Quality Assurance, Department of Legal Services, and MARTA Contractors and/or Consultants who provide goods and services.
- D. Each MARTA participant in an acquisition will exercise personal initiative and sound business judgment, in accordance with applicable laws, this Statement, applicable Procurement Procedures and other Board adopted policies.
- E. CPM Agents may use any acquisition strategy practice, policy or procedure that is appropriate to the particular acquisition that is in the best interest of MARTA and is not prohibited by law, regulations or Board adopted policy.
- F. MARTA values Supplier Diversity.

### 1.2 MARTA Procurement Standards

- A. All MARTA employees, members of the Board, Contractors and Consultants must adhere to all applicable laws, regulations, MARTA policies including without limitation ethics and conflicts of interest policies.
- B. Acquisitions shall be conducted in a manner that provides full and open competition, to the extent possible and practical, in accordance with this Statement and applicable laws.
- C. Contract terms shall incorporate a clear and accurate description of the goods or services to be procured.
- D. MARTA will maintain acquisition and contract administration systems that ensure acquisitions are conducted in accordance with this Statement and that contracts will be performed by both MARTA and its Contractors in accordance with the terms of the contract.
- E. MARTA will have written selection procedures for all acquisitions and such procedures shall ensure fair and unbiased evaluation of responses and thereby avoid any arbitrary action in the award of contracts.
- F. MARTA will provide proper planning, execution, administration and review of acquisitions and contracts to ensure consistency and efficiency.
- G. MARTA will make awards to the most responsive and responsible Contractors who submitted a quote, bid,

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or proposal that is in the best interests of the Authority to accept.

### 1.3 Supplier Diversity & Inclusion Statement

It is the policy of MARTA, consistent with applicable Federal and State laws and regulations and MARTA Board policy, to promote the utilization of diverse suppliers to the maximum extent feasible. MARTA's acquisition and contracting processes will provide a level playing field for businesses to compete for and participate in MARTA's local and federal funded contracting activity. MARTA shall never exclude any person (or firm) from participation in, or deny any person (or firm) the benefits of, or otherwise discriminate against anyone, in connection with the award and performance of any MARTA contract on the basis of race, color, sex or national origin.

1.3.1 MARTA will take all steps to foster opportunities for disadvantaged and small businesses. Steps should include:

1.3.1.1 Arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitate maximum small businesses participation (e.g., in large contracts, to make them more accessible to small businesses, encouraging prime Contractors to subcontract portions of the work);

1.3.1.2 Conducting outreach and communications programs on contracting procedures and specific contract opportunities (e.g., inclusion of disadvantaged and small businesses on recipient mailing lists for Contractors, ensuring the dissemination to Contractors on prime contracts of lists of potential subcontractors, etc.);

1.3.1.3 Utilizing emerging technology and conducting business through a variety of electronic methods.

### 1.4 Responsibilities

All MARTA Departments shall support the procurement process in accordance with this Statement, applicable law and applicable Procurement Procedures. MARTA Department officials will plan acquisitions in compliance with the requirements of MARTA's Procurement System.

### 1.5 Statutory and Regulatory Requirements and Guidance

A. Acquisitions shall be conducted in accordance with the MARTA Act and all applicable Federal and State laws and regulations, and the policies of the Board of Directors.

B. MARTA shall comply with applicable grant requirements when MARTA uses grant funds in an acquisition.


### 1.6 Contracting Authority

A. Authority to enter into, administer, modify or terminate contracts and make related findings on behalf of MARTA is delegated as set forth in Section 1.7. The General Manager/CEO may re-delegate such authority to qualified employees of MARTA.

B. No contract, modification or other commitment of MARTA resources shall be binding on MARTA until such contract, modification or commitment has been committed into the appropriate legal form and executed by an authorized individual.

### 1.7 Contract Approval Requirements

Current delegations and thresholds are detailed in the links below.

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DELEGATIONS OF AUTHORITY

<http://martanet/data/CP-SOPs/Delegation-of-Authority.pdf>

## 1.8 Unauthorized Commitments

Unauthorized purchases will be referred to the Head of CPM for review and recommendation to the Department's senior member for action.


## 1.9 Protests

Any interested party shall have the right to protest a MARTA procurement action and have its complaint considered and resolved administratively by MARTA in accordance with the Protest Procedure set forth in Chapter 23 of this Manual.

An "Interested Party" is an actual Contractor whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. Interested parties do not include subcontractors or contractors of prospective Contractor, or joint ventures, shareholders, partners or members acting independently of the Contractor with a direct benefit.

## 1.10 References

1. MARTA Act of 1965 as amended: (can be accessed online at [www.itsmarta.com](http://www.itsmarta.com))
2. MARTA By-Laws: (can be accessed online at [www.itsmarta.com](http://www.itsmarta.com))
3. MARTA's Code of Ethics (can be accessed online at [www.itsmarta.com](http://www.itsmarta.com))
4. FTA Circular 4220. 1F: [http://www.fta.dot.gov/documents/FTA\\_Circular\\_4220.1F.pdf](http://www.fta.dot.gov/documents/FTA_Circular_4220.1F.pdf)


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## Chapter 2 - Procurement Integrity and Control

### 2.0 Code of Ethics

- A. The procurement business of MARTA shall be conducted with complete impartiality and without preferential treatment. MARTA's Code of Ethics which can be found online at [www.itsmarta.com](http://www.itsmarta.com) shall be followed at all times.
- B. It is the policy of MARTA that all personnel shall perform their official duties in such a manner as to avoid even the appearance of a conflict of interest or impropriety. No officer or employee shall:
  1. Release to an individual or concern or its representatives any knowledge such person may possess or have acquired in any way concerning any advertised procurement that would give an unfair competitive advantage;
  2. Make any commitment or promise relating to the selection of a Contractor or award which could be construed as such a commitment. Personnel will not, under any circumstances, advise a business representative that any attempt will be made to influence another person to give preferential treatment to his/her firm in the selection of a Contractor or the award of a contract;
  3. Use their position with MARTA to coerce, or give the appearance of coercing, another person to provide any financial benefit to persons to whom the employee has family, business or financial ties;
  4. Accept any gratuity in violation of MARTA's Code of Ethics.
  5. Participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:
    - a. The employee, officer, or agent;
    - b. Any member of his or her immediate family;
    - c. His or her partner; or
    - d. An organization that employs, or is about to employ, any of the above.
  6. Participate in any actions that might result in favored treatment, or the appearance thereof, toward prospective Contractors.
- C. In order to avoid the appearance of, or an actual, conflict of interest, members of any MARTA procurement evaluation panel shall disclose any present, prior or prospective affiliation (e.g., employment, source of income, financial interest or other affiliation) of themselves or members of their families with any Contractor or prospective subcontractor being considered for selection, or any firm or individual for whom the contract may have a foreseeable financial effect. In the event such affiliation exists or existed, the member is responsible for advising the Head of CPM and Chief Counsel, Department of Legal Services. The determination of whether affiliations are disqualifying will be made by the Board of Ethics. The initial determination will be made by the Department of Legal Services then presented to the Board of Ethics, if necessary. All procurement business shall be conducted in accordance with the MARTA's Code of Ethics.
- D. The CPM Agent shall inform the Requestor/evaluating staff of any potential conflicts disclosed by Contractors.
- E. The Head of CPM shall ensure that all MARTA Staff involved in the contract award and administration process are thoroughly familiar with the conflict of interest and other employee conduct provisions of MARTA



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personnel policies, and MARTA's Code of Ethics.

## 2.1 Reporting of Suspected Improper or Unlawful Conduct


- A. A CPM Agent shall report to the Department of Legal Services and Head of CPM any bids which evidence a violation of any laws. The Head of CPM shall consult with the Departments of Audit and Legal Services as soon as practical to ascertain whether a reasonable basis exists for believing that a violation of the law has occurred.
- B. Practices or events that may evidence violations of anti-trust laws include the following:
  1. The existence of an "industry price list" or "price agreement" to which a contractor refers in formulating its offer;
  2. A sudden change from competitive bidding to identical bidding;
  3. Simultaneous price increases or follow-the-leader pricing;
  4. Rotation of bids or proposals, so that each competitor takes a turn in sequence as the low Contractor, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;
  5. Division of the market, so that certain competitors bid low only for contracts solicited by certain agencies, or for contracts in certain geographical areas or on certain products, and bid high in all other jobs;
  6. Establishment by competitors of a collusive cost or price estimating system;
  7. The filing of a "joint" bid by two (2) or more competitors when at least one (1) of the competitors has sufficient technical capability and productive capacity for contract performance, unless such joint bid is for the purpose of promoting MARTA's Supplier Diversity and Inclusion Programs;
  8. Incidents suggesting direct collusion among competitors, such as the appearance of identical calculations or spelling errors in two (2) or more competitive offers, or the submission by a single firm of offers for other firms; or
  9. Assertions by employees or former employees, or competitors of Contractors, that an agreement to restrain trade exists.

## 2.2 Additional Guidelines

### Contractor Contacts

- A. Guidelines - To avoid misunderstandings with Contractors, the following guidelines shall guide all MARTA staff contacts with Contractors:
  1. Contacts prior to issuance of a solicitation for some specific services or assistance from potential Contractors, which should be avoided (absent a sound rationale) are:
    - a. Testing services
    - b. Custom drawings
    - c. Special investigations
    - d. Major demonstrations
    - e. Furnishing significant samples
    - f. Free trips by MARTA to view products.



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- B. If any of the above is required, coordination must be made with the Head of CPM and Department of Legal Services to ensure fairness in the procurement process.
- C. Contractors' requests for price histories or the opportunity to examine a part should be directed to the Head of CPM.

### **2.3 Contacts during Solicitation, Evaluation, Negotiation and Award**


- A. All contacts with Contractors that relate to a procurement that is in the solicitation, evaluation, negotiation or award phase must be conducted through CPM.
- B. All requests for procurement history of any type related to an ongoing procurement, including pricing history, will be directed to the Head of CPM and Department of Legal Services.

### **2.4 Georgia Open Records Act Requests**

All requests for procurement related information through a Georgia Open Records request shall be submitted to the Department of Legal Services for appropriate action. History of prior procurement actions, including price history, for the same or similar items are not considered records related to an ongoing Procurement and may be released as otherwise required by the Georgia Open Records Act.

### **2.5 On-Site Solicitation**

Contractors soliciting for business are not allowed in the work area of any MARTA operating facility unless authorized by CPM.

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### Chapter 3 – Diversity & Equal Opportunity

#### SUPPLIER DIVERSITY & SUPPLIER INCLUSION BUSINESS ENTERPRISE PROGRAMS

#### 3.0 Purpose of the Supplier Diversity & Supplier Inclusion Program

MARTA believes that it is important to encourage the participation of small local MBE/WBE-owned businesses in the continuing business of MARTA; and that the participation of these diverse suppliers in procurement will strengthen the overall economic fabric of our region, contribute to Metro-Atlanta's economy and tax base and provide employment to local residents. The GM/CEO and Board of Directors have made the success of local small businesses a permanent goal of MARTA by implementing the Supplier Diversity & Supplier Inclusion Programs Policy.

#### 3.1 Goals of the Program:

- To increase the number of certified SBE/MBE/WBE business enterprises.
- To increase local and federal dollar expenditures with certified SBE/MBE/WBE business enterprises.
- To increase subcontracting opportunities for certified SBE/MBE/WBE business enterprises.
- To develop the capacity of certified SBE/MBE/WBE business enterprises to participate as prime contractors in MARTA contracts.


#### 3.2 Definitions

For the purposes of this section only certain terms and words are defined. Where words have not been defined, but are defined in overall Definition section, those words shall have the meaning as defined therein. The following words, terms, and phrases, when used in this procedure shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**AFFILIATE** means any business, including, but not limited to, a parent business or subsidiary business that has any of the following relationships to another business:

1. Directly or indirectly owns or holds with the power to vote, five (5) percent or more of the outstanding voting securities of such other business;
2. Five (5) percent or more of whose outstanding voting securities are directly or indirectly owned or held with power to vote by such other business; or
3. Directly or indirectly controlling, controlled by, or under common control with such other business. For the purposes of this subsection, the term "control" means at least 50% ownership (i.e., voting) of a business.

**APPLICANT FIRM** shall mean the business applying for certification in the following supplier diversity programs: small business enterprise, minority business enterprise, women business enterprise, lesbian, gay,

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bisexual, transgender business enterprise, service disabled veteran business enterprise, and veteran business enterprise.

**BUSINESS** shall mean any association, cooperative, corporation, individual, joint venture, limited liability corporation (hereinafter referred to as "LLC"), partnership, sole proprietorship, trust or other legal entity.

**BUSINESS CONCERN** shall mean a business entity organized for profit, with a place of business located in the metropolitan statistical area (hereinafter referred to as "MSA"), and which operates primarily within the MSA or which makes a significant contribution to the economy.

**DIRECTOR** shall mean the Executive Director of the MARTA Office of Diversity & Equal Opportunity (D&I) and/or designee.

**MANAGER, SUPPLIER DIVERSITY & INCLUSION** shall mean the manager of a division within MARTA D&I

**GOOD FAITH EFFORT** shall mean the efforts undertaken by a contractor to obtain certified business enterprise participation in a contract issued by Metropolitan Atlanta Rapid Transit Authority.


**INVITATION FOR BID** shall mean the complete assembly of related documents, whether attached or incorporated by reference, furnished to prospective bidders for the purpose of inviting bids.

**LOCALLY BASED INSIDE MARTA SERVICE AREA** shall mean a business located and operating in MARTA's most current service area, which are presently Clayton, DeKalb and Fulton Counties, Georgia.

1. For the purposes of this definition, to be "located" in service area means to have a physical presence within the geographic boundaries of the service area counties such as having office space, a plant, warehouse, or other physical business facility, but specifically excluding the existence of a post office box without any other physical presence, for at least one (1) year prior to submitting an application for local small business certification.
2. For the purposes of this definition, to "operate" in MARTA service area means to be the current holder of a valid business license issued by the applicable county at least one (1) year prior to submitting an application for local small business certification.

**LOCALLY BASED OUTSIDE** shall mean a business located and operating outside the geographical boundaries of the MARTA service area, but operating inside the MSA counties of Cherokee, Clayton, Cobb, Douglas, Fayette, Henry, Gwinnett and Rockdale.

1. For the purposes of this definition, to be "located" in the MSA means to have a physical presence within the geographic boundaries of the counties within the MSA, but outside of Fulton and DeKalb County such as having office space, a plant, warehouse, or other physical business facility, but specifically excluding the existence of a post office box without any other physical presence, for at least one (1) year prior to submitting an application for the offered business certifications.
2. For the purposes of this definition, to "operate" in the MSA means to be the current holder of a valid business license issued by a local government within the MSA for at least one (1) year

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prior to submitting an application for local small business certification.

**MENTOR** shall mean the established prime contractor approved by D&I and CPM, submitting bid quotations over five million dollars (\$5,000,000.00).

**METROPOLITAN STATISTICAL AREA** (hereinafter referred to as "MSA") shall mean the geographical area consisting of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry and Rockdale counties.

**PRINCIPAL PLACE OF BUSINESS** shall mean the business location where the individuals who manage the business concern's day-to-day operations spend most working hours and where top management's business records are kept.

**PROTEGE** shall mean the subcontractor certified business enterprise seeking opportunities for contracts with MARTA.

**PURCHASING AND CONTRACTING DEPARTMENT** shall mean MARTA, CPM.

**QUALIFIED SEALED SOLICITATION** shall mean any Invitation for Bid, Request for Proposal issued by MARTA released for response to bidders and proposers after the effective date of this procedure, and determined by the Head of CPM to be qualified for the application of the Supplier Diversity Program benchmarks delineated in this procedure.

**RECEIPTS** shall mean total income or, in the case of sole proprietorship gross income, plus "cost of goods sold" as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms; Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form 1040, Schedule F for farm or Schedule C for sole proprietorships.


**REQUEST FOR PROPOSALS** shall mean the complete assembly of related documents, whether attached or incorporated by reference, furnished to prospective responders for the purpose of soliciting proposals.

**REQUEST FOR QUOTATIONS** shall mean the complete assembly of related documents, whether attached or incorporated by reference, furnished to prospective vendors for the purpose of soliciting price quotations.

**EXCEPT UNDER THE DIFFERENT GUIDELINES UNDERT THE DBE PROGRAM UNDER 49 CFR 26, SMALL BUSINESS** shall mean an independently owned and operated business concern whose average annual gross receipts, as defined herein, for the previous three years must not exceed:

1. Construction firms—Three million dollars (\$3,000,000.00);
2. Professional services firms—Two million dollars (\$2,000,000.00);
3. Commodity suppliers—One million dollars (\$1,000,000.00), and

The individual owners of such business concern may not possess a personal net worth that exceeds One million three hundred and twenty thousand dollars (\$1,320,000.00), including a spouse or adult child's net worth, but excluding the individual's ownership interest in their primary residence.

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**SOLICITATION** shall mean any Invitation for Bid, Request for Proposal or Request for Quotation issued by MARTA and released for response.

**SUBCONTRACT** shall mean an agreement between a subcontractor and a contractor, pursuant to which the subcontractor will provide to the contractor equipment, goods, materials, services or supplies.

**SUBCONTRACTOR** shall mean a business providing equipment, goods, materials, service or supplies to a contractor.

**CERTIFIED VENDOR LIST/SUPPLIER DIVERSITY LIST** means the document maintained by MARTA D&I that contains the contact information and applicable business enterprise certifications issued by MARTA.

**MINORITY BUSINESS** means a business at least 51% owned by a member(s) from ethnic minority groups. (African-Americans/ Black, Hispanic/Latino, Native American. Asian Pacific, Asian-Indian.)

**ETHNIC MINORITY GROUP MEMBERS** shall mean individuals who are members of the following groups that are presumed to be socially and economically disadvantaged:


1. Black Americans, which includes persons having origins in any of the Black racial groups of Africa.
2. Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or Spanish or Portuguese culture or origin, regardless of race.
3. Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians
4. Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong.
5. Asian Indian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

**VETERAN** means service in the U.S. military, naval, or air service.

**DISABLED VETERAN** means a veteran with a documented service connected disability of at least 10 percent or more.

### **3.3 DBE/SBE Program Policy**

- A. It is the policy of MARTA to promote the utilization of DBEs and SBEs to the maximum extent feasible. MARTA procurement processes seek parity and provide opportunity by applying race neutral and race conscious measures for DBEs and SBEs to compete for and participate in all aspects of MARTA procurement.
- B. The Executive Director of D&I is on record with the FTA as the Authority's Disadvantaged Business Enterprise Liaison Officer ("DBELO"). Procedures for establishing DBE or SBE goals will be coordinated through DBELO. Responsibility for ensuring compliance to the MARTA Disadvantaged Business Enterprise Program, all of its comments and related policies and procedures is a shared set of

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responsibilities held by all MARTA employees.

- C. In furtherance of this policy, MARTA requires that all procurements be forwarded to the DBELO for DBE or SBE goal evaluation prior to advertisement. It is the responsibility of the CPM Agent to coordinate with the DBELO to ensure that the established goal is included in the Solicitation Package.
- D. In instances where MARTA has not established a specific goal for participation by DBEs/SBEs on a contract, if the Offeror subcontracts, the Offeror is still expected to create a level playing field for DBE/SBE firms to utilize the services of subcontractors or purchase goods from contractors during the performance of the contract. Upon MARTA's request, the Offeror is required to submit documentation to satisfy MARTA that good faith efforts were made to utilize DBEs/SBEs during the life of the contract.

### 3.4 Compliance

- A. DBELO shall evaluate compliance to the DBE or SBE program requirements on all Bids/Proposals upon receipt on a pass/fail basis. The Offeror who meets the contract-specific goal or demonstrates good faith efforts shall be deemed to have 'passed' per the review by D&I. Should DBELO determine that an offer 'failed' to evidence good faith efforts, DBELO shall offer the successful Offeror(s) an administrative "Reconsideration Hearing" by the Reconsideration Officer. The Contractor/Proposer shall have 48 hours to provide a written response concerning the issue of whether adequate good faith efforts were demonstrated. The Reconsideration Officer will evaluate the written and/or verbal responses and issue a formal written decision on the reconsideration.
- B. The CPM Agent is responsible for ensuring that the level of participation committed in the Bid/Proposal is entered in the contract as the goal of record.

### 3.5 Contract Compliance


DBELO aggressively monitors compliance to the goal of record throughout the life of the contract to ensure progressive and successful achievement of the DBE/SBE participation commitment.

### 3.6 Supplier Diversity Certifications

This program is administered by MARTA to encourage the development of local diverse suppliers.

#### 3.6.1 Small Business Enterprise (SBE) Certification

- A. All businesses certified as a SBE pursuant to the policy pertaining to the SBE program as adopted on or about July 1, 2014, and thereafter amended, shall retain their certification until its expiration date. Thereafter, all applicant firms must be certified under the provisions set forth below.
- B. To be certified as a SBE, an individual owner shall be required to meet the following criteria:
  - 1. The business concern must qualify as a small business as that term is defined in this policy;
  - 2. Applicant firm must qualify as a locally based business and possess a valid county and/or city business license in MARTA service area or MSA business license for one (1) year prior to submitting SBE certification application;
  - 3. Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of the SBE program;
  - 4. Applicant firm must be a for-profit business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity;

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- a. Which is at least fifty-one (51) percent owned by one (1) or more of the applicant individuals identified and the ownership must have been in existence for one (1) year or more and the applicant individual must have maintained such fifty-one (51) percent ownership for at least one (1) year; and
- b. In the case of a publicly owned business, at least fifty-one (51) percent of all classes of stock of which is owned by one (1) or more of such persons each of whom meets the net worth criteria as defined herein.

5. Applicant firm owner's net worth must be compliant with the net worth threshold for small businesses:

The individual owners of such business concern may not possess a personal net worth that exceeds One million three hundred and twenty thousand dollars (\$1,320,000.00), including a spouse or adult child's net worth but excluding the individual's ownership interest in their primary residence.; and

6. The firm's average annual gross receipts, as defined herein, for the previous three (3) years must not exceed:
  - a. Construction firms—Three million dollars (\$3,000,000.00);
  - b. Professional services firms—Two million dollars (\$2,000,000.00);
  - c. Commodity suppliers—One million dollars (\$1,000,000.00).

### **3.6.2 Minority-owned Business Enterprise (MBE) Certification**


- A. All businesses certified as a MBE pursuant to the policy pertaining to the MBE program as adopted on or about July 1, 2014, and thereafter amended, shall retain their certification until its expiration date. Thereafter, all applicant firms must be certified under the provisions set forth below.

- B. To be certified as a MBE, an individual owner shall be required to meet the following criteria:

- 1 The business concern must qualify as a minority business as that term is defined in this Procedure;
- 2 Applicant firm must qualify as a business and possess a valid county and/or city business license within the 10 county MSA for one (1) year prior to submitting MBE certification application;
- 3 Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of the SBE program;
- 4 Applicant firm must be a for-profit business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity:

- a. Which is at least fifty-one (51) percent owned by one (1) or more of the ethnic minority group members. The applicant individuals identified and the ownership must have been in existence for one (1) year or more and the applicant individual must have maintained



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such fifty-one (51) percent ownership for at least one (1) year; and

- b. In the case of a publicly owned business, at least fifty-one (51) percent of all classes of stock of which is owned by one (1) or more of such persons.

5 MBE certification and participation will be tracked and such entities are encouraged to compete for contracts with MARTA.

### **3.6.3. Women-owned Business Enterprise (WBE) Certification**

A. All businesses certified as a WBE pursuant to the policy pertaining to the WBE program as adopted on or about July 1, 2014, and thereafter amended, shall retain their certification until its expiration date. Thereafter, all applicant firms must be certified under the provisions set forth below.

B. To be certified as a WBE, an individual owner shall be required to meet the following criteria:


1. The business concern must qualify as a female-owned business as that term is defined in this policy;
2. Applicant firm must qualify as a business and possess a valid county and/or city business license within the 10 county MSA for one (1) year prior to submitting WBE certification application;
3. Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of the WBE program;
4. Applicant firm must be a for-profit business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity:
  - a. Which is at least fifty-one (51) percent owned by one (1) or more women. The applicant individuals identified and the ownership must have been in existence for one (1) year or more and the applicant individual must have maintained such fifty-one (51) percent ownership for at least one (1) year; and
  - b. In the case of a publicly owned business, at least fifty-one (51) percent of all classes of stock of which is owned by one (1) or more of women.

5. WBE certification and participation will be tracked and such entities are encouraged to compete for contracts with MARTA.

### **3.6.4. Lesbian, Gay, Bisexual, Transgender - Owned Business Enterprise (LGBTBE) Certification**

A. All businesses certified as a LGBT pursuant to the policy pertaining to the LGBTBE program as adopted on or about July 1, 2014, and thereafter amended, shall retain their certification until its expiration date. Thereafter, all applicant firms must be certified under the provisions set forth below.




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B. To be certified as a LGBTBE, an individual owner shall be required to meet the following criteria:

1. The business concern who self identifies as a LGBT-owned business as that term is defined in this policy;
2. Applicant firm must qualify as a business and possess a valid county and/or city business license within the 10 county MSA for one (1) year prior to submitting LGBTBE certification application;
3. Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of the LGBTBE program;
4. Applicant firm must be a for-profit business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity:
  - a. Which is at least fifty-one (51) percent owned by one (1) or more individuals who self identifies as LGBT. The applicant individuals identified and the ownership must have been in existence for one (1) year or more and the applicant individual must have maintained such fifty-one (51) percent ownership for at least one (1) year; and
  - b. In the case of a publicly owned business, at least fifty-one (51) percent of all classes of stock of which is owned by one (1) or more of such persons.
5. LGBTBE certification and participation will be tracked and encouraged to compete for contracts with MARTA.

### **3.6.5. Service Disabled Veteran-Owned Business Enterprise (SDVBE) Certification**

- A. All businesses certified as a SDVBE pursuant to the policy pertaining to the SDVBE program as adopted on or about July 1, 2014, and thereafter amended, shall retain their certification until its expiration date. Thereafter, all applicant firms must be certified under the provisions set forth below.
- B. To be certified as a SBE, an individual owner shall be required to meet the following criteria:
  1. The business concern must qualify as a disabled veteran-owned business as that term is defined in this policy;
  2. Applicant firm must qualify as a “disabled” veteran-owned business with at least 10% service connected disability and possess a valid county and/or city business license in MARTA service area or MSA business license for one (1) year prior to submitting SBE certification application;


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3. Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States and be compliant with the residency requirements of the SDVBE program;
4. Applicant firm must be a for-profit business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity:
  - a. Which is at least fifty-one (51) percent owned by one (1) or more disabled veterans. The ownership must have been in existence for one (1) year or more and the applicant individual must have maintained such fifty-one (51) percent ownership for at least one (1) year; and
  - b. In the case of a publicly owned business, at least fifty-one (51) percent of all classes of stock of which is owned by one (1) or more of such persons each of whom meets the net worth criteria as defined herein.
5. Applicant firm owner's net worth must be compliant with the net worth threshold for small businesses:
 

The individual owners of such business concern may not possess a personal net worth that exceeds One point three two million dollars (\$1,320,000.00), including a spouse or adult child's net worth but excluding the individual's ownership interest in their primary residence.; and
6. The firm's average annual gross receipts, as defined herein, for the previous three (3) years must not exceed:
  - a. Construction firms—Three million dollars (\$3,000,000.00);
  - b. Professional services firms—Two million dollars (\$2,000,000.00);
  - c. Commodity suppliers—One million dollars (\$1,000,000.00).

### **3.6.6 Veteran-Owned Business Enterprise (VBE) Certification**

- A. All businesses certified as a VBE pursuant to the policy pertaining to the VBE program as adopted on or about July 1, 2014, and thereafter amended, shall retain their certification until its expiration date. Thereafter, all applicant firms must be certified under the provisions set forth below.
- B. To be certified as a VBE, an individual owner shall be required to meet the following criteria:
  1. The business concern must qualify as a veteran-owned business as that term is defined in this policy;
  2. Applicant firm must qualify as a veteran-owned business and possess a valid county and/or city business license in MARTA service area or MSA business license for one (1) year prior to submitting VBE certification application;
  3. Applicant firm owner must be a citizen or lawfully admitted permanent resident of the

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United States and be compliant with the residency requirements of the VBE program;

4. Applicant firm must be a for-profit business, including a sole proprietorship, partnership, corporation, limited liability company, or any other business or professional entity:
  - a. Which is at least fifty-one (51) percent owned by one (1) or more veterans. The ownership must have been in existence for one (1) year or more and the applicant individual must have maintained such fifty-one (51) percent ownership for at least one (1) year; and
  - b. In the case of a publicly owned business, at least fifty-one (51) percent of all classes of stock of which is owned by one (1) or more of such persons each of whom meets the net worth criteria as defined herein.
5. Applicant firm owner's net worth must be compliant with the net worth threshold for small businesses:
 


The individual owners of such business concern may not possess a personal net worth that exceeds One point three two million dollars (\$1,320,000.00), including a spouse or adult child's net worth but excluding the individual's ownership interest in their primary residence.; and
6. The firm's average annual gross receipts, as defined herein, for the previous three (3) years must not exceed:
  1. Construction firms—Three million dollars (\$3,000,000.00);
  2. Professional services firms—Two million dollars (\$2,000,000.00);
  3. Commodity suppliers—One million dollars (\$1,000,000.00).

### **3.6.7 Disadvantaged Business Enterprise (DBE) Certification**

See 49 CFR Parts 26 and MARTA DBE Policy Statement. This program is administered through a partnership with MARTA and Georgia Department of Transportation.

## **3.7 Continuing Obligations of Entities Certified Under Supplier Diversity Programs and Graduation (non DBE)**

- A. All certifications issued under the Supplier Diversity program, (not including DBEs) shall be reviewed every three (3) years by MARTA's Office of Diversity & Equal Opportunity (D&I).
- B. Each certified firm must submit a recertification application to be reconsidered for the Program. Failure of the firm to seek re-certification by filing the necessary application and corresponding documents with the MARTA, Office of Diversity & Equal Opportunity within ninety (90) days from the date of receipt of written notification of certification expiration from the D&I shall result in decertification of the firm.
- C. It is the responsibility of the certified entity to notify the D&I of any change in its circumstances


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affecting its continued eligibility for the program. Failure to do so may result in the firm's de-certification and preclusion from future participation in the Supplier Diversity program.

- D. The certified entity that no longer meets certification may be decertified at the expiration of the initial certification period by the MARTA D&I Executive Director, Manager of Supplier Diversity, Small Business or designee.
- E. The SBE that has participated in the program for a total of ten (10) years shall automatically graduate from the program at the expiration of the ten (10) year period and shall no longer be entitled to be certified as a SBE. Once the ten (10) year period expires, the former SBE is encouraged to participate in the DBE and/or mentor-protégé program.

### **3.8 De-Certification, Denial and Appeal Procedure for an Entity Certified Under the Supplier Diversity Program**

- A. The Executive Director, Manager or designee may decertify an entity that repeatedly fails to honor quotations provided to MARTA and prime contractors in good faith, or otherwise fails to comply with the Supplier Diversity program requirements and the provisions of this policy.
- B. An applicant business that has been denied certification or re-certification or been de-certified may protest the denial or de-certification as follows:
  - 1. Within fifteen (15) days of receipt of denial of certification or re-certification, or notice of intent to decertify, the firm may protest such action in writing to the Executive Director, Manager, or designee.
  - 2. A meeting shall be scheduled with the applicant business, the Executive Director, Manager, or designee, and Head of CPM, or designee, at which time the business may present additional facts and evidence in support of its eligibility. The Executive Director, Manager or designee, and Head of CPM or designee may request the attendance of any witness and production of any documents concerning the applicant business's affairs. The applicant business' failure to comply within ten (10) days of these requests may be grounds for denial of the appeal.
  - 3. D&I staff shall determine the applicant business' eligibility on the basis of the information provided at the meeting and make a recommendation to the Executive Director, whose final written decision shall be communicated to the business within ten (10) days of the meeting.
  - 4. A business denied or found to be ineligible may not apply for certification for one (1) year after the effective date of the final decision issued by the executive director.
- C. CPM and D&I shall notify all certified business enterprise of MARTA procurement activity as follows:
  - 1. Notification shall be posted online; and
  - 2. D&I shall ensure that the certified vendor's list will be made available for all qualified solicitations

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issued by CPM.

- D. D&I with support from CPM shall implement a training program to provide quarterly seminars and workshops to certified business enterprises addressing the issues facing the small business community. Seminars and workshops should include a component on how to do business with MARTA and encourage participation in supplier diversity initiatives; and
- E. MARTA shall require prompt payment and certification for all contracts for performance of work or procurement of goods.
  - 1. D&I shall ensure that all contracts covered by this procedure contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been promptly paid for work and materials, no later than seven (7) calendar days from prime contractor's receipt of payment from MARTA.
  - 2. On a monthly basis and throughout the duration of the contract and upon completion thereof, the D&I shall request documentation (utilization reports) from the prime contractor to certify payments to subcontractors or suppliers.


### **3.10 Supplier Diversity Contract Pre-Award Compliance Procedures**

For all qualified sealed solicitations, the bidder/proposer shall submit a notarized affidavit of the Schedule of supplier diversity participation detailing all businesses sub-contractors from which the bidder/proposer solicited bids or quotations.

The certified vendor list/ supplier diversity list compiled by the D&I establishes the group from which the bidder/proposer may solicit subcontractors under this program. The notarized schedule of supplier diversity participation shall be due at the time set forth in the solicitation documents.


### **3.11 Good Faith Efforts in Lieu of Meeting Benchmarks**

- A. A contractor must either meet the certified business benchmarks or demonstrate good faith efforts to achieve those benchmarks. In determining whether a bidder/proposer has made good faith efforts, the Executive Director or designee shall consider all relevant factors, which may include, but are not limited to the following:
  - 1. A contact log showing the name, address, and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, the name and title of the person making the effort;
  - 2. The full detailed description of the scope of work for which a quote was requested;
  - 3. The amount of the quoted price, if one was obtained;
  - 4. The list of divisions of work not subcontracted and the corresponding reasons for not including them;

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5. Subcontractor information as requested by forms provided by the D&I and CPM;
  6. For all contracts, a signed letter of intent from all certified SBEs describing the work, materials, equipment or services to be performed or provided by the SBE(s) and the agreed upon dollar value shall be due with the bid or proposal documents.
- B. The D&I Executive Director or designee will also consider, at a minimum, the bidder/proposer's efforts to:
1. Solicit certified subcontractors in the scopes of work of the contract. The bidder/proposer shall provide interested SBE businesses with timely, adequate information about the plans, specifications, and other such requirements of the contract to facilitate their quotation. The bidder/proposer must follow up initial solicitations with interested SBEs, including but not limited to, submitting evidence of contact via telephone, email or facsimile;
  2. Identify a portion of the work available to SBEs consistent with their availability;
  3. Negotiate in good faith with interested SBEs. The bidder/proposer shall provide evidence as requested and it shall include the names, addresses, and telephone numbers of SBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with them. The ability or desire of a bidder/proposer to perform the work of a contract with its own organization does not relieve it of the responsibility to make good faith efforts on all scopes of work subject to subcontracting; and
  4. Where feasible, facilitate the leasing of supplies or equipment when they are of such a specialized nature that the SBE could not readily and economically obtain them in the marketplace.
- C. The D&I Executive Director or designee shall maintain documentation of the good faith efforts performed by a prime contractor, and a copy of these records shall be kept with the official bid/contract file, in compliance with all record retention laws or for two (2) years, whichever is longer.
- D. If the D&I Executive Director or designee determines that a bidder/proposer did not make sufficient good faith efforts, the D&I Manager, or designee shall report and record this finding in writing, to the Head of CPM. The Requestor Department and GM/CEO shall be notified by the Head of CPM of the proposal/bidder's failure to obtain the SBE benchmarks or satisfactory good faith efforts.
- E. The GM/CEO shall have the authority to recommend rejection to the Board of Directors for any response to any qualified solicitation if the bidder/proposer fails to achieve the SBE benchmarks and fails to demonstrate good faith efforts as determined by D&I.

### 3.12 Pre-Award Review of Compliance with Benchmarks, Including Good Faith Efforts


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- A. D&I shall review the notarized schedule of SBE participation prior to award, including the scope of work and the opportunity to augment listed SBE participation or good faith efforts. The D&I Manager, Supplier Diversity or designee shall review all submittals and record and report the participation of each submittal the letters of intent from SBEs. The D&I manager or designee may request through the CPM Agent clarification in writing of items listed in the schedule of SBE participation, provided such clarification shall not include.
- B. Once the D&I Manager, Supplier Diversity or designee determines that the notarized schedule of SBE participation demonstrates that the benchmarks set forth in this procedure have been achieved or good faith efforts have been made, the D&I will notify the Requestor Department, and Head of CPM.
- C. Each SBE shall deliver a monthly report to the D&I listing the work completed and payment received from the prime contractor. The report shall be supported by copies of checks, invoices and any other relevant documents to substantiate that payment to the subcontractor has been received.

### **3.12.1 Post Award and Contract Performance Compliance Procedures**

- A. Upon award of a contract by MARTA that includes the benchmarks identified in this procedure, the prompt pay obligations in the MARTA's contract with the prime contractor, and the contract between the prime contractor and the subcontractors and sub consultants named in response to this procedure become covenants of performance by the contractor in favor of MARTA. The benchmarks shall be included as terms and conditions of the contract between MARTA and the contractor and failure to achieve or maintain the agreed upon applicable benchmarks may constitute a breach of the contract.
- B. The contractor shall provide a listing of all SBE and any other subcontractors to be used in the performance of the contract, with each request for payment submitted to MARTA. D&I/contract compliance shall monitor subcontractor participation during the course of the contract and shall have reasonable access to all contracts for the project held by the contractor.
- C. After the Board of Directors approves the procurement, the D&I shall verify with each SBE that a sub-contract in the specified amount recommended to the Board has been awarded by the prime contractor to the SBE.
- D. The contractor cannot make changes to the notarized schedule of SBE participation or substitute subcontractors named in the notarized schedule of SBE participation without the prior written approval of the D&I. Unauthorized changes or substitutions shall be a violation of this chapter, and may constitute grounds for rejection of the bid or proposal or cause termination of the contract for breach. In such instances, the county may withhold payment and/or impose penalties or other sanctions. Written approval for changes shall not be unreasonably withheld from the contractor.
- E. All requests for changes or substitutions of the subcontractors named in the notarized schedule of SBE participation shall be made in writing to the Head of CPM with a copy to the contract compliance division, and shall clearly and fully set forth the basis for the request. A contractor shall not substitute a subcontractor or perform the work designated for a subcontractor with its



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own forces unless and until the contract compliance division approves such substitution in writing. A contractor shall not allow a substituted subcontractor to begin work until the contract compliance division has reviewed the substitution.


- F. The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the notarized schedule of SBE participation. Bid shopping is prohibited.
- G. The final decision whether to permit or deny the proposed substitution and the basis therefore, will be communicated to the parties in writing by the D&I Executive Director.
- H. If a contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the notarized schedule of SBE participation, the contractor shall obtain the approval of the D&I to modify the notarized schedule of SBE participation and must make good faith efforts to ensure that SBEs have a fair opportunity to bid on the new scope of work.
- I. Changes to the scopes of work shall be recorded and reported by the user department at the time they arise, to establish the reasons for the change and the effect on achievement of the benchmarks identified in this procedure.

### **3.12.3 Counting Subcontracting Participation of a SBE**

- A. The entire amount of that portion of a construction subcontract that is performed by the SBE shall be counted, including the cost of supplies and materials obtained by the SBE for the work of the subcontract, and supplies purchased or equipment leased by the SBE. Supplies and equipment the SBE purchases or leases from the prime contractor or its affiliate shall not count as SBE participation.
- B. The entire amount of fees or commissions charged by a SBE for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract shall be counted.
- C. If a firm ceases to be a certified SBE during a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted. No contractor shall be penalized as a result of the failure of a project to achieve the benchmarks set forth in this procedure if the SBE fails to remain certified as required by the provisions of this procedure.
- D. In determining the achievement of a benchmark, the participation of a SBE shall not be counted until the amount being counted has been paid to that entity.
- E. Achievement of benchmarks authorized by this article shall be evaluated after the completion of the project.

### **3.12.4 Requirements for Mentor-Protégé Relationships**




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- A. MARTA's mentor-protégé initiative is encouraged to develop relationships between mentors and protégé to provide technical, administrative, and other assistance as required for contracting with MARTA.
- B. D&I shall determine if projects valued over five million dollars (\$5,000,000.00) qualify for a mentor-protégé relationship. Projects that will qualify for the mentor-protégé relationship are those projects where some portion of the work or services to be performed by the prime contractor for MARTA is capable of being performed by a protégé through a subcontract between the mentor and the protégé.
- C. Based on the scope of work and market availability, on all eligible projects valued over five million dollars (\$5,000,000.00) D&I shall determine whether good faith efforts to enter into a mentor-protégé relationship shall be required.
- D. The Manager, Supplier Diversity or designee shall determine whether good faith efforts to enter into a mentor-protégé relationship have been adequately demonstrated based on a review of the relevant facts, documents, and circumstances.
- E. No bid for eligible projects valued over five million dollars (\$5,000,000.00) that are deemed to require good faith efforts for a mentor-protégé relationship, shall be recommended for award unless submitted by a mentor that is registered as a supplier by CPM and a protégé certified by the D&I Executive Director or designee.
- F. Mentor-protégé teams must submit notarized written agreements to the D&I, which clearly delineate the rights and responsibilities of the mentor and protégé, comply with any requirements of the contract compliance division as set forth in the eligible project bid documents, and provide that the mentor-protégé relationship shall continue for, at a minimum, the duration of the project.

The notarized written agreement must contain the following:

1. The type of collaboration and training to be provided to the project to assist in the growth and development of their business. The areas of assistance that are encouraged include, but are not limited to, bonding and insurance support, management and scheduling support;
2. Names and titles of the individuals from the mentor that are responsible for working directly with the protégé in the areas identified above;
3. Names and titles of the individuals from the protégé that are responsible for working directly with the mentor in the areas identified above;
4. A system to monitor and evaluate the effectiveness of the mentor-protégé agreement, including, at a minimum monthly reports of progress between the mentor and protégé businesses submitted to the contract compliance division; and

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5. Protégés agree not to subcontract any of their work to other contractors without the approval of the D&I.
- G. The D&I Executive Director or designee shall review and approve all agreements regarding the terms and provisions of the mentor-protégé relationship prior to the award of a contract on an eligible project to the mentor-protégé team. Mentor-protégé teams must submit agreements for preapproval no later than fourteen (14) days prior to the date set for receipt of bids on an eligible project. D&I will not approve a bid submitted by a mentor-protégé team that does not include a satisfactory written mentor-protégé agreement in accordance with the requirements of this section.
- H. During the term of the contract the mentor and protégé businesses must each provide to D&I, a quarterly summary of the mentor skills provided to the protégé, which shall include:
1. The time spent between mentor and protégé businesses in furtherance of the mentor-protégé relationship;
  2. The nature and extent of managerial, technical, financial and bonding assistance provided;
  3. A summary and explanation of any projects bid on or undertaken by the mentor-protégé team in the private sector or for a governmental entity other than MARTA; and
  4. Any additional or further information required by D&I as set forth in bid documents or otherwise.
    - a. No officer, director, employee or member of the mentor-protégé team shall be allowed to bid or otherwise participate independently on a contract where the mentor-protégé team is bidding or otherwise participating.
    - b. Each member of the mentor-protégé team shall provide D&I access to review all records pertaining to mentor-protégé agreements before and after the award of a contract in order to reasonably assess compliance with this section.

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## Chapter 4 – Procurement Planning Methods

### 4.0 Purpose and Scope


- A. This Chapter provides general guidelines regarding the preparation of MARTA procurement requests and specifications by the Requestor Department, and the selection of the proper course of procurement action by the CPM Agent. This Chapter also sets forth fundamental requirements in preparing contract specifications and in selecting the proper procurement method and special contracting approach.
- B. Prior to initiating a procurement action, the Requestor shall determine that supplies, equipment or services are necessary for MARTA functions, operations or activities and are not unnecessarily duplicative of other items or services acquired by MARTA. The Requestor shall, when appropriate, make an analysis of lease and purchase alternatives and any other appropriate possibility (including the availability of surplus MARTA property or property from other government sources), to determine which would be the most economical and practical means of acquiring supplies or equipment. Such analysis shall be documented as part of the contract file.
- C. This Chapter also outlines approval requirements for procurement transactions and the method by which the procurement of materials, construction of facilities and works, supplies and services will be requested and to indicate the manner in which Purchase Requisitions (PRs) will be prepared.
- D. In carrying out the requirements prescribed by this Chapter, all aspects of an effective procurement involve the need for good communications between MARTA's Requestor Department and CPM. These communications must also include an understanding of the respective roles and responsibilities of the many MARTA offices involved in the procurement initiation process.

### 4.1 Responsibilities

- A. The Requestor Department with the procurement requirement is responsible for determining "what to buy" (e.g. develop contract specifications for CPM review, develop independent cost estimate (ICE), delivery and completion dates). It is recognized that the Requestor Department may be required to coordinate some procurement requirements with other MARTA offices that have the need to be involved; nevertheless, a lead Requestor Department must always be identified when procurement actions are initiated.
- B. CPM is responsible for determining "how to buy" (e.g. select the proper method of procurement and issue the solicitation). The Department of Legal Services will make the final decision on the type of procurement to be used if the Requestor Department and CPM are in disagreement.
- C. CPM coordinates the procurement process to ensure all requirements are met after the Requestor Department submits its procurement.
- D. In addition to the Requestor Department and CPM responsibilities that are generally described above, other MARTA offices will have to be consulted during the procurement initiation process by virtue of their functional responsibilities, e.g. Legal, Risk Management, Diversity and Equal Opportunity, Safety and Quality Assurance, Police Services, etc.
- E. The Departments of Diversity and Equal Opportunity, Police Services, Risk Management and Safety and Quality Assurance shall read and provide necessary input on all specifications prior to release of the solicitation.

### 4.2 Contacts with Prospective Contractors

MARTA procurement actions will be processed in an ethical and proper manner with emphasis on maximizing competition. MARTA officials (except designated CPM staff) involved in the procurement process shall avoid any contact with prospective Contractors concerning the conduct of any MARTA procurement of property or services.

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### 4.3 Publicizing Contract Actions

#### 4.3.1 Pre-award

- A. CPM Agents are encouraged to use the most cost effective means to publicize contract actions to increase competition in accordance with applicable laws.
- B. All publicizing requirements shall be followed as required by the funding source (Federal Transit Administration, Transportation Security Administration, Department of Homeland Security, etc.).
- C. Notices and Industry Day conferences may be used as preliminary steps in order to accomplish any of the following:
  1. Develop or identify interested sources;
  2. Request preliminary information based on a general description of the supplies or services involved;
  3. Explain complicated specifications and requirements to interested sources; or
  4. Aid prospective Contractors in later submitting proposals without undue expenditure of effort, time, and money.
- D. If Advance Notices are used, the CPM Agent shall prepare and issue each notice to potential sources and any trade publication if deemed appropriate.
- E. An Advance Notice shall include the following:
  1. A description of the information to be furnished in the response;
  2. An indication when the solicitation will be issued;
  3. A request that parties interested in the contemplated procurement respond by a specified date; and
  4. Pre-Bid/Pre-Proposal/Site Visit information.
- F. Copies of the solicitation shall be made available online unless prohibited by Police Services for security purposes.
- G. Advance Notices shall be published online on MARTA's website in a manner reasonably likely to attract prospective Contractors/Offerors.
- H. The CPM Agent shall release all Advance Notices published in accordance with the above requirement with appropriate assistance from the Requestor Department. The CPM Agent may place additional advertisements through other media or means when it is in the best interest of MARTA.
- I. Pre-solicitation advertising prescribed in this Section is not required for sole source, GSA, State or emergency procurements, processed in accordance with Chapter 11 of this Manual.

#### 4.3.2 Post-award Announcements

MARTA shall notify members of the public of contract awards for procurements in accordance with the MARTA Act. Not less than five (5) days prior to the award of a contract which will call for an anticipated aggregate payment of \$200,000 or more to the successful Contractor, the Authority shall make an accurate and brief summary thereof available to the public in its principal office and shall publish notice of its intention to award in the local newspaper of the largest circulation in the metropolitan area. Such advertisement shall state the name of the successful Contractor, the amount of the contract and its subject matter.

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#### 4.4 Specifications and Purchase Descriptions

- A. Requests for procurement actions submitted by the Requestor Department shall include a single point of contact for all technical issues, clearly written specifications, purchase descriptions, and statements of work suitable for competition. Sole source requests must be documented and approved by the Department of Legal Services.
- B. CPM, using the following guidance, shall select the type of solicitation requirements that best fits the needs of the procurement. The need for specifications or statements of work depends on the type of solicitation and goods/services being procured. Requirements should be reassessed each time they are procured to decide if the appropriate solicitation requirements are being used.

#### 4.5 Types of Solicitation Requirements

The following is a list of different ways to draft the solicitation requirements. The list is not intended to be all-inclusive and new and innovative approaches should be reviewed to determine if that approach provides a better solution to MARTA.

- A. Equipment and Supplies Plans, drawings, specifications or purchase descriptions for procurements should state only the actual minimum needs of MARTA and describe the supplies and services in a manner which will encourage full and open competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to one Contractor's product, or the products of a relatively few Contractors. Items to be procured should be described by reference to the applicable specifications or by a description containing the necessary requirements. The term "specification", as used herein, is a clear and accurate description of the technical requirements for a material, product, or service, including the procedure by which it will be determined that the requirements have been met. Specifications for items or materials also contain preservation, packaging, packing, and marking requirements.
- B. Design Specifications Describes how to make an item, performance specifications, what the item must do. In view of responsibility for the end item and increased costs in producing items of special design, performance-type specifications should be used whenever they will serve the intended purpose. Performance specifications allow manufacturers' latitude in design within specified parameters of form, fit, and function.
- C. Construction Specifications (Bid-Build, Design-Build) The technical provisions of construction specifications shall be in sufficient detail so that, when used with the applicable drawings and the specifications, bids can be prepared on a fair and competitive basis. Materials, equipment, components or systems shall be described, where possible, by reference to documents generally known to industry. The documents include nationally recognized industry, and technical society specifications and standards. The standards, which best represent no more and no less than MARTA's minimum needs, shall be selected for incorporation by reference into the construction specifications.
- D. Statements of Work The statement of work approach is preferred for most MARTA service only contracts. A statement of work defines the work required of a Contractor, either to develop the equipment being delivered to satisfy the prime mission of MARTA, or to complement the off-the-shelf items being delivered, or to provide services being procured without attendant hardware being delivered. The basic distinction between the specification and the statement of work is that the specification defines minimum standards for the hardware/software while the statement of work defines minimum work to be accomplished by the Contractor under the contract.
- E. Performance Based Statements of Work Describe the requirements in terms of expected results or work

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outputs rather than the methods of performance of the work. To the maximum extent practicable, the work should be described in terms of what is to be required rather than how the work is to be accomplished or the number of hours to be provided. The statement of work should:

1. Clearly enable assessment of work performance against measurable performance standards, and
  2. Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.
- F. Purchase Description. A purchase description may be used in lieu of a specification where no applicable specification exists. An adequate purchase description is an aid to competition and, in the absence of competition, a purchase description should set forth the essential physical and functional characteristics of the materials required. Purchase descriptions of services to be procured should outline to the greatest degree practicable the specific services the Contractor is expected to perform.
- G. Stock Replenishment. Contract specifications and purchase descriptions for spare parts shall comply with the Stock Replenishment Procurement Guidelines.

**STORES REPLENISHMENT PROCEDURE**

<http://martanet/data/CP-SOPs/STORES-REPLENISHMENT-POLICIES-AND-PROCEDURES.pdf>


#### **4.6 Use of Brand Names in Solicitation Requirements**

- A. The use of brand name products in a solicitation is prohibited without (a) listing its salient characteristics and (b) allowing "an equal" product to be offered.
- B. Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer and thereby preclude consideration of a product manufactured by another firm, unless it is determined that the particular feature is essential to MARTA requirements, and that similar products of other companies lacking the particular features would not meet the minimum requirements for the item. Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal".
- C. The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective Contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of MARTA in essentially the same manner as those referenced.
- D. "Brand name or equal" purchase descriptions must set forth those salient physical, functional, or other characteristics of the referenced products, which are essential to the needs of MARTA. When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the Invitation for Bids or Request for Proposals as being that of the particular named manufacturer, producer, or distributor.

#### **4.7 Conflicts of Interest:**

An unfair competitive advantage could result if a Contractor were allowed to submit a bid or proposal for work described in a specification or statement of work that the Contractor developed. For the purpose of eliminating a potential unfair competitive advantage, and in compliance with appropriate federal and state



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laws, MARTA's Code of Ethics and other regulations, a Contractor that develops or assists to develop specifications, ICE, Statements of Work, Invitation for Bids, and/or Request for Proposals for MARTA procurement shall be excluded from competing for the resultant procurement.

#### **4.8 Advance Procurement Planning**


- A. Designated Department/Office Representatives initiating procurement requirements will start the procurement planning process by meeting with the Head of CPM to develop draft planning documents. The Department of Legal Services shall be included in the procurement planning process. Requestor Departments must do procurement planning for new and renewable procurements at least twelve to eighteen months ahead of anticipated needs. Procurements in excess of \$200,000 take a substantial amount of time to consummate due to lengthy preparation, review, evaluation and execution processes. Purchase Requisitions (PR) should be submitted via the Oracle system, no less than twelve (12) months before the desired contract or purchase order award date.
- B. The planning documents initiated by Designated Department/Office Representatives will be based upon the best available information and will include:
  1. Office Summary Procurement Plan - summarizing all known procurement actions for the fiscal year including new contract awards and exercise of options. This allows for overall workload planning for both the requirements and the procurement office.
  2. Individual Procurement Action Plan - prepared for each major action estimated to be in excess of \$200,000 including a projection of major procurement milestones based upon the type and complexity of procurement action identified.
- C. Planning documents will be updated regularly during the fiscal year and at least one additional planning meeting will be conducted. Additional planning meetings will be conducted as needed.
- D. Upon initiation of a procurement request, a CPM Agent and attorney will be assigned by the CPM Manager Department of Legal Services, respectively.
- E. During the planning process, special attention should be given to scheduling and identifying known recurring requirements for equipment and service procurements. This should include procurement history profiles to assist in properly planning and processing follow-on contracts.
- F. The process described below shall not preclude a prompt response to valid emergencies.
- G. Routine stock replenishment procurement actions generated through the Oracle System will not be included in the advance procurement planning process described in this Section.

#### **4.9 Purchase Requisition Requirements**

Procurement actions require a properly, fully funded, executed formal Purchase Requisition (PR). Additionally, procurements that are intended for inventory (stock) replenishment are automatically generated by Oracle based on established reorder points and quantities.

#### **4.10 Approval of Formal Purchase Requisition**

- A. Properly executed PRs are required throughout MARTA to initiate procurement action for materials, construction of facilities and works, supplies, equipment and/or services. The Requestor Department shall complete the PR (Oracle) using the standard form and providing all information requested thereon.
- B. All PRs must contain information concerning the intended end use of all items being requisitioned. Detailed technical specifications (if applicable), purchase description or scope of work (as applicable) reliability and warranty requirements, when applicable, and independent cost estimates must accompany

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PRs submitted to CPM.

*IPROCUREMENT TRAINING MANUAL*  
<http://martanet/data/CP-SOPs/iProcurement.pdf>

#### **4.11 Requestor Responsibilities**

The individual in the Requestor Department initiating the PR is responsible for the accuracy and adequacy of information supporting the PR. PRs should be submitted early enough to have a purchase order or contract prepared, reviewed, and issued in time for the material or services to be obtained when required. PRs may be cancelled to the Requestor if the necessary documentation is missing or incorrect (e.g., inadequate technical specifications, no Sole Source Justification, no ICE, no suggested supplier list, etc.).

#### **4.12 Requestor Approval Requirements**

The Requestor Department shall complete the PR in accordance with the Oracle templates, providing all information requested thereon.


#### **4.13 Additional Approval Requirements**

- A. Any Requestor Department requesting the procurement of chemicals or safety equipment, (e.g., solvents, oils, cleaners, epoxies, or welding rods), must submit the PR to the Department of Safety and Quality Assurance for review and comment prior to sending the request to CPM. Requestor Departments requesting reproduction equipment, computer equipment, software or services must have IT Department approval, as appropriate. Additionally, all requests for furniture and kitchen equipment must be approved by the Head of Facilities. Training requirements must be authorized by the Director of Training and radio/communications equipment approved by the Manager of Communications.
- B. All Capital Improvement Program (CIP) procurements must be approved by the designated Finance representative prior to submission to CPM. Grant funded procurements must be approved by the Director of Grant Programs.

#### **4.14 Preparation Guidelines (Oracle)**

- A. All PRs must be sent by the Requestor Department to CPM via Oracle with all required attachments.
- B. PRs will be entered, reviewed and approved in Oracle.
- C. The origination of a PR is based on a specific need for materials or services for a project or stock replenishment. Each PR must identify the specific project and task line item for which the procurement is to be used. Therefore, the following information must be included on the Requisition:
  - 1. Item(s) and quantity being ordered (a description of the item with part/model numbers)
  - 2. Fund Code
  - 3. Delivery Date
- D. Additional documents may be submitted electronically. Examples include:
  - 1. Scope of Work/Specifications
  - 2. Justification for sole source, if approved
  - 3. Independent cost estimate
  - 4. Drawings, if applicable



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5. List of at least three (3) potential Contractors, if possible

- E. It is important to remember that complete information is to be provided on the on-line requisition in order to assure efficient processing of requirements. If the PR does not contain all of the information needed by CPM it may be returned to the originator on-line and, if returned, will need to be resubmitted through the process as a new requirement. CPM will work with the Requestor Department as a team to assist in developing adequate purchase requisition packages.

#### **4.15 Changes to Purchase Requisitions**

If the requisition is in process, the approver can modify the requisition or choose to reject the requisition and return it to the preparer. If the requisition is rejected, the preparer may make the required changes and re-submit the requisition for approval.

#### **4.16 View of Requisitions**


All requisitions may be viewed on-line within the Oracle system to determine the status of the requisition (e.g., approved, rejected, or a purchase order has been created).

#### **4.17 Priority Requirements**

Priority Requirements are those which need expeditious procurements due to unanticipated events/circumstances. A PR should be provided to CPM as soon as the specific priority condition is discovered indicating the reason for the priority. Lack of planning does not constitute a reason for an expedited procurement process.

#### **4.18 Delivery and Performance**

- A. The time of delivery or performance is an essential contract element and shall be clearly stated in each solicitation. The Requestor shall exercise sound business judgment when establishing a delivery or performance schedule and terms should be no longer than necessary to accomplish the purpose of the contract. A solicitation shall inform Contractors of the basis on which their Bids or Proposals will be evaluated with respect to time of delivery or performance.
- B. When establishing a contract delivery or performance schedule for supplies or services, the Requestor shall consider applicable factors, including the following:
  1. Urgency of need;
  2. Production of item;
  3. Market conditions;
  4. Transportation time;
  5. Industry practices;
  6. Time for obtaining and evaluating bids or offers and awarding contracts; and
  7. Time for Contractors to comply with any condition precedent to contract performance; and time for MARTA to perform its obligations under contract, such as furnishing MARTA property to the Contractor.
- C. When scheduling the time for completion of a construction contract, the Requestor shall consider applicable factors, such as the following:
  1. The nature and complexity of the project;

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2. The construction season involved;
  3. The required completion date;
  4. The availability of materials and equipment;
  5. The use of multiple completion dates.
- D. In any contract, different completion dates may be established for separable items of work, when multiple completion dates are used, the Requestor shall evaluate requests for extension of time with respect to each item, and shall modify the affected completion dates through change process via CPM, when appropriate.
- E. The Requestor may establish contract delivery or performance schedules on the basis of any of the following:
1. A specific calendar date or dates;
  2. A specific period or periods from the date of the contract;
  3. A specific period or periods from the date agreed upon by the parties and set forth in the contract for actual commencement of performance on the contract; or
  4. In contracts containing indefinite delivery provisions (such as term contracts), a specific time for delivery after receipt by the Contractor of each individual order issued under the contract.
- F. When establishing dates for performance or delivery, the Requestor shall take into account factors pertaining to the ability of the Contractor to actually begin performance, such as time for receipt of notice by the Contractor of the contract award or acceptance.

#### **4.19 Authorized Methods of Procurement**

- A. All MARTA procurement actions above the small purchase threshold (\$200,000 or more) shall employ either a formal competitive solicitation or negotiated method of procurement.
- B. The negotiated method of procurement for the following types of procurement actions is authorized:
  1. Only one source of supply is available or as a result of a single bid in response to an IFB, as a result of a cost analysis, it is necessary to negotiate in order to determine price reasonableness;
  2. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

#### **4.20 Stock Replenishment Procurement Guidelines**

- A. MARTA's Stock Replenishment Program shall include requirements for a comprehensive spare parts data package in each new systems production contract for rolling stock or other major systems. MARTA shall also employ a multi-sourcing approach following initial spares provisioning process when it is later determined that multi-sourcing would be cost effective and would stimulate competition.
- B. Formally advertised bids may be required when it is economically feasible to reorder larger quantities or when the accumulated values of the items required exceeds the current small purchase threshold. MARTA may also utilize competitively obtained requirements type contracts for large groups of items from the same or different manufacturers in order to assure timely deliveries and to maximize economies of scale with consolidated requirements techniques.
- C. Procurement procedures prohibiting the restriction of competition have been included in this Manual and

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are applicable to all spare parts purchases. "Brand name or equal" spare parts purchases require salient physical and/or functional characteristics of the brand name product be included in the solicitation. For purposes of administrative efficiency, sole source justifications covering a specified time period may be used, after reviewing approval in accordance with this Manual, for certain spare parts or groups of parts where only one manufacturer is available and that specific manufacturer's part is critical to system safety and performance. Spare parts totaling \$200,000 or more ordered from the same Contractor within a 12 month period must be formally solicited in accordance with Chapters 7 and 8.

- D. Examples of circumstances whereby salient characteristics are not necessary in order to assure adequate competition for items identified as brand name or equal would include:
1. Use of a commercial catalog description, which has proven to be adequate in obtaining competitive bids;
  2. Particular features of the specific brand name which are essential to MARTA requirements and for which there are no other known similar products; and
  3. Identification of the brand name item that is common within the industry and MARTA has accepted common items from other manufacturers and their dealers; therefore, attempts to provide salient characteristics would serve no useful purpose.
- E. MARTA will constantly monitor the demand for spare parts and will attempt to develop other manufacturing sources. MARTA will also attempt to preclude the limitation of manufacturing sources for spare parts by obtaining comprehensive data packages including manufacturing source(s), specifications, drawings, manufacturers' descriptive materials, commercial catalog references, or salient characteristics suitable for competitive procurement if only brand names are utilized. This database will also be periodically supplemented by requiring Contractors to also deliver specification information to the Requestor Department as part of the stock replenishment purchase. CPM in coordination with the operating departments will jointly identify high usage single source items and will pursue multi-sourcing opportunities including the use of qualified parts testing, if appropriate. It should also be recognized that there will be circumstances where it is not economical to expend additional resources to attempt to promote competition for limited market low-use, low-dollar spare parts.
- F. Requestors will include a spare parts data clause in all contracts that require the initial provisioning of spare parts for MARTA's inventory system. This clause will require a comprehensive, separately priced data package as described in this Section.

*PROVISIONING FOR MAINTENANCE SUPPORT PROCEDURE*

<http://martanet/data/cp-sops/Provisioning-for-Maintenance-Equipment.pdf>


#### **4.21 Independent Cost Estimates**

**A. General**

The Requestor shall prepare Independent Cost Estimates (ICE) prior to CPM issuing a solicitation, work order or task order.

**B. Independent Estimates**

Independent Cost Estimate is a determination of price reasonableness prepared prior to and independent of any input from the Contractor. Independent Cost Estimates will be used to establish a competitive range and to supplement the required evaluation and/or negotiation process. After contract award, Independent Cost Estimates may provide essential input with respect to changes and claims. An updated Independent

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Cost Estimate is required for all scope changes.

INDEPENDENT COST ESTIMATE

[http://martanet/data/CP-SOPs/ICE\\_Short\\_Form.pdf](http://martanet/data/CP-SOPs/ICE_Short_Form.pdf)

INDEPENDENT COST ESTIMATED - DETAILED

[http://martanet/data/CP-SOPs/Independent\\_Cost\\_Estimate\\_Instructions.pdf](http://martanet/data/CP-SOPs/Independent_Cost_Estimate_Instructions.pdf)


[http://martanet/data/CP-SOPs/ICE\\_-\\_Cost\\_Analysis.pdf](http://martanet/data/CP-SOPs/ICE_-_Cost_Analysis.pdf)

1. Uses and Benefits - The establishment of an Independent Cost Estimate that is developed independently from a prospective Contractor:
  - a. Provides a determination of value (e.g., do benefits warrant the cost)
  - b. Supports procurement planning
  - c. Establishes the competitive range
  - d. Provides a basis of a price analysis, which may eliminate the need for a more burdensome cost analysis
  - e. Provides a basis for development of a pre-negotiation objective
  - f. Supports MARTA's negotiation position with Contractor, if necessary.
2. Method and Degree of Independent Cost Estimates. The cost required to research and prepare the estimate should not outweigh the potential benefits of the estimate. An independent estimate can be obtained from different sources including the following:
  - a. Published competitive prices
  - b. Results of competitive procurements
  - c. Estimates by qualified in-house estimators
  - d. Qualified outside estimators other than Contractors competing.


**C. Restrictions and Limitations**

The Requestor shall prepare an Independent Cost Estimate (ICE) prior to the release of a solicitation. Individuals preparing independent estimates will not have access to pending offers.

1. Complex Projects In some cases, the preparation of Independent Cost Estimates may be difficult or may lie outside the expertise of MARTA personnel. Outside firms may be used if the cost can be justified. Discussions with other agencies are also a potential source of information. Other grantees that have undertaken similar projects are a valuable source of cost estimating information.
2. Equipment Independent Cost Estimates for equipment may be prepared from published price lists or from past competitive procurements updated with inflation factors. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one Contractor.

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3. Services Professional services that MARTA procures range considerably in types and prices. If it is determined that in-house personnel are not proficient enough to prepare the estimate, the Requestor may obtain a professional cost estimate from a firm not interested in the final procurement.

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## Chapter 5 - Types of Contracts

### 5.0 Purpose and Scope

This chapter authorizes the use of various types of contracts to meet the procurement objectives of MARTA. Contract types and conditions for use are described. Considerations for selecting the appropriate contract type and documenting the decision in the contract file are specified. This is not an exhaustive list and CPM Agents may use whatever procurement instrument they determine to be in the best interest of MARTA.

### 5.1 General Provisions


- A. The CPM Agent shall use the types of contracts described in this Chapter for most types of procurements, except as otherwise provided for certain small purchases. Innovative contracting arrangements are not prohibited, but require the advance approval of the Department of Legal Services.
- B. The cost-plus-a-percentage-of-cost method of contracting shall not be used, nor shall a percentage of construction costs be used in pricing A/E contracts.
- C. Time and Materials Type Contracts will be used only:
  1. After a determination that no other type of contract is suitable; and
  2. If the contract specifies a ceiling price that the Contractor shall not exceed except at its own expense.
- D. The CPM Agent in cooperation with the Department of Legal Services and Requestor Department shall select the type of contract that is most appropriate to the circumstances of each procurement, in accordance with the provisions of this Chapter.
- E. In procurements other than competitive solicitations, the CPM Agent may negotiate a contract price (or estimated cost and fee) that will result in the greatest incentive for efficient and economical performance.

### 5.2 Selecting Contract Types

- A. When procurement is by competitive sealed bidding, the CPM Agent in cooperation with the Department of Legal Services should generally, use a firm-fixed-unit price contract. The type of contract to be used shall be determined by the Department of Legal Services prior to the solicitation, and the solicitation shall inform Contractors of the type of contract that will be used.
- B. Except when a procurement is by competitive sealed bidding, the Department of Legal Services, should select the most effective contract type and needs to consider contract type together with the issues of price, risk, uncertainty, and responsibility for costs.
- C. The CPM Agent shall avoid continued use of a cost reimbursement or time-and-materials contract after experience provides a basis for firm pricing.
- D. The CPM Agent shall include documentation in each contract file to show why the particular contract type was selected.

### 5.3 Fixed-Price Contracts

- A. Fixed-price contracts may provide for a firm price.
- B. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price shall be subject to adjustment only by operation of contract clauses, approved by Department of Legal Services providing for equitable adjustment or other revision of the contract price under stated circumstances.
- C. A firm-fixed unit price contract shall provide for a price that is not subject to any adjustment.

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#### 5.4 Fixed-Unit Price Contracts with Economic Price Adjustments (Escalation/De-Escalation)

- A. The CPM Agent shall avoid using a fixed-unit price contract with economic price adjustment unless it is necessary to protect MARTA against significant fluctuations in labor or material costs to provide for the contract price adjustment in the event of changes in the Contractor's established prices or in the best interest of MARTA to do so.
- B. A fixed-unit price contract with economic price adjustment shall provide for upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.
- C. An economic price adjustment may be one (1) of the following general types:
  1. Adjustment based on increases or decreases from an agreed upon level in published or otherwise established prices of specific items or the contract end items, provided that items are standard or semi-standard supplies that have an established catalog or market price, or in the case of semi-standard supplies, can be reasonably related to prices of nearly equivalent standard supplies that have an established catalog or market price;
  2. Adjustment based on increases or decreases in specified costs of labor or materials that the Contractor actually experiences during contract performance; or
  3. Adjustment based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

##### ECONOMIC PRICE ADJUSTMENT CLAUSE


<http://martanet/data/CP-SOPs/ECONOMIC-PRICE-ADJUSTMENT.pdf>

- D. For use of economic price adjustment in procurements by competitive sealed bids, the CPM Agent shall follow the procedures set forth in Chapter 7, Procurements by Sealed Bidding.
- E. The CPM Agent may use a fixed-unit price contract with economic price adjustment when the following factors are applicable:
  1. There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and
  2. Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract.
- F. Price adjustments based on established catalog prices shall be restricted to industry-wide contingencies. Industry-wide contingencies shall be those affecting a particular industry as a whole, and shall not depend upon circumstances within the Contractor's control.
- G. Price adjustments based on labor and material costs shall be limited to contingencies beyond the Contractor's control.

#### 5.5 Cost Reimbursement Contracts

- A. The CPM Agent shall use a cost-reimbursement contract 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.
- B. The CPM Agent may use cost-reimbursement contracts only when the following circumstances apply:
  1. Appropriate MARTA surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and



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2. The CPM Agent determines, based upon discussions with the Requestor, that the lack of precision of the Statement of Work or the difficulty of accurately estimating the costs make the use of a fixed-price contract impractical.
- C. Each cost-reimbursement contract shall contain the following:
  1. A clause, approved by the Department of Legal Services, indicating that only those costs determined to be reasonable and allocable will be reimbursable; and
  2. A clause, approved by the Department of Legal Services, establishing a stated not to exceed amount.
- D. The CPM Agent may use a cost-sharing contract when the Contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.
- E. The CPM Agent may use a cost-plus-incentive-fee contract or cost-plus-award-fee contract in accordance with the provisions in Section 5.6 below on Incentive Contracts.
- F. The CPM Agent may use a cost-plus-fixed-fee contract when contracting for efforts that might otherwise present too great a risk to the Contractor, such as when the contract is for a study and the level of effort is unknown.


## 5.6 Incentive Contracts

- A. The CPM Agent may use an incentive contract when a firm-fixed-price contract is not appropriate and the required supplies or services can be procured at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the Contractor's performance.
- B. The CPM Agent may use an incentive contract when it is necessary to establish reasonable and attainable targets that are clearly understandable by the Contractor, and to provide appropriate incentive arrangements designed to motivate Contractor efforts and discourage Contractor inefficiency and waste.
- C. When predetermined formula-type incentives, on technical performance or delivery are included, increases in profit or fee shall be provided only for achievement that surpasses the targets, and decreases shall be provided for to the extent that targets are not met.
- D. The CPM Agent shall apply incentive increases or decreases to performance targets rather than minimum performance requirements.
- E. Incentive contracts may be fixed-price incentive contracts or cost-reimbursement incentive contracts.

## 5.7 Types of Incentives

- A. Incentive contracts shall include cost incentives that take the form of a profit or fee adjustment formula.
- B. Except for cost-plus-award-fee contracts, incentive contracts shall include the performance target, a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides for the following:
  1. Actual cost that meets the target will result in the target profit or fee;
  2. Actual cost that exceeds the target will result in downward adjustment of the target profit or fee; and
  3. Actual cost that is below the target will result in upward adjustment of the target profit or fee.
- C. Technical performance incentives may be considered in connection with specific product characteristics or other specific elements of the Contractor's performance.
- D. Technical performance incentives may be designed to tailor profit or fee to results achieved by the



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Contractor, compared with specified target goals. The contract shall be specific in establishing performance test criteria (such as testing conditions, instrumentation precision, and data interpretation), in order to determine the degree of attainment of performance targets.

- E. The CPM Agent may consider delivery incentives when meeting a required delivery schedule as a significant program objective.
- F. The CPM Agent may specify, in incentive arrangements, the application of the reward-penalty structure in the event of caused delays or other delays beyond the control and without fault or negligence of the Contractor or a subcontractor.
- G. Such incentives should only cover levels of increased performance that are desirable to MARTA. The amount of the incentive used must reflect a value judgment.


## 5.8 Fixed-Price Incentive Contracts

- A. A fixed-price incentive contract may be used when the following factors apply:
  - 1. A firm-fixed-price contract is not suitable;
  - 2. The nature of the supplies or 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;
  - 3. If the contract also includes incentives on technical performance 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
  - 4. Adequate cost or pricing information for establishing a reasonable firm target is reasonably expected to be available at the time of initial contract negotiations.
- B. A fixed-price incentive contract shall be used only when the CPM Agent determines that this type of contract represents a fair allocation of risk or that it is impractical to obtain supplies or services of the kind or quality required without the use of this contract type.
- C. A fixed-price incentive contract with a firm target shall specify a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements shall be negotiated at the outset. The formula shall have the following results:
  - 1. When the final cost is less than the target cost, application of the formula will result in a final profit greater than the target profit;
  - 2. When the final cost is more than the target cost, application of the formula will result in a final profit less than the target profit; and
  - 3. If the final negotiated cost exceeds the price ceiling, the Contractor will absorb the difference as a loss.
- D. In a fixed-price incentive contract with a firm target, the price ceiling shall be the maximum that may be paid to the Contractor, except for any adjustment under other contract clauses.
- E. When the Contractor completes performance, the CPM Agent, Contracting Officers Technical Representative and the Contractor shall establish the final price by applying the formula.

## 5.9 Cost-Plus-Negotiated-Percentage-Fee Contracts

A cost-plus-negotiated-percentage-fee contract may be used when the following factors apply:

- 1. The work to be performed is such that it is neither feasible nor effective to devise predetermined

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objective incentive targets applicable to cost, technical performance, or schedule;

2. The likelihood of meeting the procurement objective will be enhanced by using a contract that effectively motivates the Contractor toward exceptional performance and provides MARTA with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and
3. Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

#### **5.10 Time-And-Materials Contracts**

- A. A time-and-materials contract may be used only after the CPM Agent determines, in writing, that no other type of contract is suitable.
- B. A time-and-materials contract may be used only when it is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
- C. A time-and-materials contract shall include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.
- D. The CPM Agent shall ensure that there is adequate surveillance of Contractor performance when a time-and-materials type contract is used.
- E. When the nature of the work to be performed requires the Contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than cost if the following factors apply:
  1. The estimated price of material charged does not exceed twenty percent (20%) of the estimated contract price;
  2. The material to be charged is identified in the contract;
  3. No element of profit on material charged is included as profit in the fixed hourly labor rates; and
  4. The contract provides that the price to be paid for the material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to MARTA, and that in no event shall the price exceed the Contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

#### **5.11 Labor-Hour Contracts**


- A. When materials are not required, the CPM Agent may use a labor-hour contract, a variation of the time-and-materials contract.
- B. The use of a labor-hour contract shall be in accordance with the provisions of the Section 5.10 above, on Time-And-Materials Contracts.

#### **5.12 Multi-Year Contracts**

Before issuing a multi-year contract, the Requestor shall make the determination that the length of the contract is in MARTA's best interest and there is a reasonable expectation of funding in the subsequent years.

#### **5.13 Indefinite Delivery Indefinite Quantity Contracts and Work Order Contracts**

- A. The CPM Agent may use an Indefinite Delivery-Indefinite Quantity (IDIQ) type of contract (either a requirements contract or an indefinite quantity contract/Work Order) when the exact quantities of supplies or services are not known at the time of contract award. The contract shall specify maximum or minimum

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quantities that MARTA may order under each individual order and the maximum that MARTA may order during a specified period of time.

B. There are several types of indefinite delivery contracts:

1. Requirements contracts,
2. Indefinite quantity (IQ) contracts
3. Work Order contracts. The Authority uses Work Orders for General Consulting Professional Services and Architectural/Engineering contracts. The procedure outlined below shall be followed for work orders issued.

*GENERAL CONSULTANT PROFESSIONAL SERVICES WORK ORDER PROCEDURE*

<http://martanet/data/CP-SOPs/GCPS-work-orders.pdf>

C. Indefinite Delivery type contracts are used when the Requestor anticipates recurring requirements but cannot predetermine the precise quantities for supplies or services. The Requestor shall include the following in each contract and solicitation for a requirements contract:

1. A realistic estimate of the total quantity or dollar amount that will be ordered, based on the most current information available; and
2. A clause, approved by the Department of Legal Services stating that the estimate is not a representation to a Contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.

D. If feasible, a requirements type contract shall state the maximum limit of the Contractor's obligation to deliver and MARTA's obligation to order.


E. The CPM Agent may use an Indefinite Quantity type of contract when the Requestor cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the Requestor determines that it is inadvisable to commit MARTA for more than a minimum quantity.

F. An Indefinite Quantity type contract shall require MARTA to order and the Contractor to furnish at least the stated minimum quantity of supplies. The Contractor shall also be required to furnish, if and as ordered, any additional quantities, not to exceed a stated maximum. The CPM Agent shall ensure that the contract obligates the budget amount authority needed to cover MARTA's minimum required order under the contract.

G. Each Indefinite Delivery contract issued must include a fixed dollar ceiling that represents the target not-to-exceed cost authorization for the work specified.

#### 5.14 Share-in-Savings Contracts

The term 'share-in-savings contract' means a contract under which a Contractor provides solutions for (i) improving MARTA's mission-related or administrative processes; or (ii) accelerating the achievement of MARTA missions; and MARTA pays the Contractor an amount equal to a portion of the savings derived by MARTA from (i) any improvements in mission-related or administrative processes that result from implementation of the solution; or (ii) acceleration of achievement of MARTA missions. This type of contract should rarely be utilized by MARTA.

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## **5.15 Work Order Procedures**

### **5.15.1.0 Purpose**

This Chapter sets forth the steps required to initiate, review, execute and authorize payment of Work Orders. The Procurement Manual, provides additional direction for portions of this Chapter, including, but not limited to, Delegation of Authority, Independent Cost Estimate (ICE), Request for Proposal (RFP), Unauthorized Work, and Limited Notice to Proceed (LNTP).

### **5.15.2.0 Role and Responsibility**

#### **5.15.2.1 Requestor**

The Requestor is the subject matter expert (SME) for the Work Order, serves as the technical representative that has an identified need for a Work Order and initiates the procurement process.

#### **5.15.2.2 Professional Services (formerly Engineering Services)**

The Professional Services staff is the support for the procurement of engineering and other technical services operating under Master agreements. They prepare the Work Order Package and track it through the Approval process. They issue the Notice to Proceed in conjunction with the Requestor.

### **5.15.3.0 Work Order Process**

#### **5.15.3.1 Overview**

Funding for work must be approved in the Capital Improvement Program (CIP) or Operating budget prior to initiation of the Work Order. The Work Order package is comprised of the following required information:

- Scope of Work (SOW)
- Independent Labor Hour Estimate (ILHE)
- Project Number and Task Number
- Additional Cost Estimates, if any


Each Work Order must receive concurrence by, at minimum: Chief of Capital Programs, Planning & Innovation, Chief Counsel and, if the Work Order has an estimated value in excess of \$100,000 the GM/CEO.

#### **5.15.3.2 Scope of Work (SOW)**

The Scope of Work (SOW) should be as concise, specific, and detailed as appropriate so that the parties understand what is to be accomplished. The Work Order SOW should clearly state the background/history and description of task activities; key milestone dates, deliverables and product acceptance criteria.

The basic elements of a Work Order SOW include, but are not limited to:

- Introduction and Overview
- Brief Background/History

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- Objectives
- Requirements (which may include specialized qualifications, certifications, licenses)
- Tasks
- Schedule of Key Milestones and Deliverables
- Reporting Requirements
- Period and Place of Performance
- Criteria for Acceptance
- Proposed/Estimated Start and Completion Date

#### **5.15.3.3 Independent Labor Hour Estimate (ILHE)**

The Independent Labor Hour Estimate (ILHE) is the breakdown of estimated hours for labor only and does not include direct labor rate and overhead rate. The ILHE is the tool used to project the costs for a Work Order. For this reason, the Requestor shall prepare or obtain the ILHE without consultation with contractors who will be invited to participate in the solicitation. The Requestor may obtain assistance in developing estimates through in-house sources or contractors paid to provide an estimate. Contractors providing an estimate are prohibited from submitting a proposal.

The labor breakdown will include individual labor categories with the number of hours to be used in each labor category for services requested. No other fees may be added to the labor costs. The Requestor shall ensure that the labor categories are appropriate for the requirements identified in the SOW.

The ILHE is the preferred estimating type used for professional services such as architecture and engineering services or transit planning services.


#### **5.15.3.4 Contractor Selection Process**

##### **A. Selection Process**

MARTA will request proposals from the pre-qualified contractors based on the Scope of Work. The proposal shall include detailed description of all labor and expenses requested to complete the Scope of Work.

##### **B. The process for selection is based upon:**

1. The solicitation documents developed by the Requestor.
2. Evaluation of submitted proposals by the Requestor
3. Determination of the best value to the Authority from the responsive contractors.
4. Negotiations with selected Contractor will be conducted by Requestor, CPM and Legal if Contractor's price exceeds ILHE by 15%.
5. The Requestor, CPM and Legal will document the Record of Negotiations, and may request a best and final offer.
6. Upon selecting the contractor, the Work Order will be processed and CPM shall electronically route the Work Order for approval/concurrence and execution. They shall be signed by the Requestor, AGM and Chief; other signatories will be included only if required by other MARTA provisions.

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#### 5.15.3.5 Work Assignment

Approval of a direct unburdened labor rate above \$125 per hour will require a Rate Justification Form (see Attachment A) approved by Human Resources Compensation Division. The Rate Justification Form shall include, at a minimum, an individual's name, employer, education, years of experience, unique qualifications, and relevant tasks and/or deliverables.

#### 5.15.3.6 Restrictions

Work Order contracts should not include provisions that allow the Contractor(s) to receive the following benefits from MARTA:

- A. Breeze Card
- B. Laptop
- C. iPad
- D. Cell Phone
- E. Paid Training or Conferences
- F. Remote (off-site) Work
- G. Commuting Costs
- H. Paid Vacation

Any exceptions to the above listed restrictions must be justified and approved by an authorized employee of MARTA. When reviewing and approving the Field Overhead Rate MARTA (and Contractor) shall take into consideration other costs and supplies provided by MARTA. MARTA will not reimburse commuting costs. An exception to the commuting reimbursement may be requested by Contractor submitting a justification detailing the unavailability of local resources. A Travel Authorization Form (Attachment B) must be approved by the CC, CFO and General Manager/CEO.

Travel on behalf of the Authority will be permitted. For example, only Contractor's employee travels to inspect a bus at a manufacturer's plant. Approved long distance travel costs will be reimbursed in accordance with established MARTA guidelines. Long distance travel costs include, but are not limited to; airfare, hotel, per diem, parking, and rental car.


Overtime must be approved by the Requestor prior to incurring any charges. Any approved overtime will be billed at the standard established hourly rate, subject to applicable law, without escalation.

#### 5.15.3.7 Change Orders

A change order may involve addition or deletion of scope, schedule, or budget. The Requestor delivers a modified scope and ILHE to CPM.

The Requestor shall notify the Contractor of the request for a change order, provide the scope of work, and request a proposal for the change order. The Contractor's cost will be evaluated by the Requestor and negotiations may be conducted, if necessary. The Contract Specialist will process the change order. The Requestor and CPM with work collaboratively to obtain the appropriate approvals in accordance with this Chapter.

#### 5.15.3.8 Unauthorized Work

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Any work undertaken without prior written consent is performed at the Contractor's sole risk and subject to non-payment of incurred costs.

#### **5.15.3.9 Limited Notice to Proceed (LNTTP)**

A Limited Notice to Proceed (LNTTP) may be issued should unforeseen circumstances occur involving a need to expedite or continue service. Approval of the LNTTP will be based on the established Delegation of Authority. **Payment of invoices under a LNTTP shall not exceed the amount approved under the LNTTP. Any work undertaken in excess of an LNTTP without an executed Work Order is unauthorized work and shall be handled in accordance with Section 3.8 of this Chapter.**

#### **5.15.3.10 Work Order Term**

The period of performance for each Work Order shall be clearly identified in the Work Order. Funding for a Work Order will not automatically renew and must be in the approved fiscal year (FY) budget. A letter will be issued by the AGM for Capital Programs Delivery with the approved budget. This amount may be changed via the Change Control Process and a new letter issued detailing the changes.

#### **5.15.3.11 Fair and Reasonable Pricing**

In order for the Authority to make a determination of fair and reasonable pricing, the contractor may be required to submit its most recent FAR Audit. The Authority's Department of Internal Audit, at its discretion, may perform a review of the FAR Audit.

On a case by case basis a negotiated rate may be used in place of a FAR Audit with appropriate justification provided.

#### **5.15.3.4.0 Invoice Processing**


##### **5.15.3.4.1 Overview**

The Work Order process is designed, in part, to help with the prompt payment of all properly formatted and undisputed invoices and to create an accurate, verifiable and auditable account of all Authority funds spent on Work Orders.

Contractor Responsibilities:

1. Contractor shall submit monthly invoices according to the requirements of the Work Order. Electronic submittals are required.
2. All invoice coversheets must include, at a minimum, the following information:
  - a. Work Order Number
  - b. Work Order Title
  - c. Complete MARTA project number string
  - d. Billing period covered
3. All invoices should list cost components in detail including, at least the following items:
  - a. Direct Labor
  - b. Indirect or overhead
  - c. Subcontractors cost and fee
  - d. Expenses



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4. Back-up documentation should include:

- a) Signed timesheets (for prime and subcontractors, if any)
- b) Subcontractors invoice (if any)

5. If there are any expenses, an expense report form shall be included which identifies the date of the expenditure, the category (reproduction, travel, lodging, etc.), the amount. Detailed receipts and other supporting documentation for each expense item shall be attached to the expense report. Per diem, if applicable, should also be included on the expense report. Government/MARTA rates and rules shall apply.

6. A monthly Progress Report shall be included with the invoice and it shall detail project activities and percentages completed, as specified in the contract.

Failure to provide the required information may cause delay in payment, partial payment or rejection of all or part of the invoice.

#### **5.15.3.4.2 Invoice Review**

The Requestor is responsible for the initial review and approval of the invoice. The review will include confirmation that rates, overhead and fees are approved. The review will also include a review for completeness, consistency with any other terms of the Contract, allowable charges and mathematically correct.

The Requestor's review shall consist of the following:

1. An initial review and approval of the hourly rates upon award of the Contract. Thereafter, the rates shall be audited annually by MARTA's Internal Audit Department.
2. Verify expended labor hours listed by employee and labor category.
3. Verify expenses (direct and indirect).
4. Verify travel, including a breakdown of travel and per diem expenses by traveler, by trip, and receipts for such items.
5. Review progress reports and/or percent complete.
6. Confirm that appropriate back-up documentation is included.
7. Verify each line item to include appropriate project, task, and line item budget amount listed in the Work Order.


If any part or the whole invoice is not approved, then a brief explanation will be provided in writing at the bottom of the invoice and the information shared with the Contractor by the Requestor so corrections can be made and the invoice resubmitted. The Requestor will copy the Professional Services staff on this transmittal.

The Project Manager will maintain a document that tracks the total amount of the Work Order, invoices approved for payment, expenditure to date and the remaining budget balance for the Work Order.

#### **5.15.3.4.3 Rejecting an Invoice**

The Requestor may reject all or part of an invoice. Should the Requestor reject an invoice, the Requestor shall contact the Contractor to try to reconcile disputed charges. The Requestor will provide assistance to the Contractor, if required. The existing contract and Work Order will control dispute resolution.



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**ATTACHMENTS:**

Attachment A - Rate Justification

[WORK ORDER RATE JUSTIFICATION FORM.pdf](#)

Attachment B - Travel Justification

[WORK ORDER TRAVEL ALLOWANCE JUSTIFICATION FORM.pdf](#)

## Chapter 6 - Miscellaneous Procurement Actions

### 6.0 Purpose and Scope


This chapter outlines MARTA's procedures for Options, Unsolicited Proposals, and New Chemical Commodities.

### 6.1 Options

- A. Except as provided in the following Sections, a Requestor may include an option in a contract when it is in the best interest of MARTA to include in the contract a unilateral right by which MARTA may elect to purchase additional supplies, services or extend the term of the contract.
- B. The Requestor may include options in a contract for products or services if there is an anticipated need for similar products or services beyond the first contract period. The period within which an option may be exercised may extend beyond the date specified for completion of the products or services in a contract.
- C. Any written findings required for a contract entered into by negotiations shall specify both the basic requirements and the increase permitted by an option.
- D. Contract provisions, approved by the Department of Legal Services, setting forth the cost of the option may include, but are not limited to, the following:
  1. A specific dollar amount;
  2. An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including the price for work in a fixed-price type contract;
  3. In a cost-type contract, a stated fixed or maximum fee, or a fixed or maximum fee amount determinable by applying a formula contained in the basic contract;
  4. A specific price that is subject to an economic price adjustment provision; or
  5. A specific price that is subject to change as a result of changes to the prevailing labor rates provided by the U.S. Department of Labor (DOL).
  6. CPI changes

#### 6.1.1 Solicitation of Contracts with Options

- A. If a contract provides for an option, the solicitation shall include appropriate option clauses, approved by the Department of Legal Services.
- B. Each contract shall state the period within which an option may be exercised.
- C. In order to meet the requirements of this Manual for full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified

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from the terms of the base contract. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement and shall comply with the non-competitive procurement procedures in Chapter 11.

**OPTIONS CLAUSE**

<http://martanet/data/CP-SOPs/Options-Clause.pdf>


**6.1.2 Exercise of Options**

- A. Before exercising an option, the CPM Agent shall make written findings that the exercise will be in accordance with the terms of the option and the conditions of the requirements set forth below. Such documentation shall be made part of the official contract file.
- B. A CPM Agent shall exercise an option only after determining the following:
  1. That sufficient budget authority is available;
  2. That the requirement covered by the option fulfills an existing MARTA need; and
  3. That the exercise of the option will be the most advantageous method of fulfilling MARTA's need, when price and other factors are considered.
- C. The CPM Agent and Requestor, after considering price and other factors, shall make the determination in the above Section on the basis of one of the following:
  1. A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option; provided, that if it is anticipated that the best price available is the option price (or that this is the more advantageous offer), the CPM Agent shall not use this method to test the market;
  2. An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the most advantageous offer; or
  3. The short time between the award of the contract containing the option and the exercise of the option indicates that the option price is the lowest price obtainable or the most advantageous.
- D. When determining whether to exercise an option, the CPM Agent shall take into account the need for continuity of operations and the potential cost of disrupting operations.
- E. The exercise letter shall cite the option provision as authority for the action and should be issued within the time period specified in the contract.
- F. CPM shall make the final determination regarding exercise of an option.

**EXERCISE OF OPTION LETTER**

<http://martanet/data/CP-SOPs/Option-Year-letter.pdf>

- G. Tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others. Tag-on is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change and is subject to non-competitive procurement procedures.

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## 6.2 Unsolicited Proposals

MARTA welcomes new and innovative ideas through the submittal of unsolicited proposals. Unsolicited proposals are those that are submitted by an offer for the purpose of potentially obtaining a contract with MARTA. Such proposals are usually associated with innovative concepts for expansion or for revenue generating services, including, but not limited to, the following:

- Services Expansion
- Parking Garages
- Real Estate
- Land Development
- Concessions
- Branding

### 6.2.1 Definitions

The following words and terms have the meaning indicated unless the context clearly indicates a different meaning.

- A. **Unsolicited Proposal** – is a written proposal for a new or innovative idea that is submitted to MARTA for review and evaluation and that is not in response to a Request for Proposals, Invitation for Bids, or any other Authority-initiated solicitation or program.
- B. **Open Competition** – means that an unsolicited proposal is advertised to allow other entities to submit proposals.


### 6.2.2 Procedures

These procedures outline the process for the submission, evaluation, competition and contract award of unsolicited proposals.

#### A. Criteria for Unsolicited Proposals

A valid unsolicited proposal must:

- Be innovative and unique;
- Be independently originated and developed by the firm;
- Be prepared without MARTA supervision, endorsement, direction, guidance from or any contact with any MARTA personnel at any time during preparation, other than the request for and provision of information available pursuant to the relevant Open Records provisions;
- Include sufficient detail to permit a determination that MARTA support would be worthwhile and demonstrate that the proposed work would benefit MARTA;
- Not be an advance proposal for property or services that MARTA could acquire through competitive methods; and
- Not address a previously published expression of need or Request for Proposals.

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**B. Submittal of Unsolicited Proposals**

Entities submitting unsolicited proposals to MARTA are required to mail one original, one electronic and six (6) hard copies of their Proposal to:

Head of CPM  
Metropolitan Atlanta Rapid Transit Authority  
2424 Piedmont Road, N.E.  
Atlanta, Georgia 30324

MARTA's CPM staff will acknowledge receipt of an unsolicited proposal within fourteen (14) days.

In submitting an unsolicited proposal to MARTA, firms are consenting to allow MARTA to use any proprietary information or intellectual property contained in the unsolicited proposal to develop a Request for Proposals or Request for Qualifications. Under no circumstance will MARTA be liable or reimburse the firms for the release or use of the information contained in their unsolicited proposals.

All unsolicited proposals submitted to MARTA will be treated as public records. In accordance with the Georgia Open Records Act (GORA), the unsolicited proposal will be made available to the public upon request in accordance with GORA.

**C. Content of Unsolicited Proposals**

Unsolicited conceptual proposals must contain, at a minimum, the following:

**1. Basic information including –**


- a. Firm's name and address and type of organization; e.g., profit, nonprofit, educational, small business;
- b. Names and telephone numbers of technical and business personnel to be contacted for evaluation purposes;
- c. Identification of proprietary data or information for nondisclosure under the Georgia Open Records Act;
- d. Date of submission; and
- e. Signature of an authorized representative.

**2. Technical information including –**

- a. Concise title and abstract (approximately 200 words) of the proposed effort;
- b. A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of MARTA's mission;
- c. Type of support needed from the agency; e.g., Government property or personnel resources.

**3. Supporting information including-**

- a. Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation; and.

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- b. Information indicating that the Proposer has the necessary financial resources to complete the project.

**D. Fee**

A proposal review fee payable (certified check or money order) to MARTA will be required at the time of submittal to offset the costs of processing, reviewing and evaluating unsolicited proposals and must accompany any unsolicited proposal in accordance with the fee structure, based on contract value, below:

**Fee Schedule**

<b>Contract Value</b>	<b>Fee</b>
Less than \$200,000	\$1,000
\$200,000 up to \$1M	\$5,000
\$1M up to \$50M	\$10,000
\$50M and above	\$20,000

This is the standard Fee Schedule. The General Manager/CEO has the right to waive the fee, prescribe a lower fee, or increase the fee based on the amount of staff effort required to analyze a proposed project or the level of other services, such as engineering consultants or appraisals, necessary to properly evaluate the proposal.

All costs incurred by the firm in preparing and submitting an unsolicited proposal will be borne solely and completely by the firm.


MARTA will return the fee to a Proposer who submitted a proposal accepted by MARTA but which resulted in award of a contract to an entity other than the Proposer.

**E. Evaluation Process**

1. Within sixty (60) days of receipt of an unsolicited proposal, the Head of CPM and appropriate subject matter expert (SME), as designated by the Authority, will determine if the proposal:
  - a. Is a valid unsolicited proposal meeting the requirements of Section C;
  - b. Is essential to MARTA's mission; and
  - c. Contains sufficient technical and cost information for evaluation.

If the proposal meets these requirements, MARTA will:

- a. Notify the firm of its intent to conduct a comprehensive evaluation of the proposal;
  - b. Assemble an evaluation team that includes technical and financial SMEs related to the unsolicited proposal; and
  - c. Proceed to a comprehensive evaluation.
2. MARTA staff will consider the following factors, in addition to any others, appropriate for a particular proposal:

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- a. Unique, innovative, and meritorious methods, approaches, or concepts demonstrated by the proposal;
  - b. Overall scientific, technical, or socioeconomic merits of the proposal;
  - c. Potential contribution of the effort to the Authority's specific mission; and
  - d. The details of the cost revenue associated with the proposal.
3. If an unsolicited proposal meets all requirements upon completion of a comprehensive evaluation, MARTA staff will seek the appropriate management or Board approval to proceed to open competition.
  4. MARTA may elect to follow its standard procedures governing the release of a Request for Proposals or it may elect to publicize the unsolicited proposal as received, in compliance with relevant State law.
  5. During the competitive selection process, the proponent of an unsolicited proposal will have the same standing as any other potential proponent.
  6. Relevant criteria and associated weights will be developed for the evaluation of proposals should additional proposals be received through the competitive process. While one factor to be considered during the evaluation process will be the lowest cost/highest revenue, this will not be the only factor upon which an award will be based.
  7. Consideration will be given to the initial proponent of an unsolicited proposal during the evaluation process.

**F. Return of Unsolicited Proposal**

Nothing in this policy requires MARTA to act or enter into a contract based on an unsolicited proposal. MARTA may return an unsolicited proposal at any time during the process.


MARTA will return an unsolicited proposal to the firm, citing reason, when its substance:

1. Is available to the Authority without restriction from another source;
2. Closely resembles a proposed or pending competitive acquisition requirement;
3. Is not essential to accomplishing the Authority's mission; and
4. Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

**G. Prohibitions**

To ensure transparency, accountability and objectivity, entities submitting proposals, MARTA Board members, employees, staff and consultants must adhere to regulations, policies and guidelines regarding potential conflicts of interest in accordance with any federal and state laws, and the MARTA Standards of Conduct.

Any communication between an entity submitting a proposal and any MARTA Board member, staff member, or consultant regarding the unsolicited proposal is strictly prohibited from the time the entity's proposal is received by MARTA until a final determination is made on the award of a contract arising from the unsolicited proposal. The only exceptions to this are:

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- Any communications with CPM staff; and
- Site visits to the firm's facilities.

Any violation of these requirements will constitute grounds for immediate return of the firm's proposal.

### **6.3 Procurement and Qualification of New Chemical Commodities**

- A. It is the practice of MARTA that the procurement of Chemical Commodities, including Cleaners, Paints, Solvents, Lubricants, Adhesives and Graffiti Removers receive the review and concurrence of the Requestor Department and Department of Safety and Quality Assurance (SQA) for occupational and environmental safety requirements, and that these commodities be properly described with composition, use and labeling specifications, as appropriate, for the purposes of Commodity Classification and Purchasing.
- B. During each step of the Procurement process, verification Safety and Quality Assurance safety plan.



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## Chapter 7 - Procurement By Sealed Bidding

### 7.0 MARTA Act

In accordance with the MARTA Act, Competitive Bidding is required as follows:

1. The contract shall be let to the lowest responsive and responsible Contractor when the purchase price of all supplies, equipment, and materials is \$200,000 or greater.
2. All competitive bidding shall be in accordance with the MARTA Act.

### 7.1 Scope

- A. The primary method of procurement is the competitive sealed bid, which results in a firm-fixed-unit price contract awarded to the lowest responsive and responsible Contractor. The MARTA Act and other applicable Federal and State statutes require the use of sealed bidding under almost all circumstances for purchasing supplies, materials and construction and equipment when the cost of said purchases are estimated to exceed the small purchase threshold. Publicizing and public opening of bids is required. In order for sealed bidding to be most effective, the following conditions should be present:
  1. A complete, adequate and sufficiently generic specification is developed;
  2. Adequate competition is available in the marketplace (three or more responsive and responsible Contractors will be notified; and
  3. The procurement lends itself to a firm-fixed unit price contract.
- B. Rules regarding the preparation of the Invitation for Bids (IFB), and the bid and award processes are described. Two-step sealed bidding is an authorized procedure which separates the qualification stage from the sealed bidding process.

### 7.2 General Requirements

- A. The IFB is developed by the CPM Agent in collaboration with the Requestor Department and Department of Legal Services. The CPM Agent assures that all required IFB contract clauses and provisions are included in the IFB, including other appropriate requirements depending on the type of funds used.
- B. A Pre-Planning Meeting will take place to discuss all aspects of the procurement. A standing committee will consist of CPM, Department of Legal Services, D&I, Risk Management, Safety and Quality Assurance and other departments, as appropriate.
- C. The method of Procurement Decision Matrix will be completed during the Pre-Planning Meeting.

#### PROCUREMENT PLANNING CHECKLIST


<http://martanet/data/CP-SOPs/PRE-PLANNING-CHECKLIST-OVER-200K.pdf>

- D. A procurement timeline shall be established at the Pre-Planning Meeting.

#### PROCUREMENT SCHEDULE FORM

<http://martanet/data/CP-SOPs/IFB-Procurement-Schedule.pdf>

- E. Each IFB shall be publicized and subsequent bids be publicly opened.
- F. Bids shall be solicited from an adequate number of Contractors to assure full and open competition.
- G. Bids shall be evaluated without discussions with Contractors.
- H. Award shall be made by use of a firm-fixed-unit price contract or fixed-unit-price with economic price

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adjustment (See Section 5.4 above).


- I. Award is made to the lowest responsive and responsible Contractor whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.
- J. All discounts and transportation costs shall be considered in determining which bid is lowest.

### 7.3 Diversity and Equal Opportunity Requirements

All solicitations require review by D&I for goal determination and good faith efforts in meeting goals (See Chapter 3).

### 7.4 Solicitation Requirements

- A. Requestor submits requisition through Oracle requesting initiation of an IFB to CPM. Appropriate departmental approvals are obtained based on hierarchy. Purpose, rationale, special instructions, Bid Form, Supplementary Conditions, Technical Specifications, suggested Contractors, funding, Independent Cost Estimate (ICE) and term, including option periods, if applicable, are to be included with the requisition.
- B. The CPM Agent shall prepare each IFB including appropriate standard forms and provisions with information provided by the Requestor Department.
- C. The solicitation should contain the following as appropriate to the nature of the contract requirement, e.g., for supplies, equipment, services, or construction:
  - 1. The solicitation and contract form prescribed by MARTA;
  - 2. Date solicitation will be advertised;
  - 3. Date, hour, and place of Pre-Bid Conference and Site Visit (local time shall be used);
  - 4. Date, hour, and place of bid opening (local time shall be used);
  - 5. Contract form
  - 6. Instructions to Contractors;
  - 7. A description of the supplies or services required; quantities; bid form;
  - 8. Any descriptions or specifications that are necessary to permit full and open competition; a description of the services required and any drawings, plans, and complete technical specifications that are not restrictive of competition and in sufficient detail to permit full and open competition; unreasonable requirements placed on firms in order for them to qualify to do business is not permitted;
  - 9. A requirement that all bids must allow a period for acceptance at least one hundred twenty (120) calendar days, from the date of bid opening;
  - 10. Necessary provisions to ensure that, pursuant to MARTA's D&I, small and disadvantaged businesses will be given the maximum feasible opportunity to compete for contracts and subcontracts. A D&I goal requirement, if appropriate;
  - 11. A statement of any special technical qualifications due to the complexity of equipment being procured or for some other reason;
  - 12. When applicable, packaging, packing, preservation, and marking requirements;
  - 13. Inspection, acceptance, quality assurance, reliability and warranty requirements.

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14. Requirements for time, place, and method of delivery or performance.
15. Requirements for accounting and appropriate data and any required contract administration information;
16. Any special contract requirements (e.g., bid guarantee, bonds, insurance, liquidated damages, progress payments) if necessary;
17. Contract clauses or provisions required by Federal, State, or Local laws or regulations;
18. A list of documents, exhibits, and other attachments;
19. Representations, certifications, and other statements required of Contractors;
20. Basis of award, such as lump sum or separately awardable;
21. Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference;
22. A notice to Contractors that all bids, materials and correspondence are subject to the Georgia Open Records Act;
23. Conflict of Interest Statement and form;
24. Any special provisions necessary for the particular procurement relating to payment terms, invoicing (to include PO number), accounting data, etc.;
25. Statement of Business and Financial Qualifications;
26. Work Authorization Form;
27. The IFB shall require written acknowledgment by each Contractor of the receipt of all addenda issued;
28. If appropriate, descriptive literature and bid sample requirements;
29. Identify deadline for questions; and
30. Reference protest procedures.

**D. Construction Contracts**

For construction contracts, the solicitations shall also contain the following information:

1. Contract milestones and schedule information;
2. State prevailing wage and other funding source requirements; and
3. S.A.V.E. affidavit; and
4. Inspection, acceptance, quality assurance, reliability and warranty requirements.

- E. The CPM Agent issues Advance Notice to Contractors, if necessary, and posts the Invitation for Bids (IFB) on-line. Distribution of the IFB to internal customers and planrooms is also handled by the CPM Agent. The Request for Advertisement is forwarded to Contract Control for inclusion in the newspaper of general circulation and such publications identified by the Requestor Department.

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## 7.5 Bid Requirements

Each bid shall be based upon specifications contained in the IFB, and each bid shall be typewritten or written legibly in ink. The person who signs the bid shall initial all alterations in ink. Each bid, shall be signed in ink. Each bid shall be submitted based upon requirements in the IFB.

## 7.6 Time for Submission of Bids

The CPM Agent in consultation with the Requestor Department shall provide a reasonable time for prospective Contractors to prepare and submit bids in all IFBs consistent with the needs of MARTA. The MARTA Act requires that publication be made at least once a week in the two weeks prior to bid opening.

### MARTA ACT ADVERTISING REQUIREMENTS SECTION

<http://martanet/data/CP-SOPs/Advertising.pdf>

## 7.7 Place and Method of Delivery of Supplies


All materials and supplies are to be solicited Free on Board (F.O.B.) destination unless otherwise determined to be in the best interest of MARTA.

## 7.8 Bid Samples

- A. The IFB shall state when the Contractor is required to furnish samples as part of their response.
- B. The CPM Agent shall not require Contractors to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specifications or purchase description. If bid samples are required, the IFB shall list all of the characteristics for which the samples will be examined.
- C. Bid samples shall be used to determine the responsiveness of the bidder.
- D. The Requestor Department shall reject a bid as non-responsive if the sample fails to conform to any of the characteristics listed in the IFB.

## 7.9 Descriptive Literature

- A. Each IFB shall state whether the Contractor is required to furnish descriptive literature.
- B. The CPM Agent shall not require Contractors to furnish descriptive literature unless the Requestor needs it to determine before award whether the products offered meet the specifications or to establish exactly what the Contractor proposes to furnish.
- C. The Requestor shall document, in writing, the reasons why product acceptability cannot be determined without submission of descriptive literature and shall include the document in the contract file.
- D. The IFB shall clearly identify the following:
  1. The descriptive literature required to be furnished;
  2. The purpose for which the literature is required;
  3. The extent to which the literature will be considered in the evaluation of bids; and
  4. The rules that will apply if a Contractor fails to furnish the literature before bid opening or if the literature furnished does not comply with the requirements of the IFB.
- E. Unsolicited descriptive literature not required by the IFB shall not be considered as qualifying the bid and shall be disregarded unless it is clear from the bid or accompanying papers that the Contractor's intention

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was to qualify the bid.

#### **7.10 Cancellation of Invitation for Bids Before Opening**

- A. An IFB shall not be canceled before opening unless the Requestor and Department of Legal Services determine that cancellation is in the best interest of MARTA and is actually cancelled in accordance with the MARTA Act.
- B. Reasons for a decision to cancel an IFB prior to opening include:
  1. Inadequate or ambiguous specifications were cited in the IFB;
  2. Specifications have been revised;
  3. Supplies or services being contracted for are no longer required;
  4. The IFB did not provide for consideration of all factors of cost to MARTA; or
  5. A defect is found in the solicitation documents.
- C. If an IFB is cancelled before opening, bids that have been received shall be returned unopened to the Contractors.
- D. The Head of CPM shall send a notice of cancellation to all prospective Contractors to which IFBs were issued

#### **7.11 Pre-Bid Conferences**

- A. The CPM Agent may use pre-bid conferences to explain procurement requirements.
- B. The Pre-Bid conference information shall be included in the IFB.
- C. The Pre-Bid conference shall be held as least two (2) weeks prior to bid opening.
- D. Any substantive clarification resulting from the Pre-Bid conference should be identified in an addendum. Nothing stated at the Pre-Bid conference shall be authoritative or change the IFB unless a written addendum is issued.
- E. If MARTA requires any type of Pre-Bid conference, site visit, or meeting, the IFB shall include the time, date, and location of the Pre-bid conference and site visit, and when and where project documents, including final plans and specifications are available. Any Pre-Bid conference or site visit, shall be no sooner than a minimum of five (5) calendar days of the publication of the initial notice.


##### *PRE-BID CONFERENCE AGENDA FORM*

<http://martanet/data/CP-SOPs/Pre-bid-Conference-Agenda.pdf>

- F Supplier Diversity & Inclusion shall be discussed as part of the pre-bid agenda.

#### **7.12 Inquiries**

- A. All inquiries must be received 15 days prior to bid opening.
- B. An inquiry to an IFB shall be identified and sent to the appropriate party for response.
- C. Each inquiry shall reference the portion of the IFB it addresses.
- D. The CPM Agent shall electronically post each inquiry with approval by the Manager, CPM to all prospective Contractors to which an IFB has been furnished and uploaded to the MARTA website.

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- E. The CPM Agent shall distribute each inquiry within a reasonable time to allow all prospective Contractors to consider the information in submitting their bids.

### 7.13 Addendum to Invitation for Bids

- A. Addenda to an IFB shall be identified as such.
- B. If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, or other items, or to correct a defective or ambiguous IFB, the change shall be accomplished by addendum to the IFB.
- C. Each addendum shall reference the portion of the IFB it amends.
- D. The CPM Agent shall electronically post each addendum, after being reviewed by the Department of Legal Services to all prospective Contractors to which an IFB has been furnished and uploaded to the MARTA website.
- E. The CPM Agent shall publish each addendum to MARTA's website within a reasonable time (e.g. not less than 2 days before due date) to allow all prospective Contractors to consider the information in submitting their bids.
- F. If, because of an addendum, the time and date for receipt of bids is not sufficient to permit preparation of the bid, the CPM Agent and Requestor Department shall consider increasing the time for submission of the bids. This will be done by addendum.

#### ADDENDUM EXTENDING BID OPENING DEADLINE

<http://martanet/data/CP-SOPs/Addendum-Extending-Deadline.pdf>

### 7.14 Records of Invitation for Bids and Records of Bids

- A. CPM must retain a record of every Invitation for Bids issued and of each record of bids, known as the Bid Tabulation Sheet in accordance with applicable law and MARTA policies.

#### BID TABULATION FORM

<http://martanet/data/CP-SOPs/Bid-Tab-Sheet.pdf>

- B. The complete planholders list will be included in the contract file.

### 7.15 Responsiveness of Bids


- A. To be considered for award, a bid must comply in all material respects with the IFB so that all Contractors may stand on equal footing and the integrity of the procurement process may be maintained.
- B. Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the IFB. Contractors must use the Bid Form furnished by MARTA to assure uniformity in bid responses.

#### CHECKLIST FOR BID RESPONSIVENESS

<http://martanet/data/CP-SOPs/Responsive-Form.pdf>

### 7.16 Time of Bid Receipt

Bids must be received in the office designated in the Invitation for Bids not later than the time identified in the Invitation for Bids.

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### 7.17 Late Bids

Bids are considered late based on the time clock in the Bid Opening Room if the time is later than that identified in the IFB. Unless a bid is late owing solely to MARTA mishandling, late bids will not be accepted by MARTA.


### 7.18 Modification or Withdrawal of Bids Before Bid Opening

- A. A bid may be modified or withdrawn by written request submitted by mail or in person. The designated official identified in the IFB must receive the request from a Contractor's authorized signatory prior to the exact time of bid opening.
- B. Modifications received shall be sealed in an envelope and time and date stamped to evidence receipt. No information contained in the envelope shall be disclosed before the time set for the bid opening.
- C. If a bid is withdrawn in accordance with this Section, any bid guarantee (e.g. bond, etc.) shall be returned to the Contractor.
- D. All documents relating to the modification or withdrawal of bids shall be made a part of CPM's file.

### 7.19 Rejection of Individual Bids

- A. Any bid that fails to conform to the requirements of the IFB shall be rejected at the sole discretion of MARTA.
- B. Any bid that does not conform to the IFB's specifications shall be rejected unless the IFB authorized the submission of alternate bids and the supplies or services offered as alternates meet the requirements specified in the IFB.
- C. Any bid that fails to conform to the delivery schedule or permissible alternates stated in the IFB shall be rejected.
- D. A bid shall be deemed non-responsive if the Contractor imposes conditions that would modify requirements of the IFB or limit the Contractor's liability to MARTA. For example, a bid shall be deemed non-responsive if the Contractor does the following:
  1. Protects against future changes in conditions, such as increased costs, if total possible costs to MARTA cannot be determined;
  2. Fails to state a price and indicates that price shall be "price in effect at time of delivery" or words of equivalent meaning;
  3. When not authorized by an IFB, the Contractor conditions or qualifies a bid by stipulating that it is to be considered only if, before award date, the Contractor receives (or does not receive) award under a separate solicitation;
  4. Requires that MARTA is to determine that the Contractor's product meets applicable MARTA specifications; or
  5. Limits the rights of MARTA under any contract clause.
- E. A bid received from any Contractor that is suspended, debarred, or otherwise ineligible to receive a Federal or State contract shall be rejected if the period of suspension, debarment, or ineligibility has not expired prior to the bid opening date.



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- F. Bids received from Contractors determined by the Requestor Department, CPM Agent or Department of Legal Services to be non-responsive are not accepted by MARTA.
- G. When a bid guarantee is required and a Contractor fails to furnish the bid guarantee in accordance with the requirements of the IFB, the bid may be rejected.
- H. Requestors shall make non-responsibility determinations.
- I. All originals of all rejected bids, and any written findings with respect to the rejections, shall be maintained in the contract file.

## **7.20 Minor Informalities or Irregularities in Bids**

Minor informalities or irregularities in bids may be waived if the Department of Legal Services determines in writing that the waiver is in the best interest of MARTA.

## **7.21 Mistake in Bids After Award**

- A. Bid mistakes are not always discovered prior to contract award. Post award mistakes are those that arise because:
  - 1. A mistake in bid was not recognized prior to contract award; or
  - 2. The formal contract document does not reflect the actual agreement of the parties.
- B. The first category covers unilateral mistakes (the Contractor's) and one that MARTA had no actual or constructive knowledge of before contract award. Relief from the mistaken bid is available only before award and on limited grounds.
- C. The second category covers mutual mistakes where the executed agreement does not reflect the actual agreement of the parties, either because MARTA has actually erred in its specification, or in the drafting of the contract, which has been executed by both parties.
- D. If a mistake in a bid is not discovered until after award and after execution of the contract, the mistake may be corrected by contract amendment, if correcting the mistake would be favorable to MARTA without changing the essential requirements of the specifications.
- E. In addition to the cases contemplated in the Section above or as otherwise authorized by law, if a mistake in a bid is not discovered until after award, the appropriate representatives (Department of Legal Services and Requestor) that approved the procurement action are authorized to make one of the following determinations:
  - 1. To rescind the contract;
  - 2. To reform a contract to: (i) delete the items involved in the mistake or (ii) to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original IFB; or
  - 3. That no change shall be made in the contract as awarded.
- F. Each proposed determination shall be submitted to the Department of Legal Services for review.
- G. The contract file shall contain a record of each determination made in accordance with this Section, the facts involved, and the action taken.

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## 7.22 Bid Mistake in Contracts Solicited by IFB

A Contractor, under competitive bidding requirements, may not be permitted to change its bid because of a mistake. However, a Contractor may seek to rescind its bid due to a mistake, but must notify MARTA in writing within five calendar days after public opening of the bids.

## 7.23 Requirements

- A. A Contractor shall not be relieved of the bid unless by consent of MARTA, nor shall any change be made in the bid because of mistake.
- B. MARTA may consent to a Contractor being relieved of its bid if all of the following grounds are established:
  1. A mistake was made;
  2. The Contractor gave MARTA written notice within five days after opening of bids of the mistake specifying in the notice in detail how the mistake occurred;
  3. The mistake made the bid materially different than Contractor intended it to be; and
  4. The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the scope of the work.
- C. The Contractor will be requested to produce physical evidence (e.g., bid preparation documents) that will reasonably allow MARTA to make a determination that a mistake was made.
- D. The Contractor who claims a mistake or who forfeits its bid security shall be prohibited from participating in further bidding on the project on which the mistake was claimed or security was forfeited.


## 7.24 Apparent Clerical Mistakes

Any clerical mistake apparent on the face of a bid shall be corrected by the CPM Agent prior to award. Examples of such apparent mistakes are obvious error in placing decimal point or obvious error in designation of unit. Correction of the bid will be effected by attaching the verification to the original bid. Correction will not be made on the face of the bid; however, it shall be reflected in the award document.

## 7.25 Other Mistakes

The Department of Legal Services is authorized to make the following administrative determinations in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award:

1. When the Contractor requests permission to rescind a bid and clear evidence establishes the existence of a mistake, a determination by the Department of Legal Services permitting the Contractor to withdraw its bid may be made. However, if the evidence is clear both as to existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received, a determination by the Department of Legal Services may be made to correct the bid and not permit its withdrawal.
2. When the Contractor requests permission to correct a mistake in its bid and clear evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the Contractor to correct the mistake may be made, provided that, in the event such correction would result in displacing one or more lower bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable from the invitation and the bid itself. If the evidence is clear only as to

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the mistake, but not as to the intended bid, a determination by the Department of Legal Services permitting the Contractor to withdraw its bid may be made.

3. When the evidence is not clear that the bid, as submitted, was not the bid intended, a determination by the Department of Legal Services may be made requiring that the bid be considered for award in the form submitted.

## 7.26 Bid Receipt and Opening

### A. Receipt of Bids

As bids are received, MARTA shall secure and safeguard the bids until the established time for bid opening.

### B. Opening of Bids

The person designated as the CPM Agent shall coordinate and conduct the bid opening. All bids received prior to the bid opening will be publicly opened, read aloud to the persons present, and recorded. It is usually impracticable to read the entire bid, therefore, only the total amount of each bid will be read.

### C. Recording of Bids

The bids shall be recorded on a Bid Tabulation Sheet. Any apparent or potential problem with any bid that is noted at the time of bid opening should be indicated on the Bid Tabulation Sheet. The CPM Agent will certify the accuracy of the Bid Tabulation Sheet, and certify that opportunity was provided for public inspection of all opened bids, by placing his/her signature thereon. MARTA's CPM Agent will then ensure that these results are posted on MARTA website within a reasonable time after bid opening.

#### RECORD OF BIDS RECEIVED FORM

<http://martanet/data/CP-SOPs/Bid-Tab-Sheet.pdf>

## 7.27 Evaluation of Bids

Contracts shall be awarded to the Contractor that submits the lowest responsive and responsible bid at the sole discretion of MARTA.


- A. Evaluation of bids for responsiveness, responsibility and price reasonableness shall be coordinated by the CPM Agent. The results of the evaluation shall be documented to provide clear justification for contract awards.
- B. The CPM Agent shall include documentation in the file as to whether or not a Contractor is considered responsible and responsive.

#### CHECKLIST FOR BID RESPONSIVENESS

<http://martanet/data/CP-SOPs/contract-checklist.pdf>

## 7.28 Responsiveness of Bid

The responsiveness of the bid itself is determined by its conformance to the technical, legal and commercial requirements of the bid documents. Generally, a bid is not responsive and may not be considered for award if it contains a deviation to any material factor, which affects price, delivery, quality or quantity of the articles

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or services furnished or fails to conform to the material requirements of the IFB. A bid will be rejected when the Contractor imposes conditions, which would modify requirements of the Solicitation Package. MARTA may waive minor errors or omissions.

## 7.29 Price Analysis is Required for all Procurements

A price analysis is required for all procurements. If only one response is received and MARTA elects to negotiate with that Contractor a price/cost analysis must be completed by the Audit Department if the procurement exceeds the General Manager's authority or if an audit is required by Federal, State or Local laws or regulations.

## 7.30 Rejection of All Bids/Cancellation of Invitation for Bids After Opening

MARTA may, at its discretion, reject any or all bids. As a general rule after opening, Invitation for Bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the initial Invitation for Bids and the additional quantity should be treated as a new procurement or an amendment using Chapter 11 procedures for a non-competitive procurement.

## 7.31 Reasons for Cancellation/Determining Follow-Up Action

A. Reasons when an IFB must be canceled and bids rejected include, but are not limited to:

1. All bids were non-responsive or at unreasonable prices;
2. There is evidence of collusion or bad faith;
3. No responsive or responsible Contractor.

B. An IFB may also be canceled after opening but prior to award if the goods/services are no longer needed or when CPM, in coordination with the Requestor Department and the Department of Legal Services determines that circumstances justify such action.

## 7.32 Procedures for Rejecting All Bids


Once a decision is made to recommend the rejection of all bids and after the Contractor survey has been performed (if appropriate), the CPM Agent, Department of Legal Services and Requestor shall jointly make a decision and take the following steps:

1. Determine the recommended course of action (e.g., revise and reissue the solicitation, request authority to negotiate a non-competitive contract, cancel the entire procurement action).
2. If the decision is to cancel the solicitation, prepare a Board Agenda Report and Resolution recommending the rejection of all bids.

### BOARD RESOLUTION FOR REJECTION OF ALL BIDS

<http://martanet/data/CP-SOPs/Rejection-Resolution.pdf>

3. Upon receiving authorization from the Board of Directors, the CPM Agent will send a letter to all of the Contractors advising them that all bids have been rejected.
4. Complete written documentation must be maintained in the contract file including copies of original bids, written recommendations from the Requestor Department (and the Legal Department, if appropriate), records of communications with Contractors, and a record of the basis for decisions made pertaining to the contract.

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### 7.33 Single or Non-Responsive Bid

- A. Single Bid: In the event a single bid is received in a sealed bid procurement, MARTA shall: conduct a canvas of Contractors to determine why there were no other Contractors; and perform a price/cost or request a price/cost analysis from the Department of Internal Audit to determine that the bid price is fair and reasonable.
- B. Non-Responsive Bid: Where competitive bids are solicited and no responsive bids are received, an alternative procurement may be permissible under the non-competitive procedures set forth in Chapter 11.

### 7.34 Tied Bids

The resolution of an apparent tie is performed as follows:

1. Arithmetic calculations are checked to confirm that the bids are identical and the bids are reviewed for responsiveness.
2. If the bids are tied and responsive, the CPM Agent advises the tied Contractors, in writing, that a tie has occurred and they are invited to attend the determination of the winning Contractor. This will be accomplished by the tossing of a coin and the Head of CPM will assign who is heads and who is tails.
3. The date, time and method of this determination will be established by written notice but does not require the attendance of the Contractors.
4. This process will be witnessed by the CPM Agent and a CPM Manager or higher.

### 7.35 Award Process

#### A. Award

Award will be made by written notice, within the time for acceptance specified in the bid. Award will be made to the lowest responsive and responsible Contractor. Award will not be made until all required Executive and Board approvals have been obtained.

#### B. Notification to Unsuccessful Contractors

The CPM Agent shall:

Notify each unsuccessful Contractor via email within a reasonable time after Board approval that its bid was not accepted and include, among other things, the dollar amount of the successful bid and the name of the successful Contractor;

NON-AWARD LETTERS

<http://martanet/data/CP-SOPs/non-award-letters.pdf>


### 7.36 Delay of Award

Should administrative difficulties after bid opening threaten to delay award beyond Contractors' acceptance periods, the CPM Agent may ask the Contractors to extend the bid validity period (with consent of sureties, if necessary) to avoid the need for re-soliciting. All Contractors must agree.

REQUEST FOR EXTENSION OF BID VALIDITY LETTER

<http://martanet/data/CP-SOPs/Bid-Validity-ltr.pdf>

### 7.37 Authority to Approve Contracts

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The CPM Agent shall prepare a purchase order, award letter or contract (as applicable) and then circulate it to obtain the appropriate approvals as identified in the Delegations of Authority. Board packages are routed through the Executive Management Information System (EMIS). Award of a contract will not be made until the appropriate approval has been received.

A Notice of Award or contract, in the case of contracts exceeding \$200,000 shall only be sent to the awardee after Board approval. The successful Contractor must then submit the required insurance and surety forms, if required, at the same time and with the executed contract.

In the case of purchase contracts, a purchase order is executed by the authorized delegate and transmitted to the recommended Contractor. Upon execution by MARTA, a binding contract is formed.

The Awardee must execute the proposed contract as presented first, then MARTA will execute the unmodified version of the same.

### 7.38 Notice of Award Posting

The CPM Agent shall notify members of the public via posting on MARTA website of the award. The notification posted on the Internet should include the contract name, description of work, prevailing Contractor and amount of the final contract.

#### NOTICE OF AWARD LETTER

<http://martanet/data/CP-SOPs/Notice-of-Award-Example.pdf>

Notice of Intent to Award (NOI) is posted online at least five (5) days prior to award.

#### MARTA ACT NOTICE OF AWARD SECTION


<http://martanet/data/CP-SOPs/Notice-of-Award-Ad.pdf>

### 7.39 Two-Step Sealed Bids for Services and Miscellaneous Procurements

Two-step sealed bidding requires the Contractors to submit a qualification statement for evaluation, and then in a subsequent IFB from those Contractors who were determined to have submitted an acceptable qualification statement.

#### General

- A. Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding for Construction, Services and Miscellaneous Procurement contracts. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of MARTA's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items.
- B. Two step sealed bidding is conducted in two steps:
  1. Step One: Consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the services, etc. offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and

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special testing techniques. It is the proper step for clarification of questions relating to technical requirements.

2. Step Two: Involves the submission of sealed priced bids by those firms or individuals who submitted acceptable technical proposals for Step One. Sealed bids will be received and publicly read aloud by the CPM Agent. Contracts are awarded following the procedures found in Chapter 7 or Chapter 8, whichever is appropriate.

#### Conditions for Use

- A. Unless other factors require the use of traditional sealed bidding, two-step sealed bidding may be used in preference to competitive negotiation when all the following conditions are present:
  1. Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion of the technical aspects of the requirement to ensure mutual understanding between each source and MARTA.
  2. Definite criteria exists for evaluating technical proposals.
  3. More than one technically qualified source is expected to be available.
  4. Sufficient time will be available for use of the Two-Step Method.
  5. A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.
- B. None of the following precludes the use of two-step sealed bidding:
  1. Multi-year contracting.
  2. MARTA-owned facilities or special tooling to be made available to the successful Contractor.
  3. A first or subsequent production quantity is being acquired under a performance specification.

### 7.40 Contract File Documentation

A written Record of Procurement History requires the following items shall be documented in the file:

1. Rationale for the method of procurement (see Chapter 5)
2. Selection of Contract Type (see Chapter 4)
3. Reasons for Contractor selection or rejection, and
4. The basis for the contract price.

### 7.41 Conforming the Contract

The process outlined in the following link shall be followed when conforming Contract Documents.

#### PROCESS TO CONFORM CONTRACTS


<http://martanet/data/CP-SOPs/Conformed-Contracts.pdf>

Contract files shall be closed in the manner prescribed by the link below.

#### FINAL CLOSE-OUT CHECKLIST

<http://martanet/data/CP-SOPs/solicitation-close-out-checklist.pdf>



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## Chapter 8 – Professional Services Contracts/Letter of Agreement "LOA"

### 80 Introduction

- A. Purpose: The following chapter has been developed to provide guidance on how to contract for professional services. These procedures are designed to provide structure and include the form, format, and basic processes from recognition of a contractual need through satisfying that need by execution of a contract.
- B. Scope: At present, Section 14, "Competitive Bidding on Contracts, Etc.", of the MARTA Act specifically exempts professional services contracts from the structured process of competitive bidding. Professional services procurements permit the negotiation of procurements in accordance with sound business principles. These procedures can be used to contract with professional service providers that include, but are not limited to, the following: architects, engineers, attorneys, accountants, consultants, advisors, and other individuals or firms who are engaged primarily in the rendition of professional services and not the sale of goods or merchandise. Professional services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training or direct assistance such as studies, analyses, and evaluations.


### 8.1 Solicitation/Selection

- A. In the preparation of a solicitation for desired professional services, the Requestor Department should describe their requirements clearly, accurately and completely to the greatest extent possible in a Scope of Work. In addition, the Requestor Department should endeavor to avoid unnecessarily restrictive requirements, which might unduly limit the number of prospective Contractors. Contracts identified as "sole source" must have sufficient documentation to support that determination. CPM and the Department of Legal Services will make the final determination.
- B. The solicitation for professional services normally takes the form of a Request For Proposals (RFP), since it affords the flexibility to negotiate not only price, but other factors considered crucial to the successful completion of the contract. It must be determined prior to solicitation and documented for the file what the appropriate basis of award will be, namely either: (1) the most advantageous offer to the authority, price and other factors considered; or (2) best qualified Offeror.
- C. The Source Evaluation Committee (SEC) is comprised of members selected to evaluate proposals submitted in response to a solicitation. The SEC scores the bids, proposals, qualification statements, etc. If the SEC is recommending that the project not be awarded, the SEC should nonetheless score the proposals, unless all were deemed non-responsive. If applicable, the SEC will provide its recommendation to the Executive Steering Committee.
- D. The Technical Evaluation Team (TET) reviews technical responses. TET's are not required on all advertised formal solicitations.
- E. The Executive Steering Committee (ESC) reviews the SEC's recommendation, votes and forwards its own recommendation to the Board.

### 8.2 The Most Advantageous Offer

May be used for professional activities such as studies, evaluation, analyses, and training when selection should be based on price and other factors.

- A. Process

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Request permission from the Board of Directors to solicit proposals (greater than \$200,000).

Prepare Request for Proposals, including:

1. Instructions;
  2. Terms and Conditions;
  3. Evaluation Criteria (Quality and Cost Related; e.g., qualifications, experience, approach, total cost, etc.);
  4. Statement of Work; and
  5. Cost Schedule
- B. Prepare Independent Cost Estimate for above work.
- C. Conduct a Pre-Planning Meeting to review and approve the solicitation document.

*PRE-PLANNING CHECKLIST*

<http://martanet/data/CP-SOPs/PRE-PLANNING-CHECKLIST-OVER-100K.pdf>

- D. Prepare an evaluation plan detailing the evaluation process that MARTA Staff, the SEC and advisors will follow.

*RFP EVALUATION PLAN*


<http://martanet/data/CP-SOPs/RFP-Evaluation-Plan.pdf>

- E. Solicit proposals to ensure adequate competition to the extent practicable.
- F. Procurements should normally be negotiated, unless one of the exceptions below applies.
1. Discussion after receipt of initial proposals is not required;
  2. Time for delivery will not permit discussions; or
  3. The procurement is for an item such that, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price.

### **8.3 Negotiation Procedures**

8.3.1 Sole source or competitive procurements may be negotiated if it is in MARTA's best interests.

- A. Non-competitive negotiation (sole source) is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Circumstances under which a contract may be awarded by non-competitive negotiation are limited to the following:
1. The item is available only from a sole source;
  2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (the emergency must be declared by the GM/CEO);
  3. After solicitation of a number of sources, competition is determined inadequate; or
  4. Only a single bid or proposal is received in response to an IFB or RFP, respectively; or

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5. The item is procured directly from the original manufacturer or Contractor of the item to be replaced. If appropriate, MARTA must certify in writing to the appropriate funding source, if necessary: (1) that such manufacturer or Contractor is the only source or proprietary owner of such item; and (2) that the price of such item is no higher than the price paid for similarly situated customers.
- B. In competitive negotiation, proposals are requested from a number of sources and the IFB/RFP is publicized; negotiations may be conducted with one or more respondents, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Conducting negotiations with multiple sources in a competitive solicitation should be avoided, if possible. If competitive negotiation is used the following requirements shall apply:
  1. Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.
  2. The Request for Proposals shall identify all significant evaluation factors, including price or cost where required and their relative importance.
  3. When it is necessary to rectify ambiguities, mistakes or omissions, an appropriate addendum shall be issued in a timely manner.
  4. The Authority shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible Offerors for the purpose of written or oral discussions and selection for contract award.

#### 8.3.2 When to Conduct Negotiations

Subject to the exceptions below, after receipt of proposals the Source Evaluation Committee may shall conduct written or oral discussions with any number of responsive and responsible Offerors who submit proposals within a competitive range, price and other factors considered.

#### 8.3.3 Subject Matter of Negotiations

- A. Restrictions on the information that may be revealed to the Offerors by the Committee during the course of negotiations:
  1. No MARTA staff, member of the SEC or advisor to MARTA shall furnish information to a potential Offeror which may afford it an advantage over others.
  2. After receipt of initial proposals, no information contained in any proposal shall be made public, subject to Georgia law.
  3. Auction techniques, such as advising Offerors of their price relationship with others, are prohibited.
  4. The Department of Legal Services shall be present at all negotiations.
- B. Whenever negotiations are conducted with several Offerors, while such negotiations should whenever possible be conducted successively, all Offerors selected to participate in such negotiations shall be offered an equitable opportunity to submit such price, technical or other revisions in their proposals as may result from the negotiation process. All such Offerors shall

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be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals must be submitted by that date.

C. Changes in the Authority's Requirements

Where the Request for Proposals sets forth one requirement and after receipt of proposals, it becomes apparent that the Authority's needs may be better fulfilled in another manner, all Offerors should be appropriately advised, in writing, and further discussions or negotiations should follow.

D. Conduct of Negotiations

1. Evaluation of Offerors' proposals, including price revision proposals and subsequent negotiations with the Offeror, shall be completed by all personnel concerned with the procurement.
2. Agreement of the parties on all basic issues shall be the objective of the contract negotiations.
3. Oral discussions and/or written communications shall be conducted with Offerors to the extent necessary to resolve uncertainties relating to the purchase or to the price to be paid.
4. Cost or profit figures of one Offeror shall not be revealed to other Offerors.

#### 8.4 Best and Final Offers (BAFO)

BAFOs should be used only when the Requester Department and CPM determine it is in MARTA's best interests.

Final Negotiations:

1. Offerors are forwarded any changes to the original solicitation;
2. Offerors are asked for their "best and final offer", not merely to confirm or reconfirm prior offers; and
3. Offerors are notified that any revision or modification of proposals must be submitted by the deadline specified.

#### 8.5 Late Proposals


Late proposals may not be considered.

#### 8.6 Determining Reasonableness of Price

A price/cost analysis shall be performed by the Department of Audit in connection with every negotiated procurement involving only one proposal when such an audit is required by Federal, State or Local laws or regulations or when such negotiated procurement involves an amount exceeding the General Manager's Authority. Where no price competition exists, and in all cases where a cost analysis is performed, profit should be negotiated as a separate element of the price.

#### 8.7 Basis of Award

- A. After evaluation of proposals in accordance with the criteria set forth in the RFP, the SEC/SEP shall recommend to the Board of Directors that a contract be awarded to the responsive and responsible Offeror with the proposal that offers the most advantageous to the Authority, price and other factors considered.

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- B. Contracts shall be made only with responsible Contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to, among others, such matters as Contractor record of past performance, financial and technical resources.

## 8.8 Documentation

Negotiated procurement records or files shall provide at least the following pertinent information: Contractor selection; determination and findings; record of negotiations; cost/price analysis, initial procurement request with evaluation plan, proposals and recommendation.

## 8.9 Contract Execution

- A. Upon approval of the Board of Directors or appropriate approval authority, a contract or award letter will be issued.
- B. In the preparation and distribution of the contract or award letter the following administrative steps should be taken by the CPM Agent:
1. Obtain the Authority Oracle Document Number;
  2. Working copies are made for the CPM Agent's file and one copy should be sent to the Contracting Officers Technical Representative (COTR);
  3. The original is filed in the official contract file;
  4. Contract Control shall retain the complete working file, documenting the complete contract process of solicitation, evaluation, award, successful proponent and non-successful proponents, proposals and Best and Final Offers; and
  5. The CPM Agent should retain the administration contract file documenting Contractor performance.


## 8.10 Request for Proposals (RFP) Process

- A. Requestor submits requisition through Oracle requesting initiation of an RFP to CPM. Advance notice to CPM and the Department of Legal Services should be provided. Also, the project team should be identified. Appropriate departmental approvals are obtained based on hierarchy. Special instructions, Evaluation Factors and Weights, Proposal Evaluation Plan (with the composition of the Source Evaluation Committee (SEC), Technical Evaluation Team (TET), as appropriate, Evaluation Score Sheet, Supplementary Conditions including term, Statement of Work, Summary Fee Schedule, suggested Contractors, funding and estimated dollar amount are to be included with the requisition.
- B. Prior to soliciting proposals from prospective Offerors:
1. Requestor submits written request to CPM requesting a Board Resolution be prepared requesting permission to solicit proposals for a subject.

### BOARD RESOLUTION FOR PERMISSION TO SOLICIT RFPS


<http://martanet/data/CP-SOPs/Permission-to-Solicit.pdf>

2. Requestor shall include purpose, rationale, funding, Independent Cost Estimate (ICE), term, evaluation criteria and composition of SEC/TET.
3. CPM prepares the Board package and letter from the General Manager/CEO to the Board of

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Directors certifying the reason why it is impracticable to prepare adequate specifications upon which to accept sealed bids for the project.


- C. CPM Agent prepares draft solicitation package, working with Requestor Department and Department of Legal Services to assure accuracy (Supplemental Instructions, Evaluation Factors and Weights, Supplementary Conditions, Statement of Work, and Summary Fee Schedule).
- D. CPM Agent schedules and conducts Pre-Planning Meeting. Comments are addressed and incorporated into the draft document and a solicitation schedule is finalized. Attendance includes at a minimum: Requestor Department, Risk Management, D&I and Department of Legal Services. The Departments of Quality Assurance and Safety. Human Resources and Police Services may attend, if necessary. Subject Matter Experts (SME) from the departments listed above will identify requirements to be included in the solicitation. CPM Agent shall not remove those requirements without written approval from the SME.
- E. The solicitation document is finalized and sent to Department of Legal Services for concurrence. The Requestor Department is consulted as to the necessity of a Pre-Proposal Conference/Site Visit and the date/time of such conference. A Proposal Deadline is set by the CPM Agent based on at least thirty (30) days street time from the first date of advertising of the solicitation.
- F. The CPM Agent issues Advance Notice to Offerors and posts Request for Proposals on-line. Distribution of the RFP to internal customers and plan rooms is also handled by the CPM Agent. The Request for Advertisement is forwarded to Contract Control for inclusion in a newspaper of the greatest general circulation and other publications, if necessary.
- G. CPM Agent shall coordinate the participation and conducts the Pre-Proposal Conference.
- H. CPM Agent issues Addenda, as necessary. Addenda shall be published on MARTA's Website.
- I. Inquiries received within the stated timeline are forwarded to the Chairperson of the SEC for response; the response is made available on MARTA's Website.
- J. CPM Agent obtains proposals received prior to the time of the Proposal Deadline.
- K. Protests, if any, received by CPM are forwarded to the Department of Legal Services for response.
- L. CPM Agent arranges SEC/TET kickoff meeting to review the evaluation process. The TET reviews and discusses the proposals.
- M. Initial technical scoring is conducted on each proposal to identify which proposals will be included in the competitive range and thus considered for further consideration. CPM Agent prepares the summary technical scoring. Cost is scored separately and provided to the SEC Chairperson after the technical scoring is presented by the TET Chairperson. The SEC Chairperson may at this point, decide to make a recommendation to award without discussion or to have discussions with all firms in the competitive range. The final decision lies with the SEC via voice vote or otherwise.
- N. CPM Agent sends letters to Offerors not within the competitive range informing them that their proposals will not receive further consideration.
- O. SEC and TET develops questions/clarifications on proposals within the competitive range and CPM distributes the same.
- P. CPM Agent schedules demonstrations/presentations (if appropriate) with Offerors within the competitive range. CPM Agent follows-up with confirmation letters to the Offerors of the date, time

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and place for the presentation. Questions developed by the SEC and TET are coordinated by the CPM Agent and sent by CPM in advance of the scheduled presentations.

- Q. CPM Agent coordinates and conducts fact-finding meetings, as appropriate.
- R. Best and Final Offers (BAFO) may be requested of Offerors in the competitive range by the SEC.
- S. CPM Agent schedules SEC evaluation meeting for final evaluation of Best and Final Offers. Final technical scoring is conducted. CPM Agent prepares final score sheet and distributes to SEC. Cost scoring is performed by the CPM Agent.
- T. CPM Agent performs a price analysis on each procurement to determine whether the price is fair and reasonable.
- U. Reserved.
- V. Upon receipt of the Summary Recommendation Memorandum from the SEC Chairperson, the CPM Agent alerts D&I of the recommended awardee and forwards the Contractor's Equal Employment Opportunity information to D&I; notifies the Contractor that it has been recommended for award and that D&I will be in contact, and requests Certificates of Insurance, Drug Alcohol Policy (if applicable) and other required contract items. A D&B Report is requested from the Department of Finance.
- W. CPM Agent prepares Board package (EMIS System) for routing and ultimate presentation by the Requestor Department at the next scheduled committee meeting requesting approval of the procurement.
- X. Upon approval of the procurement by the Board of Directors, CPM Agent prepares letters to unsuccessful Offerors notifying them of the contract award and prepares the draft contract for Legal Services.
- Y. CPM Agent enters the contract information into Oracle regarding the award of the contract.
- Z. CPM Agent prepares contract or Notice of Award and obtains the appropriate signature. The letter or contract is emailed to the awardee. Post award documents are requested in addition to the return of the executed contract.
- AA. CPM Agent receives the post award insurance and forwards to Risk Management for review and approval. If applicable, Payment and Performance Bonds are also submitted to Risk Management for review.
- BB. CPM Agent notifies the Requestor Department that all contractual documents have been received and approved and that the contract administration function can begin.
- CC. CPM Agent distributes the executed contract.



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## Chapter 9 - Architect-Engineer and Related Services

### 9.0 Purpose and Scope

- A. This Chapter prescribes guidelines and requirements for the procurement of Architect-Engineer (A/E) and related services.
- B. Architect-Engineer Services are defined as professional services of an architecture or real property engineering nature associated with research development, design, construction, alteration, or repair of real property that are required by virtue of law or desired by MARTA to be performed by a registered or licensed architect or engineer. Types of services include, but are not limited to, program management, construction project management, feasibility studies, preliminary engineering, design, surveying, mapping, private architectural, landscape architectural, environmental, and land surveying. Regardless of funding source, procurements will be conducted without considering price as an evaluation factor in determining the most qualified Proposer. A cost proposal may only be solicited from the most qualified Proposer firm and negotiations may only be conducted with that firm. If a satisfactory contract cannot be negotiated, negotiations will be formally terminated. Only then will negotiations be conducted with the second most qualified Proposer. This procedure will be followed until a satisfactory contract can be negotiated.

### 9.1 Architect-Engineer Solicitation Responsibilities


- A. CPM will publicly announce all requirements for architect-engineer services and conduct selection processes for these services based on the demonstrated competence and qualifications of prospective Contractors. Sources for architect-engineer contracts shall be selected in accordance with the procedures set forth below.
- B. CPM shall use qualifications-based competitive procedures for procurement of A/E related services. Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected, consistent with the minimum needs of MARTA, followed by a request for a price proposal from the selectee and negotiations with the selectee to determine fair and reasonable compensation terms. This method of procurement, follows the Brooks Act, where competitive prices are not obtained and can only be used in procurement of architect-engineer services. This method of procurement cannot be used to obtain other types of services even though firms that provide the above types of services may also be potential sources to provide other services.

### 9.2 Evaluation of Firms for Procurement of Architect-Engineer Services

MARTA shall select firms for Architect-Engineer contracts on the basis of demonstrated competence and on the professional qualifications necessary for satisfactory performance of the services required. Price shall not be an evaluation factor.

### 9.3 Solicitation Process

- A. General
  1. CPM will have responsibility for the qualifications based formal solicitation process.
  2. A Selection Committee shall be established for each procurement of A/E services. The Selection Committee shall be composed of technically qualified individuals with particular training or experience in the various criteria for the procurement. The Selection Committee shall include members from the Authority's staff and may, in appropriate cases, include qualified individuals in the Atlanta area or employees from other transit properties. The Department of Diversity and Equal Opportunity shall be represented on the Selection Committee as a non-voting member.

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3. Written criteria shall be established for the technical requirements of each procurement of A/E services by the Requestor Department. Selection of the most qualified firm shall be based upon the written criteria for the procurement.
4. Each selection criteria shall be assigned a weight reflecting the importance of the criteria in the procurement of the A/E services and DBE involvement shall be either pass or fail.

**B. Board of Directors**

1. For each procurement of A/E services estimated to exceed \$200,000 in value, the Board of Directors shall be informed of the purpose of the procurement prior to the beginning of the selection process. Additionally, Selection Committee members shall be identified by title, and selection criteria and associated weights shall be reported.
2. Each contract in excess of \$200,000 negotiated in accordance with this Section shall be presented to the Board of Directors for approval.

**C. Selection Process**

**1. Solicitation**

Letters requesting Expressions of Interest, and Statements of Qualifications shall be sent to firms that have expressed an interest in the type of assignment under consideration and to any firm identified by the Department of Diversity and Equal Opportunity. The letters will include a description of the assignment and a statement of the Authority's policies and requirements regarding equal employment opportunity, disadvantaged business enterprise involvement and conflict of interest restrictions.

A notice of the pending solicitation shall be placed in such local newspapers as to insure adequate notice to all qualified firms within the metropolitan Atlanta area. Notices also may be placed in national professional publications.

Firms may submit Expressions of Interest and Statement of Qualifications individually or in combination with other firms or individuals in a joint venture or prime-sub arrangement.


**2. Short Listing**

The Selection Committee shall review and evaluate all Expressions of Interest and Statements of Qualifications submitted in response to the solicitation and in accordance with the specified submittal deadline. Based on such review and upon consideration of the criteria for the procurement, the Selection Committee shall select a short list of three (3) or more firms that are the most highly qualified to provide the services required. If three (3) firms or more submit, the Selection Committee shall have the option to eliminate a firm from further consideration if they are not deemed to be qualified.

**3. Interview and Selection**

The Selection Committee shall interview and conduct discussions with each firm on the short list to evaluate each firm's qualifications based upon the written criteria and the weight assigned to such criteria for the procurement of A/E services. Based on such interviews and discussions, the Selection Committee shall not consider price as an evaluation factor in selecting the one most qualified firm. The Selection Committee may identify one or more alternate firms listed in order of qualifications.

**4. Negotiation and Approval of Contract**

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The Selection Committee and CPM shall negotiate with the most qualified firm to establish compensation terms that are deemed fair and reasonable by both parties. In negotiating such compensation terms, the estimated value of the services shall be taken into account.

If a satisfactory contract cannot be negotiated with the most qualified firm, negotiations with that firm should be terminated. Negotiations should commence with additional firms on the short list in the order of their competence and qualifications as established by the Selection Committee until an agreement is reached in accordance with this Section.


Each contract in excess of \$200,000 negotiated in accordance with this Section shall be presented to the Board of Directors for approval.

#### **9.4      Work Order Procedures**

Work Orders are issued in response to a need for A/E services identified by Authority staff. The procedure listed below shall be followed when issuing Work Orders for A/E services.

##### *GENERAL ENGINEERING CONSULTANT WORK ORDER PROCEDURE*

[\*\*MARTA CPM Procurement & Procedure Manual - Work Order Procedures.pdf\*\*](#)

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## Chapter 10 – Small Purchases

### 10.0 Purpose and Scope

- A. This Chapter sets forth the procedures for small purchases and other simplified purchase procedures. The procurement of supplies, materials and equipment, the estimated aggregate amount of which does not exceed \$200,000 shall be purchased by utilizing Small Purchases Procedures or other simplified methods. Micro-Purchase Procedures are also discussed in this Section. The micro-purchases threshold is established by the funding entity. Requirements for each funding source shall be reviewed prior to any procurement action. The threshold for locally funded purchases is \$20,000 while the FTA micro-purchase threshold is \$10,000. Department of Homeland Security (DHS) micro-purchases threshold is \$10,000.00 B. This Chapter describes the procedures for using a blanket purchase order (BPO), Procurement Purchase Card and a purchase order as well as other small purchases. Procedures for the modification or cancellation of purchase orders are also prescribed.

### 10.1 Use of Small Purchase Procedures

- A. The small purchase procedures set forth in this Chapter may only be used for the procurement of supplies, services, construction, and other items when the total amount of the procurement does not exceed the small or micro-purchase threshold.
- B. A CPM Agent shall not use small purchase procedures when the requirement can be met by using a requirements contract, an indefinite quantity (IDIQ) contract, or other required source of supply.
- C. A Requestor shall not split a procurement totaling more than MARTA's small purchase limitation into several purchases that are less than the limit in order to permit the use of the small purchase procedures.
- D. A procurement requirement shall not be parceled, split, divided, or purchased over a one (1) year period of time in order to avoid the dollar limitations for use of small purchase procedures.
- E. A CPM Agent shall use the small purchase procedures that are most suitable, efficient, and economical based on the circumstances of each procurement.
- F. Total purchases for any item exceeding \$200,000 in a twelve (12) month period must be procured by formal solicitation.
- G. Contracts above the small purchase threshold must contain remedies for breach of contract.


### 10.2 Small Purchase Authority

The small purchase contracting authority of MARTA personnel shall be specific delegations issued to named individuals or positions within MARTA by the General Manager/CEO. Refer to Section 1.7.

### 10.3 Requirements for Micro-Purchases

A procurement for an amount not to exceed the established micro-purchase threshold may be accomplished by securing one quotation if the price is considered to be fair and reasonable. The only file documentation required is a determination that the price is fair and reasonable and how the determination was made. Determinations may be based on published catalog prices, pricing available to the general public or other government entities. The procurement may not be divided or reduced merely to come within the micro-purchase limit.

### 10.4 Purchase Card Program

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- A. This Section applies to purchases of supplies or equipment at or below the micro-purchase threshold with the use of a purchase card.
- B. CPM will maintain a Purchase Card Program in order to allow MARTA to establish a more efficient, cost-effective method of purchasing and payment for small dollar transactions. Departments are encouraged to participate in this Program to procure and pay for micro-purchases in accordance with MARTA procedures.
- C. Consistent with the requirements of Chapter 1 of this Manual with respect to the re-delegation of procurement authority, the General Manager/CEO may re-delegate micro-purchase authority to qualified MARTA employees who will be using the supplies or services being purchased. MARTA employees delegated this authority are Purchase Cardholders within the meaning of Chapter 10, Section 10.2 of this Manual and subject to MARTA's Standard of Conduct.
- D. Only such MARTA employees receiving this re-delegated procurement authority may participate in MARTA's Purchase Card Program. CPM will be responsible for developing and maintaining the Purchase Card Procedure, training employees selected to receive a Purchase Card and maintaining a list of all MARTA employees who exercise such authority.
- E. Micro-purchases, when possible or appropriate should be distributed by Purchase Cardholders equitably among qualified Contractors.
- F. Requirements aggregating more than the micro-purchase threshold shall not be split into several purchases that are less than the threshold merely to permit purchase. Contracting authority may be revoked if this direction is violated. Micro-purchases may be awarded without soliciting competitive quotations if the Cardholder determines that the price is reasonable. Prompt payment discounts should be solicited, if appropriate.
- G. The administrative cost of verifying the reasonableness of the price for purchases at or below the micro-purchase threshold may more than offset potential savings from detecting instances of overpricing. Therefore, actions to verify price reasonableness such as soliciting additional quotations need only be taken if:
  1. The Cardholder suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or
  2. Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).
- H. CPM shall conduct periodic reviews and evaluations of Requestor Department's purchase card activity for determining compliance with MARTA's procurement guidelines and other business practices as appropriate. This review will also evaluate the purchasing activities of individuals with this purchasing authority.

**PURCHASING CARD PROCEDURE**

<http://martanet/data/CP-PR-0870.pdf>

## **10.5 Small Procurements Greater than the Micro-Purchase Threshold**

Small Procurements greater than the micro-purchase threshold must be conducted by soliciting written/electronic quotations. Price quotations shall be solicited from a minimum of three (3) qualified sources. Quotations must be obtained by CPM Agents. Quotes obtained from Requestor Departments will

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result in disqualification of the quote.

#### **10.6 Determination of Reasonableness of Price and Award for Competitive Small Purchases**

- A. The CPM Agent shall determine, in writing, that the quote is fair and reasonable.
- B. When only one (1) quote is received in response to a Request for Quotations (RFQ), the CPM Agent shall perform a cost/price analysis providing a basis for the determination that the price is fair and reasonable.
- C. The determination that a proposed price is fair and reasonable may be based on either of the following:
  1. Competitive quotations;
  2. Comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items, value analysis, an ICE, the CPM Agent or Requestor's personal knowledge of the item being purchased, or any other reasonable basis such as rates found reasonable on recent pricing actions; or
- D. The CPM Agent shall establish and maintain records of price quotations and include the record in the purchase file. The records shall consist of quotations received.
- E. Records supporting small purchases shall be retained in accordance with MARTA procedures.
- F. When adequate competition is lacking and for sole source small purchases, a cost/price analysis may be necessary to determine reasonableness (See Chapter 15, Cost and Price Analysis).
- G. Federal, State and local laws shall be followed for procurements funded with other than local/operating funds.


#### **10.7 Written Record of Procurement History for Purchases above the Micro-Purchase Threshold**

The following information shall be documented in the file for all actions above the micro-purchase threshold:

1. Rationale for the method of procurement (See Chapter 4);
2. Selection of Contract Type (See Chapter 5);
3. Reasons for Contractor selection or rejection, and
4. The basis for the contract price.

#### **10.8 Purchase Orders (PO)**

- A. Each purchase order shall be issued through the Oracle system on a standardized electronic form. The PO will include the terms and conditions associated with the solicitation. The PO shall state the PO number is to be listed on invoices in order for invoices to be processed. Failure to include the PO number will result in rejection and return of the invoice unpaid. The Contractor shall acknowledge that any goods or services provided outside the request of this PO are at the Contractor's risk solely and will not be paid or returned by MARTA.
- B. In general, the CPM Agent shall issue a purchase order on a firm fixed unit price basis.
- C. Each purchase order shall include any trade and prompt payment discounts that are offered.
- D. Each purchase order shall specify the quantity of supplies or services ordered.
- E. When applicable, a purchase order shall provide that inspection and acceptance will be at destination. When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to the point of receipt. The designated MARTA officials immediately, upon receipt and

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acceptance of materials, shall complete receiving reports.

- F. Each purchase order shall contain a definite calendar date by which delivery of supplies or performance of services is required.
- G. Distribution of copies of purchase orders shall be limited to those required for essential administration and transmission of contractual information.

#### **10.9 Modification of Purchase Orders**

- A. A purchase order may be modified. Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.
- B. The CPM Agent shall obtain a Contractor's written acceptance of a purchase order modification if the written acceptance is determined by the CPM Agent to be necessary to ensure the Contractor's compliance with the purchase order as revised.

#### **10.10 Termination and Cancellation of Purchase Orders**

- A. If a purchase order has been issued to a Contractor, the CPM Agent shall process the termination action in accordance with the provisions found in Chapter 14, Contract Management and Administration.
- B. If a purchase order has not been issued to a Contractor, the CPM Agent shall notify the Contractor in writing, that the purchase order has been canceled.
- C. If the Contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action shall be required and the purchase order shall be considered cancelled.
- D. If the Contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the CPM Agent shall treat the action as a termination in accordance with the provisions found in Chapter 14, Contract Management and Administration.

#### **10.11 Incidental Expenditures/Check Request**


In order to streamline the single purchase of certain incidental items, which are not generally subject to competitive procedures, excluding professional services; departments may utilize the Check Request method of purchasing. These purchases must not exceed ten thousand dollars (\$10,000) and must be in the Requestor Department's budget. The types of items are: advertising, conference/seminar registration fees; subscriptions; books, manuals, and publications; training services and memberships.

#### **10.12 Qualified Products List (QPL)**


##### **A. Product Types Eligible for the QPL**

1. In order to update and maintain an efficient QPL, the following procedures shall be implemented;
  - a. CPM shall determine specific item(s) that, for reasons of efficiency, economy, compatibility, maintenance reliability or safety, need to be standardized.
  - b. A specific written record for each item stating the necessity for establishing the QPL shall be kept by CPM; and
  - c. A written record shall be kept by CPM, which details the requirements that shall be met for a product to become qualified and the procedures that must be followed.



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2. The QPL shall be reviewed no less than two times per year. The purpose of this review is to evaluate additions or deletions from the QPL.
3. A notice prepared by the CPM Agent shall be published by MARTA at least once a year on its website:
  - a. Advertises the existence of, and all additions, to the QPL;
  - b. States that the QPL is available for public inspection;
  - c. Specifies the title and address of MARTA's office which may be contacted in regard to the procedure for compilation of the QPL and for information as to when products may be submitted for pre-qualification;
  - d. Lists all QPL items by generic descriptions; and
  - e. Lists prospective purchase quantities forecast for future requirements for each item.
- B. Each Requestor Department is responsible for submitting to CPM, required information for each item to be placed on the QPL such as stock number description or specification (preferable generic rather than brand name), previously approved products, estimated annual requirements for the item and the reason the addition of the item to the QPL is necessary. Requestor Departments are also responsible for requesting any deletions from the QPL should item(s) no longer be needed, or if Contractor(s) no longer offer a product which has been qualified and for ensuring that listings they have requested are accurate.
- C. CPM is responsible for maintaining the QPL, (e.g., adding and deleting items as requested and providing Requestor Departments with copies of the QPL) on a bi-annual basis. Items will be carried on the QPL for two years after which the items will be deleted unless renewed by the Requestor Department.

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## Chapter 11 - Non-Competitive and Emergency Procurements

### 11.0 Purpose and Scope

- A. Procurement of supplies and services, without competition, may be authorized under limited conditions, and subject to written justification documenting the conditions which preclude competition. The need for a non-competitive procurement is recognized when MARTA's interests are best served. Where ever possible, Requestors are encouraged to avoid continuation of non-competitive contracts post expiration.
- B. The conditions and limitations for use of emergency procedures are described.

### 11.1 Exceptions to Competitive Solicitation Requirements

Under certain limited circumstances, the MARTA Act permits exceptions to competitive bidding requirements. These include:

1. Emergencies in case of public exigency. Competitive bidding requirements may be waived if it is determined by the General Manager/CEO that an emergency directly and immediately affecting customer service or public health, safety or welfare requires immediate delivery of supplies, materials, equipment or services; provided, however, that a record explaining the emergency shall be submitted to the Board at its next regular meeting and thereafter kept on file.
2. Sole Source. The purchase of any supplies, equipment, or material upon a finding that there is only a sole source of supply and that the purchase is for the sole purpose of duplicating or replacing supplies, equipment, or material already in use is permitted. The Department of Legal Services must approve all single and sole source purchases.
3. Purchase made from contracts with the Federal or State government.


### 11.2 Procurement by Non-Competitive Proposals

Sole Source procurements are accomplished through acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment that is not within the scope of the original contract is considered a sole source procurement that must be justified in writing and comply with this subparagraph.

1. Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
  - a. The item is available only from one source;
  - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - c. After solicitation of a number of sources, competition is determined inadequate; or
2. A price/cost analysis is required.

### 11.3 General Provisions

- A. For non-competitive procurements, the CPM Agent must use the negotiated method of procurement.
- B. In each instance where the non-competitive procurement procedures set forth in this Chapter are used, the CPM Agent shall do the following:
  1. For small purchases see Chapter 10, all non-competitive procurements exceeding the micro-purchase threshold require written findings justifying the procurement which specifically demonstrates that

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procurement by competitive bids or competitive negotiation is not required by the provisions of this Manual; and


2. Ensure that all of the steps required under this Chapter for the justification, documentation, and approval of the procurement are completed before the contract is awarded.

#### **11.4 Non-Competitive Procurement Actions**

- A. The CPM Agent shall take reasonable steps to avoid using sole source procurement except in circumstances that comply with all appropriate rules and regulations. The CPM Agent shall take action whenever possible, to avoid the need to continue to procure the same supply, service, or construction without competition. The Requestor Department shall assist by identifying requirements in their annual procurement plan.
- B. If the only justification for using sole source procurement is based on the lack of sufficient time to complete the process of competitive sealed bids or solicitation of competitive proposals, MARTA shall not award a contract on a sole source basis unless a legitimate emergency, as defined in this Chapter, exists with respect to the need for the supply, service, or construction being procured. Sole source procurement shall not be justified on the basis of any of the following circumstances:
  1. The lack of adequate advance planning for the procurement of the required commodities, services, or other items;
  2. Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
  3. Pending expiration of budget authority.
- C. The CPM Agent shall ensure that each sole source procurement is reviewed and approved by the Department of Legal Services.

#### **11.5 Sole Source**

- A. The Requestor Department shall make every effort to limit the use of sole source procurements.
- B. When determining whether there is only one (1) source for the requirement, the Requestor shall consider whether there is a reasonable basis to conclude that MARTA's minimum needs can only be satisfied by the supplies or services proposed to be procured, and whether the proposed sole source Contractor is the only source capable of providing the required supplies or services.
- C. If the reason for making a procurement on a sole source basis is based on the particular source's ownership or control of limited rights in data, patent rights, copyrights, or trade secrets applicable to the required supplies or services, the CPM Agent shall require that the written findings clearly demonstrate the need for the specific supplies or services, and that one (1) of the following applies:
  1. The requirements cannot be modified to allow procurement by competitive sealed bids or competitive negotiated proposals; or
  2. It is in the best interest of MARTA (determined by Department of Legal Services) to meet its requirements through procurement of the specific supplies or services and that the proposed Contractor is the only source for the specific supply or service.
- D. Based upon the advice of the Requestor Department, the Department of Legal Services and Head of CPM may determine that sole source negotiations are justified for the procurement of specific makes and models of technical equipment and parts if one or more of the following requirements are met:

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1. The specific technical equipment or parts are being procured for standardization purposes, and that standardization of the equipment or parts is in the best interest of MARTA;
  2. The equipment or parts will be used to meet MARTA's requirements for replacement parts or additional units that are compatible with existing MARTA equipment;
  3. The existing equipment for which the parts or additional units are being procured was obtained by MARTA through the use of competitive procurement procedures, or was obtained through a separately justified and approved sole source procurement;
  4. No identical or compatible parts or equipment are available from any other source; and
  5. Warranty will be voided, if specified parts are not used.
- E. Justification for a sole source procurement shall cover all of the supplies or services being procured under a single contract. The justification of the sole source procurement of some supplies or services shall not be used to avoid competitive procedures for obtaining other commodities or services, which do not qualify for sole source procurement under the same contract.

*SOLE SOURCE EXAMPLE*


<http://martanet/data/CP-SOPs/Sole-Source-Example.pdf>

#### **11.6 Negotiated Sole Source Findings**

- A. The findings to negotiate a sole source contract documents the reasons why negotiation is required as a method of procurement, and why a sole source procurement is justified.
- B. Each sole source contract file shall include the following:
  1. Specific identification of the procurement as sole source;
  2. The nature or description of the proposed procurement;
  3. A description of the requirement, including the estimated value or cost;
  4. A specific citation to the applicable provision of this Manual that provide legal authority for negotiating the procurement on a sole source basis;
  5. An explanation of the unique nature of the procurement or other factors that qualify the requirement for sole source procurement;
  6. An explanation of the proposed Contractor's unique qualifications, equipment or other factors that qualify the proposed Contractor as a sole source for the procurement;
  7. A description of the market survey conducted and the results, or a statement of the reasons why a market survey was not conducted, and a list of the potential sources contacted by the Requestor Department and CPM Agent which expressed, in writing, an interest in the procurement; and
  8. Any other pertinent facts or reasons supporting the use of a sole source procurement.

#### **11.7 Sole Source Procurement Procedures**

- A. The CPM Agent shall not be required to publicize a solicitation for a procurement made on a sole source basis.
- B. The CPM Agent shall use a Request for Quotes (RFQ) for a sole source procurement. The RFQ request shall include all terms and conditions of the solicitation. All sole source procurements must be approved by the Department of Legal Services in advance.

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- C. The CPM Agent shall comply with the applicable negotiation procedures in Chapter 8, Competitively Negotiated Contracts, of this Manual, except as specifically exempted in this Chapter, or where those procedures apply only to negotiation with more than one (1) source.
- D. The Department of Legal Services shall ensure that each sole source contract contains all of the required clauses, representations, and certifications, in accordance with the applicable laws and regulations.

**SOLE SOURCE FORM**


<http://martanet/data/CP-SOPs/Sole-Source-Justification.pdf>

## **11.8 Emergency Procurements**

- A. MARTA may conduct a procurement on an emergency basis if the procurement is essential to a requirement to deal with an emergency condition, as defined in the Section below, and the same has been approved by the GM/CEO.
- B. Competitive bidding requirements may be waived if it is determined in writing by the General Manager/CEO that an emergency directly and immediately affecting customer service or public health, safety or welfare requires immediate delivery of supplies, materials, equipment or services; provided, however, that a record explaining the emergency shall be submitted to the Board in accordance with the MARTA Act, at its next regular meeting and thereafter kept on file.
- C. For purposes of an emergency procurement under this Chapter, an "emergency condition", is a situation (e.g. flood, epidemic, riot, or catastrophic equipment failure), which creates an immediate threat to the public health, welfare, or safety. The existence of the emergency condition creates an immediate need for supplies, services, equipment or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:
  - 1. The health or safety of any person;
  - 2. The preservation or protection of property; or
  - 3. The continuation of necessary MARTA functions.
- D. In the absence of an emergency condition, an emergency procurement shall not be justified on the basis

of any of the following circumstances (among others):

- 1. The lack of adequate advance planning for the procurement of required supplies, services, or construction;
  - 2. Delays in procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
  - 3. Pending expiration of budget authority or funding.
- E. The emergency procurement of supplies or services shall be limited to quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.
- F. If a long-term requirement for the supplies, services, or construction is anticipated, the Head of CPM may require the Requestor Department to initiate a separate non-emergency procurement action at the same time that the emergency procurement is made.
- G. A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of

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the procurement unless a limited number of additional commodities, services, or other items are needed to fill an ongoing emergency requirement until regular procurement action procedures initiated under other Chapters in this Manual can be completed.


## 11.9 Emergency Procurement Findings

- A. When an emergency procurement is proposed, the Requestor Department shall prepare written documentation that sets forth the justification to negotiate the emergency procurement.
- B. The CPM Agent shall ensure that each emergency procurement contract file shall include the following:
  1. Specific identification of the document as an emergency procurement finding;
  2. The nature or description of the proposed procurement action;
  3. The written authorized emergency declaration that provides legal authority for negotiating the emergency procurement prepared by the Department of Legal Services;
  4. A description of the emergency, including the nature of the threat to the public health, welfare, or safety, and the nature of the harm that the public might suffer if the requirement were not met by emergency procurement;
  5. A description of the requirement, including the estimated value or cost;
  6. A description of the efforts made to ensure that proposals or offers are received from as many potential sources as possible under the circumstances, or a sole source justification in accordance with the provisions of this Manual; and
  7. Any other pertinent facts or reasons supporting the procurement on an emergency basis.
- C. The CPM Agent shall not be required to publicize the solicitation of a procurement made on an emergency basis.
- D. The Department Head of the responsible Requestor Department shall submit a request for the emergency procurement to the General Manager/CEO stating the basis for, or condition causing the emergency, the items or services or purchases required, and the name of a recommended Contractor.

The General Manager/CEO shall approve or disapprove the procurement request and, if approved, shall notify the Board in writing of the necessity for such action.

The CPM Agent shall determine whether the same type of item or services requested is currently under order through any other procurement method. If such procurement is active, the CPM Agent shall:

1. Contact the Contractor and ascertain whether or not adjustments in quantities, delivery, or other performance requirements may be made to accommodate the emergency; and
  2. If no current contract exists for the required items or service, the CPM Agent shall attempt to solicit offers or proposals from as many potential Contractors as possible under the emergency condition. An emergency procurement shall not be made on a sole source basis unless the contract file includes justification for the sole source procurement.
- E. CPM Agent may use a letter or a verbal request to solicit proposals for an emergency procurement. If a letter request is used, the CPM Agent shall ensure that the letter is as clear and concise as possible and does not include unnecessary verbiage or notices. A letter request shall only contain the data and information necessary for providing a proposal. All verbal requests shall be reduced to writing.
  - F. The CPM Agent shall comply with all applicable requirements of Chapter 8, Competitively Negotiated

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Contracts, except as specifically exempted in this Chapter.


G. The CPM Agent working with the Department of Legal Services shall ensure that each emergency procurement contract contains the required clauses, representations, and certifications, in accordance with the requirements of this Manual.

H. The CPM Agent shall ensure that proper records of each emergency procurement are maintained.

EMERGENCY LETTER EXAMPLE

<http://martanet/data/CP-SOPs/Emergency-Letter.pdf>



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## Chapter 12 - Surplus Sales

### 12.0 Purpose and Scope

This Chapter outlines MARTA's procedures for the disposal of surplus and obsolete property.

### 12.1 Responsibilities

CPM shall retain authority and responsibility for the disposition of all obsolete and surplus material and real property. The Office of Real Estate determines how to dispose of real property in consultation with the Department of Legal Services.

### 12.2 Application

This Chapter shall apply to all surplus property including but not limited to real property, inactive stock and excess, obsolete, worn-out, discarded, scrap, recyclables, construction remnants or otherwise unusable materials, supplies and equipment.

### 12.3 Estimate


An independent estimate or appraisal will be performed commensurate with the potential for recovery of cost.

### 12.4 Procedure

- A. Upon written determination by any Requestor Department that such personal property is no longer needed, the Requestor Department shall prepare a requisition in Oracle.
- B. CPM will consider the following avenues of disposition:
  1. Alternative use within MARTA
  2. Sale to outside companies
  3. On-line auctioning
  4. Auctioneer services (vehicles)
- C. Prior contractual commitments concerning the disposition of property, for example, federal funds were used in the initial purchase, must be strictly observed.
- D. Approval shall be obtained from all required and/or appropriate departments prior to final disposition.

### 12.5 Sales Process/Bidding Requirements

- A. Informal Bid. Formal public bids are not required where the estimated value of an item or aggregate of like items of personal property is less than \$200,000. Such sales may be made by informal bid. Informal bids are written quotations which permit prices and other items to be compared. The Head of CPM/AS shall determine if a formal or informal solicitation is used for personal property under \$200,000.
- B. Formal Bid. A formal bid is one submitted by the Contractor pursuant to the following procedure and shall apply to all real property and surplus sales \$200,000 or more.
  1. Notice of the sale shall be published in accordance with the MARTA Act.
  2. The CPM Agent shall email notice of the sale to all potential buyers who have indicated their interest in purchasing property of the kind being sold.
  3. Sale will be made by sealed bids to be opened in public and read aloud. Bids shall be tabulated and a recommendation made by the Requestor. These recommendations will be in writing and will include documentation indicating the highest responsible and responsive Contractor. A record of all

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bids shall be kept on file.

#### 12.5.1 Notice of Minimum Bid Requirement

The notice of sale may, if deemed prudent, contain as one of its terms and conditions a requirement that to be considered, a bid must be above a stated minimum amount.

#### 12.5.2 Employee Sales

Employees and their family as defined in the Standards of Conduct are not allowed to bid on the sale of any MARTA property.

#### 12.5.3 Active Inventory Items

The CPM Manager shall authorize the sale of active inventory items in response to requests from other public entities. Active inventory items (parts currently used in operations) will be sold at replacement cost or for a value equal to their current MARTA inventory value plus standard shipping and handling fee of 15% and only on an accommodation basis. Active inventory items will not be sold if such sale may negatively impact MARTA operations.

### 12.6 Donations

The donation of any bus, material, equipment or non-revenue vehicle to a private organization is not permitted. MARTA may donate to Georgia public agencies.

### 12.7 Sales Transactions

#### Records Retention


- A. Copies of all documents, including advertisements, notices of sale, awards, sales orders, sales receipts and bills of sale, shall be maintained in the file as part of the public records of MARTA.
- B. The following information is to be specified on the Notice of Award:
  1. Customer name
  2. Customer address
  3. Contact person
  4. Sale Order Number
  5. Specific description of item(s) sold
  6. Sale price of item(s) sold

### 12.8 Payment/Pick-up

Upon receiving payment, it will be forwarded to Accounting for deposit. A copy of the check will be maintained in the file. Upon deposit of funds, the CPM Agent shall arrange pick up of the surplus property.

### 12.9 Report of Sales

CPM shall prepare and furnish Quarterly Sales Reports of all personal property sold and the revenue received.

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## Chapter 13 – Construction Contracts

### 13.0 Purpose and Scope

Contracts for construction or installation of equipment shall be awarded in accordance with the provisions of this Chapter and other applicable provisions of this Manual as prescribed herein.

### 13.1 Construction or Installation Contracts

- A. Contracts for the construction, reconstruction or improvement of any facility when the expenditure required involves \$200,000 or more shall be formally advertised and awarded to the lowest responsive and responsible Contractor except where negotiation is authorized.
- B. Where applicable, Requestors shall ensure that technical references in specifications conform to widely recognized standards for specifications promulgated by governments and the best industry standards and conform to MARTA's criteria.
- C. Specifications for bids shall not be drafted (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or an approved equal" so that Contractors may furnish any equal material, product or service. In those cases involving a unique or novel product or where only one brand or trade name is known to MARTA, the specifications may list only one.
- D. When "brand name or an approved equal" descriptions are necessary, specifications shall clearly identify and describe the particular physical, functional, or other characteristics of the brand name items (including available warranties) that are considered essential to satisfying the requirement to allow consideration of alternatives.
- E. A written estimate, herein referred to as MARTA's Estimate, of construction costs shall be prepared for each proposed contract prior to solicitation and for each proposed contract modification.
- F. The estimate shall be prepared by MARTA's Estimating Office.
- G. The MARTA Estimate, or request for an estimate, shall be forwarded to the CPM Agent attached to (1) the request for preparation of the contract solicitation or (2) the request for initiation of a contract modification. Each estimate shall be prepared itemizing costs.
- H. If two-step sealed bidding is used, the estimate shall be prepared before step one is started.
- I. Access to information concerning MARTA's estimate shall be limited to MARTA personnel or agents of MARTA whose official duties require knowledge of the estimate. The overall amount of MARTA estimate shall not be disclosed, except as otherwise permitted by this Manual.
- J. Any pre-solicitation notice and each solicitation shall state the scope of the construction requirement in terms of physical characteristics.
- K. The technical provisions of construction specifications shall be in sufficient detail so that when used with the applicable drawings and the specifications and standards incorporated by reference, bids can be prepared on a fair and competitive basis. The documents shall include nationally recognized industry standards. The standards which best represent no more and no less than MARTA's needs shall be selected for incorporation into the construction specifications.
- L. The Authority shall use firm fixed unit price or guaranteed maximum price contracts to procure construction. A contract may be priced on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit-price basis (when a unit price is paid for a specified quantity of work

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units), or a combination of both methods.


- M. If different completion periods for separate parts or stages of the work are specified in a construction contract, the Requestor Department should include a provision providing for liquidated damages for delay of or failure to perform each separate part or stage of the work.
- N. Liquidated damages provisions for construction contracts may be contained in the Supplementary Conditions for construction contracts. The assessment for damages may be at a specific rate per day for each day of overrun in contract time or per incident; and the rate must be specified in the contract. The Requestor Department has responsibility for providing the amount and supporting documentation.

**LIQUIDATED DAMAGES CLAUSE**

<http://martanet/data/CP-SOPs/LIQUIDATED-DAMAGES-FOR-DELAY-CLAUSE.pdf>

### **13.2 Construction Labor Standards**

- A. This Section provides a detailed description of the Federal labor laws and requirements which are applicable to MARTA contracts, establishes administrative procedures in connection with such laws and prescribes the contract clauses with respect to each such labor law or requirement.
- B. All Federally Funded contracts in excess of two thousand dollars (\$2,000) for construction and other contracts in excess of two thousand five hundred dollars (\$2,500) which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327- 330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each Contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or dangerous to his/her health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials for articles ordinarily available on the open market.
- C. All contracts for construction or repair shall include a provision requiring the Contractor to comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each Contractor or subcontractor shall be prohibited from inducing by any means any persons employed in the performance of the work under the contract or subcontract to give up any part of the compensation to which he is otherwise entitled.
- D. All MARTA construction contracts in excess of \$2,000 shall include a provision requiring the Contractor to comply with the Davis-Bacon Act (40 U.S.C. 275a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act, Contractors shall be required to pay wages to laborers and mechanics at a rate no less than the minimum wages specified in a wage determination issued by the Secretary of Labor. In addition, Contractors shall be required to pay wages not less often than once a week.
  - 1. Minimum Wage Rates. Minimum wage rates paid to laborers and mechanics employed under any construction contract exceeding two thousand dollars (\$2,000) in amount shall be the rates prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act and any regulations there under. Wage determinations are published by the Department of Labor. Special wage rate determinations may be obtained from the Department of Labor (locally funded).
  - 2. Wage Determinations. The CPM Agent is responsible for the insertion in each solicitation the current

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prevailing wage determination issued by the Department of Labor and/or the State of Georgia. In addition, the award of a contract shall be conditioned upon the acceptance of the wage determination. Appropriateness regarding the inclusion of this clause shall be determined by Department of Legal Services.

*EXAMPLE OF WAGE RATES*

[http://martanet/data/CP-SOPs/1668\\_001.pdf](http://martanet/data/CP-SOPs/1668_001.pdf)

*WORK AUTHORIZATION CERTIFICATION CLAUSE*

<http://martanet/data/CP-SOPs/WORK-AUTHORIZATION-CERTIFICATION.pdf>

*WORK AUTHORIZATION FORM*

<http://martanet/data/CP-SOPs/Work-Authorization-Form.pdf>

### 13.3 Value Engineering

Requestors will consider value-engineering requirements in contracts for construction projects of sufficient size, which offer reasonable opportunities for cost reductions, and that appropriate contract provisions have been included when applicable.

### 13.4 Design-Build Contracts

Design-build (abbreviated D-B or D/B accordingly) is a project delivery system used in the construction industry. It is a method to deliver a project in which the design and construction services are contracted by a single entity known as the design-builder or design-build Contractor. In contrast to "design-bid-build" (or "design-tender"), design-build relies on a single point of responsibility contract and is used to help minimize risks for MARTA and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

### 13.5 Resident Engineer's Manual

The Resident Engineer's Manual is used to administer MARTA's construction contracts.


*RESIDENT ENGINEER'S MANUAL*

<http://martanet/data/CP-SOPs/RE-Manual-Part1.pdf>

<http://martanet/data/CP-SOPs/RE-Manual-Part2.pdf>

<http://martanet/data/CP-SOPs/RE-Manual-Part3.pdf>

<http://martanet/data/CP-SOPs/RE-Manual-Part4.pdf>

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## Chapter 14 – Contract Management and Administration

### 14.0 Purpose and Scope

This Chapter defines the CPM Agents' roles, responsibilities and authorities in the management and administration of MARTA contracts.

Contract administration is the process of enforcing the terms of a contract through actions such as evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments, processing contract modifications and closeout.

### 14.1 Contract Execution by MARTA

After contract execution and approval by the Head, CPM, the CPM Agent will issue a Notice of Award (NOA) and allow time for submission of required Contract Documents before issuing a Notice to Proceed (NTP). For construction contracts, the CPM Agent will issue an Administrative Notice to Proceed (ANTP) after contract execution approval by the Head, CPM. Upon receipt and approval of all required submittals, the CPM Agent will issue a Site Notice to Proceed (SNTP).

### 14.2 CPM Agents' Responsibilities

Typical contract administration functions are listed below:

1. Contractor correspondence;
2. Issuance of modification of the contract (after approval by the Department of Legal Services) in accordance with the Changes article or other articles of the General Conditions with the approval of the Department of Legal Services; and
3. Processing of Contractor's invoices.

### 14.3 Contracting Officers Technical Representative


Contracting Officers Technical Representative (COTR) will perform the functions listed below:

1. Inspection of the work for compliance with the contract;
2. Negotiation with the Contractor, within specified limits, as to adjustment of contract units and/or time, and recommendation of acceptance or rejection of negotiation results with the approval of the Department of Legal Services;
3. Request MARTA estimate of contract modifications;
4. Authorize release of retainage or remitting liquidated damages with the approval of the Department of Legal Services;
5. Approval of the Contractor's shop drawings, working drawings, materials, equipment, and operations and storage areas;
6. Approval of the Contractor's progress schedule; and
7. Approval of the Contractor's invoices.

### 14.4 Post-Award Conference (Kick-Off Meeting)

A. At the post-award conference, CPM Agent shall be responsible for the following:

1. Establishing the time and place of the conference;
2. Preparing the agenda, when necessary;

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3. Notifying appropriate MARTA representatives;
  4. Notifying appropriate Contractor representatives;
  5. Designating or acting as chairperson;
  6. Conducting a preliminary meeting of MARTA personnel, if necessary; and
  7. Preparing a summary report of the conference.
- B. The Post Award Conference meeting provides key members of both organizations an opportunity to establish lines of authority and communication and identify their respective duties and responsibilities. Discussions may also cover specific project plans, specifications, safety requirements, unusual conditions, and schedules of completion. A thorough understanding of all features of the contract will promote better relations and usually improve construction operations.
- C. Any changes to the contract that result from the post-award conference shall be made only by a formal contract modification referencing the applicable terms of the contract.
- D. The CPM Agent shall prepare and sign a summary report of the post-award conference.
- E. The CPM Agent shall include in the summary report all information and guidance provided to the Contractor.
- F. The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.


#### **14.5 Contract Distribution**

The CPM Agent shall distribute copies of contracts or modifications within five (5) working days after execution to the Contractor, Project Manager, COTR, D&I, and other appropriate parties.

#### **14.6 Contract Files**

- A. The CPM Agent shall establish a file containing the records of all contractual actions pertinent to the administration of that contract. The CPM Agent shall maintain the original contract file until it is turned over to Contract Control.
- B. The documentation in each contract file shall be sufficient to constitute a complete history of the transaction for the following purposes:
  1. Providing a complete background as a basis for informed decisions at each step of the process;
  2. Supporting actions taken;
  3. Providing information for reviews and investigations; and
  4. Furnishing essential facts in the event of litigation.
- C. Document actions substantiating and reflecting contract payments.
- D. All original documents are to be kept in the contract file; only photocopies are to be loaned or transferred.
- E. The Project Manager/COTR for each project must ensure that he/she forwards all original documents pertaining to a contract action to the CPM Agent for inclusion in the official contract file.
- F. An up-to-date project schedule shall be maintained.
- G. The COTR will maintain the technical files.
- H. Safety and Quality Assurance deliverables shall be maintained in the Contract file. All Safety verification reports



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and Safety plans shall be maintained in ....


- I. All Consultants performing Safety functions must meet Safety and Quality Assurance minimum requirements throughout the duration of the Contract period.

#### **14.7 Records Management and Records Retention**

Staff will manage and retain contract files in accordance with applicable laws and MARTA Records Management Policy and Records Retention Schedule.


#### **14.8 Contract Modifications and Change Orders**

- A. Only the authorized representative acting within the scope of the General Manager/CEO's delegated contract authority is authorized to execute a contract modification or change orders on behalf of MARTA. Other MARTA personnel shall not do any of the following:
  1. Execute Contract Modifications or Change Orders;
  2. Act in a manner that causes a Contractor to believe that they are authorized to bind MARTA; or
  3. Direct or encourage a Contractor to perform work that should be the subject of a contract modification.
- B. A Contract Modification or Change Orders may be either bilateral or unilateral. All changes must be within the scope of the original scope/specifications. The authorized representative or a representative acting within the scope of his/her authority may use a bilateral contract modification or change orders to make negotiated equitable adjustments resulting from the issuance of a contract modification or change orders.
- C. The authorized representative or a representative acting within the scope of his/her authority may use a unilateral contract modification or change orders to do the following only with approval of CPM and the Department of Legal Services:
  1. Make administrative changes, such as correction of typographical errors or funding information; or
  2. Issue contract changes where negotiated settlements are not realized.
- D. An Independent Cost Estimate (ICE) shall be prepared by the Requestor for all contract modifications or change orders.
- E. A contract modification or change order will not be executed that causes or will cause an increase in the funding level of the contract without the Requestor having first obtained available funding. A five (5%) percent General Manager/CEO's contingency is available for each Board approved contract. The General Manager/CEO contingency must be approved by the General Manager/CEO.
- F. MARTA shall not be responsible for any costs incurred by a Contractor for any additional work or other actions by a Contractor outside the scope of the written contract and written contract modifications or change orders signed by MARTA. A Contractor shall not rely upon any written or oral statements or directions of employees or agents of MARTA other than the authorized representative for authority to perform work, alter schedules or specifications, or any other action that would normally require a written contract modification or change order.
- G. Negotiation of contract modifications or change orders shall be conducted by Project Managers, Resident Engineers, COTRs, CPM Agents and the Department of Legal Services.
- H. Change Orders
  1. The following procedures for change orders shall be used:
    - a. When a change order is proposed, the CPM Agent and the Department of Legal Services shall be notified and shall determine whether a change order is required. CPM and legal shall

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approved the requested change after consulting with the appropriate technical advisers. The CPM Agent shall, if necessary, prepare the proposed contract change order with the assistance of the Department of Legal Services.

- b. The CPM Agent shall require the Contractor to submit cost or pricing data for the proposed change, and shall perform a price analysis or request a price/cost analysis from the Department of Internal Audit.
2. After the change order is fully executed, the Contractor shall continue performance of the contract as changed. In cost-reimbursement contracts, the Contractor shall not be obligated to continue performance or incur costs beyond the limits established in the contract.
3. The CPM Agent, COTR and Department of Legal Services shall negotiate an equitable adjustment resulting from a change order in the shortest practicable time.
4. If the CPM Agent, COTR and Department of Legal Services are unable to accomplish a settlement to equitably adjust the contract for a MARTA issued change, consideration should be given to issuing a unilateral settlement decision in the form of a change order if allowed per the contract.
5. Contract changes that may be issued unilaterally per the contract, shall be priced before their execution if this can be done without adversely affecting MARTA's interests. If a significant cost increase could result from a contract change and time does not permit negotiation of a price, a maximum price shall be negotiated in an attempt to reach a bilateral agreement.
6. A written memorandum shall be prepared to record the results of negotiations, if any. The summary record of negotiations shall set forth the understanding between the parties on major issues (e.g., price, delivery, performance time, payment terms) and any special provisions to be included in the contract and shall be used as a guide for the Department of Legal Services and CPM to draft a written amendment to the contract. The memorandum shall explain the differences, if any, between the negotiated price adjustment and the pre-negotiation position. When there are numerous differences involving significant sums, a tabular format should be used to show the price differences and the differences must be explained in the narrative accompanying the tabulation.
7. A change order, which reflects an equitable adjustment in the contract price, is subject to review in accordance with the dollar value of the adjustment. When the price settlement reflected by the contract modification include price increase, the level of review required for approval of the modification shall be determined based on the net value. This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modifications.
8. If a contract change increase exceeds the General Manager's authority/contingency and the change is more than \$200,000 in a single transaction or an audit is required by federal, state or local laws, an audit is to be conducted by the Department of Internal Audit.
9. A change order will be completed for each contract change.

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#### 14.9 Authorization for Contract Changes


All contract changes must be acknowledged in writing, before the work is performed, by the authorized representative of the Contractor and the appropriate MARTA representative.

#### 14.10 Suspension of Work/Stop Order

- A. Situations may occur during contract performance that causes the COTR to order a suspension of work, or a work stoppage. This Section provides guidelines for CPM Agent actions for those situations, as authorized by an appropriate contract clause. Prior notice shall be provided to the Department of Legal Services for all work stoppages.
- B. The CPM Agent based upon direction from the COTR may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the COTR determines appropriate.
- C. The CPM Agent and COTR may, at any time, by written order require the Contractor, to stop all, or any part, of the work called for under the contract. The initial stop work order commences the day it is received by the Contractor and may be unilaterally issued for a period of 90 calendar days or less. The stop work can be renewed by mutual agreement with the Contractor, CPM Agent and COTR for additional 90-day periods.

#### 14.11 Termination

- A. Termination settlement proposals in excess of the General Manager's Authority are subject to audit by MARTA's Department of Internal Audit.
- B. Terminations for Convenience of MARTA:
  1. MARTA contracts will be terminated for convenience only when this is determined to be in the best interest of MARTA. The COTR's determination shall be in writing and approved by Department of Legal Services and Requestor Department Head.
  2. Formal written notice to the Contractor is necessary to terminate a contract for convenience. Such notice will state that the contract is being terminated pursuant to the Termination for Convenience provision of the contract, the effective date, the extent of termination and instructions to the Contractor to cease performance under the contract.
  3. The CPM Agent and COTR will negotiate a no-cost settlement with the Contractor if possible. Otherwise, the CPM Agent and COTR will negotiate an appropriate settlement agreement with the Contractor pursuant to the terms of the contract.
- C. Terminations for Default:
  1. The Termination for Default clause for contracts for supplies and services is included in MARTA's General Conditions.
  2. If a Contractor's right to proceed is terminated for default, MARTA may (if included in the contract) take over and complete the work or cause it to be completed, and the Contractor and its sureties, if any, shall be liable to MARTA for any increased costs caused thereby if in accordance with the contract terms. The Contractor and its sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages, if liquidated damages are provided in the contract, and/or for actual damages per the contract.

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3. Where the surety does not complete performance of the contract, the Authority may complete the performance of work by awarding a new contract based on the same plans and specifications if in accordance with the contract terms. Such award may be the result of competitive bidding or negotiation; whichever procedure is most appropriate and in MARTA's best interests under the circumstances. The CPM Agent must use reasonable diligence to obtain the lowest price available for completion.
4. If the CPM Agent, COTR and Department of Legal Services determine that termination is not in the best interest of MARTA although the Contractor is in default, the CPM Agent may permit the Contractor to continue the work, and the Contractor and its sureties shall be liable to MARTA for damages specified in the contract.

#### 14.12 Additional Contract Compliance

- A. The COTR shall ensure that the supplies, services, or construction procured under each MARTA contract conform to the quality, safety and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance. COTR shall maintain all Safety and Quality Assurance verification reports and Safety plans throughout the duration of the Contract period.
- B. The COTR/Project Manager shall be responsible for the following:
  1. Ensuring that contract quality assurance is conducted by MARTA before acceptance as otherwise provided in this Chapter, by or under the direction of MARTA personnel;
  2. Ensuring that non-conforming supplies, services, or construction are rejected, except as otherwise provided in this Chapter;
  3. Obtaining any quality plan specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies, services, or construction from the office responsible for the technical requirements.
  4. Ensuring all Consultants performing Safety functions must meet Safety and Quality Assurance minimum requirements throughout the duration of the Contract period.

#### 14.13 Liquidated Damages

- A. A liquidated damages clause may be used in a contract.

##### LIQUIDATED DAMAGES CLAUSE


<http://martanet/data/CP-SOPs/LIQUIDATED-DAMAGES-FOR-DELAY-CLAUSE.pdf>

Liquidated damages are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance).

A liquidated damages clause will not be enforced if its purpose is to punish the party in breach rather than to compensate the injured party.

Liquidated damages assessment must be at a specific rate per day for each day of overrun and must be specified in the contract. Any damages recovered must be credited to the project involved unless the FTA permits otherwise.

- B. In order for a liquidated damages clause to be upheld, two conditions must be met.

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1. First, the amount of the damages identified must roughly approximate the damages likely to fall upon the party seeking the benefit of the term.
2. Second, the damages must be sufficiently uncertain at the time the contract is made that such a clause will likely save both parties the future difficulty of estimating damages.

#### **14.14 Post-Award Responsibilities**

The COTR will conduct all further coordination on technical issues between the Contractor and MARTA, subsequent to the issuance of the Notice to Proceed letter. Issues affecting the business or legal terms in the contract, modifications or supplemental agreements to the contract must immediately be brought to the attention of the CPM Agent and the Department of Legal Services. The CPM Agent will coordinate discussions with appropriate MARTA personnel and the Contractor. The official contract and all documents pertaining thereto will be maintained by the CPM Agent.

#### **14.15 Closeout of Contracts**

- A. Because of the complexities of MARTA procurement activities, every contract situation cannot be covered by a single procedure. Therefore, the CPM Agent should exercise good judgment and discretion in the closeout of files for a completed contract.
- B. A completed contract is one which is both physically and administratively complete and in which all aspect of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. A contract is physically complete only after all articles and services called for under the contract, including such related items as operating and maintenance manuals, reports, spare parts, and exhibits, have been delivered to and accepted by MARTA, including those articles and services for which no specific compensation may have been stipulated. A contract is administratively complete when all payments have been made and administrative actions accomplished.
- C. The CPM Agent is responsible for review of the contract file and obtaining all necessary documentation to ensure that: (1) all deliverables and/or services (including any reports) required under the contract have been received and accepted; (2) the terms and conditions of the contract have been complied with; (3) disposition of accountable property under the contract has been accomplished; (4) a final audit (cost type contracts), when appropriate, has been performed and all questioned costs have been resolved; (5) the final invoice for the contract has been certified and sent to Accounting; and (6) all necessary actions required to close the contract are completed and documented.
- D. Small purchase files shall be considered closed when the CPM Agent receives evidence of receipt of property and final payment, provided there are no on-going warranty, maintenance or service obligations even if no further payment by MARTA is contemplated.
- E. Files for all firm-fixed-price contracts, other than small purchases, shall be closed within three (3) months after the end of the month in which the CPM Agent receives evidence of physical completion, provided there are no on-going warranty, maintenance or service obligations even if no further payment by MARTA is contemplated.
- F. Files for contracts requiring settlement of indirect cost rates shall be closed within six (6) months after the end of the month in which the CPM Agent receives evidence of physical completion or Board approval, if required, provided there are no on-going warranty, maintenance or service obligations even if no further payment by MARTA is contemplated.
- G. Files for all other contracts shall ensure that all required contractual actions have been completed and

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shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

H. A contract file shall not be closed in any of the following situations:

1. If the contract is the subject of a claim or dispute;
2. If the contract is in litigation or under appeal;
3. In the case of a termination, if all termination actions have not been completed; or
4. If Federal, State and Local approval is required and has not been received.

*CONTRACT CLOSE-OUT PROCEDURE*


<http://martanet/data/10327.pdf>

#### **14.16 Performance Evaluation**

Upon completion of the Contractor's effort, a final evaluation report, in a narrative form, prepared by the COTR, and/or project manager, will be sent to the CPM Agent to be used for future evaluations of the Contractor. The evaluation shall be completed no later than 90 days after contract closeout.

*CONTRACTOR PERFORMANCE EVALUTION FORM*

<http://martanet/data/CP-SOPs/Performance-Evaluation-Form.pdf>

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## Chapter 15 – Cost and Price Analysis

### 15.0 Purpose and Scope

Cost or price analysis must be conducted and documented in conjunction with each MARTA procurement action, including contract changes. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

1. **Cost Analysis** – A cost analysis must be performed when the Contractor is required to submit elements (e.g., Labor Hours, Overhead, Materials, etc.) of the estimated cost; (e.g. under professional consulting and architectural and engineering services contracts).

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

2. **Price Analysis** – A price analysis may be used in all other instances to determine the reasonableness of the proposed contract or change order price.

### 15.1 Audit Support

The CPM Agent shall request audit assistance when the information available is inadequate to determine a fair and reasonable price or is required to comply with federal, state or local laws. Such request shall be tailored to reflect the minimum essential supplementary information needed to be incorporated in a cost analysis performed by the buying activity. At a minimum, Department of Internal Audit assistance shall be requested as follows:


1. All single and/or sole source or cost reimbursement type bids/proposals, greater than the General Manager's authority.
2. Change to any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the change involves a price increase expected to exceed the General Manager's authority/contingency but not less than \$200,000 in a single transaction.
3. Construction Close Outs;
4. A/E Overhead Rates; and
5. Forward Pricing Rates and Factors.

### 15.2 Price Analysis

Price analysis may be conducted by:

1. Comparison of proposed prices received in response to the solicitation;
2. Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items;
3. Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;
4. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements; or



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5. Comparison of proposed prices with independent MARTA cost estimates.

*PRICE ANALYSIS FORM*

<http://martanet/data/CP-SOPs/Price-Analysis.pdf>

*PRICE ANALYSIS TEMPLATE*


<http://martanet/data/CP-SOPs/PRICE-ANALYSIS-TEMPLATE.pdf>

*FTA DEFINITION OF COST AND PRICE ANALYSIS*

<http://martanet/data/CP-SOPs/Cost-and-Price-Analysis.pdf>

### 15.3 Cost Analysis

- A. Cost analysis is the review and evaluation of the separate cost elements and profit in a Contractor's proposal or bid (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Cost analysis is required:
  1. When using a cost-reimbursement contract to determine probable cost;
  2. In sole source contracts, including change orders;
  3. Where price analysis is insufficient in fixed-price contracts to determine price reasonableness; and
  4. Where the Auditor determines that a cost realism analysis is necessary to avoid unduly low prices.
- B. Sound pricing depends primarily upon the exercise of good judgment by all personnel concerned with the procurement. Each procurement should be individually considered and a decision made regarding the need for and extent of a cost and/or price analysis.
- C. Cost principles for evaluation of proposed costs shall be consistent with Federal cost principles.

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## Chapter 16 – Contractor Responsibility and Debarment/Suspension

### 16.0 Purpose and Scope

- A. This Chapter establishes MARTA’s procedures for award of contracts to responsible Contractors, procedures for determining responsibility, and how information is obtained and used as a basis for a responsibility determination.
- B. Procedure regarding the use of a Pre-Award Survey and Post Bid/Proposal Survey Analysis are described.
- C. MARTA may use of the List of Parties Excluded from FTA Procurement to evaluate contractors.

#### FEDERAL GOVERNMENT LIST OF DEBARRED CONTRACTORS

<https://www.sam.gov/portal/public/SAM/#1>

- D. MARTA may use of the State of Georgia – Suspended and Debarred Contractors list to evaluate contractors.


#### STATE OF GEORGIA LIST OF DEBARRED CONTRACTORS

<http://doas.ga.gov/StateLocal/SPD/Contracts/Pages/SpdDebar.aspx>

### 16.1 Responsible Prospective Contractors

- A. Awards shall be made only to responsible Contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
- B. A responsible Contractor is defined as one who has fitness, capacity and experience to satisfactorily perform the work.
- C. The Authority shall not make an award unless a determination by the Requestor is made in writing that the prospective Contractor is responsible, in accordance with the provisions of this Chapter.
- D. To be determined responsible, a Contractor shall meet all of the following requirements:
  1. Financial resources adequate to perform the contract, or the ability to obtain them;
  2. Ability to comply with the required or proposed delivery or performance schedule;
  3. A satisfactory performance record based on verification by CPM of provided references;
  4. The necessary organization, experience, accounting, and operational controls and technical skills;
  5. Compliance with applicable licensing and tax laws and regulations;
  6. The necessary production, construction, and technical equipment and/or facilities, or the ability to obtain them;
  7. Compliance with the D&I requirements set forth in the solicitation; and
  8. Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations or as required by the specific procurement.
- E. The CPM Agent, in implementing the requirements of this Section, shall consult the List of Excluded Parties (Federal and State) before deciding whether a prospective Contractor is responsible.

### 16.2 Special Standards of Responsibility

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- A. When necessary for a particular procurement, the Requestor shall develop special standards of responsibility.
- B. Special standards shall be developed when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance.
- C. The special standards set forth in the solicitation shall apply to all Contractors.

### **16.3 Application of Other Requirements**

- A. Except to the extent that a prospective Contractor has sufficient resources, the Requestor Department shall require, and the prospective Contractor shall promptly provide with its response to the procurement, acceptable evidence of the prospective Contractor's ability to obtain resources.
- B. Acceptable evidence of the prospective Contractor's ability to obtain resources shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel, or other resources.
- C. An affiliated business shall be considered a separate entity in determining whether the business that is to perform the contract meets the applicable standards of responsibility.

### **16.4 Obtaining Information for Determination of Responsibility**

- A. Before making a determination of responsibility, the Requestor Department (with CPM's assistance) shall in accordance with this Manual possess or obtain information sufficient to confirm that a prospective Contractor meets the applicable standards and requirements for responsibility set forth in this Chapter.
- B. The prospective Contractor shall promptly supply information with its response to the solicitation requested by the CPM Agent regarding the responsibility of the prospective Contractor.
- C. If the prospective Contractor fails to supply the information requested with its response to the solicitation, the Requestor Department (with CPM's assistance) shall make the determination of non-responsibility. If the available information is insufficient to make a determination of responsibility, the Requestor Department (with CPM's assistance) shall determine the prospective Contractor to be non-responsible.
- D. The Requestor Department (with CPM's assistance) shall use the following sources of information, as appropriate, to support determinations of responsibility or non-responsibility:


1. General Services Administration publication titled List of Parties Excluded from FTA Procurement;

*FEDERAL GOVERNMENT LIST OF DEBARRED CONTRACTORS*

<https://www.sam.gov/portal/public/SAM/#1>

2. Records and experience data, including verifiable knowledge of MARTA personnel;
3. Information supplied by the prospective Contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information;
4. Pre-award survey reports;
5. Other sources, such as publications, Contractors and customers of the prospective Contractor, financial institutions, government agencies, and business and trade associations; and
6. State of Georgia Department Debarred and Suspended Contractors website:

*STATE OF GEORGIA LIST OF DEBARRED CONTRACTORS*

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[Debarred & Suspended Contractors](#)

- E. COTRs and other MARTA personnel who become aware of circumstances casting doubt on a Contractor's ability to perform a contract successfully shall promptly inform the CPM Agent and furnish the relevant information in writing.
- F. The CPM Agent should consult the List of Parties Excluded From FTA Procurement or Non-Procurement Programs and State of Georgia website before soliciting an offer from, awarding a contract to, or consenting to a subcontract with a debarred or suspended Contractor.

#### **16.5 Determinations and Documentation**


- A. The award of a contract shall constitute a determination that the prospective Contractor is responsible with respect to that contract.
- B. When an offer on which an award would otherwise be made is rejected because the prospective Contractor is found to be non-responsible, the Requestor Department (with CPM's assistance) shall make, and sign a determination of non-responsibility, which shall state the basis for the determination. Documentation shall be placed in the contract file.
- C. Documents and reports supporting a determination of responsibility or non-responsibility, including any pre-award survey reports and any applicable information pertaining to DBEs from the Department of Diversity and Equal Opportunity Programs shall be included in the contract file.
- D. The CPM Agent may discuss pre-award survey information with the prospective Contractor before determining responsibility. At any time, after award, the CPM Agent may discuss the findings of the pre-award survey with the company surveyed.

#### **16.6 Pre-Award Surveys**

- A. The Requestor Department (with CPM's assistance) shall conduct a pre-award survey to assist in determining a prospective Contractor's capability to perform a proposed contract.
- B. Normally, a pre-award survey will not be required if the contemplated contract will be \$10,000 or less, or will have a fixed price of less than \$200,000 and will involve only commercial products.
- C. Before beginning a pre-award survey, the CPM Agent shall ascertain whether the prospective Contractor is debarred, suspended, or ineligible. If the prospective Contractor is debarred, suspended or ineligible, the CPM Agent shall not proceed with the pre-award survey.
- D. When a pre-award survey discloses unsatisfactory performance, the Requestor Department (with CPM's assistance) shall determine the extent to which the prospective Contractor plans or has taken corrective action.
- E. The pre-award survey report shall indicate any persistent pattern of need under prior contracts for costly and burdensome MARTA assistance to the Contractor (such as engineering, inspection, or testing) that were provided to protect MARTA's interests but not contractually required.
- F. The Requestor Department (with CPM's assistance) shall prepare a narrative pre-award survey report that documents the results of the pre-award survey and provides support for both the evaluation ratings and the determination of responsibility or non-responsibility.

#### **16.7 Effect of Listing**

- A. Contractors debarred, suspended or proposed for debarment are excluded from receiving contracts, and

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MARTA shall not solicit offers from, award contracts to, or consent to subcontracts with these Contractors.

- B. Contractors included on the Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. MARTA shall not solicit offers from, award contracts to, or consent to subcontracts with these Contractors under those conditions and for that period.
- C. Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.
- D. After the opening of bids or receipt of proposals, the CPM Agent shall review the Federal and State List of Parties Excluded from Procurement Programs.
- E. Bids or Proposals received from any Contractor listed in the Parties Excluded from Procurement Programs shall be rejected as non-responsible.
- F. Proposals, quotations, or offers received from any listed Contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed Offeror during a period of ineligibility. If the period of ineligibility expires or is terminated prior to award, the Requestor may, but is not required to, consider such proposals, quotations or offers.
- G. Immediately prior to award, the CPM Agent shall again review the List of Parties Excluded from Procurement Programs to ensure that no award is made to a listed Contractor.

#### **16.8 Continuation of Current Contracts**


- A. Notwithstanding the debarment, suspension, or proposed debarment of a Contractor, MARTA may continue contracts or subcontracts in existence at the time the Contractor was debarred, suspended, or proposed for debarment. A decision as to the type of termination action, if any, to be taken should be made only after review by the Requestor Department and Department of Legal Services.
- B. MARTA shall not review or otherwise extend the duration of current contracts, or consent to subcontracts, with Contractors debarred, suspended, or proposed for debarment.

#### **16.9 Restrictions on Subcontracting**

MARTA shall not consent to a Contractor who is debarred, suspended, or proposed for debarment being permitted to function as a joint venture, partner or subcontractor.

#### **16.10 Certification Regarding Debarment or Ineligibility**

- A. The CPM Agent will assure compliance with Federal, State and Local guidelines by requiring Contractor and Subcontractor certificates regarding debarment or ineligibility.
- B. When a Contractor, in compliance with the provision entitled "Debarred or Ineligible Parties" indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the CPM Agent shall request such additional information from the Contractor as may be deemed necessary in order to make a determination of the Contractor's responsibility.
- C. Contractors who do not furnish such information render the Contractor non-responsible.

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## Chapter 17 – Bonds, Other Securities and Insurance

### 17.0 Purpose and Scope

This Chapter prescribes MARTA requirements for Contractor bid bonds or other security, for performance and payment bonds, and for Contractor insurance, where required. This Chapter also provides guidelines for the CPM Agent and other MARTA officials to handle bonding and insurance issues.

### 17.1 General Provisions

- A. MARTA shall specify bonding, in compliance with applicable Federal, State, Local or MARTA's own requirements to adequately protect the interests of the Authority.
- B. The Authority may require any of the following types of security, among others, for any solicitation or contract, regardless of the estimated amount of the contract:
  1. Bid bonds;
  2. Other bid or proposal security;
  3. Construction performance and payment bonds;
  4. Performance or payment bonds or other security on non-construction contracts;
  5. Letters of Credit;
  6. Other Collateral (escrow for source code); and
  7. Guaranty (any form).

### 17.2 Types of Bonds and Securities


- A. Bid Security. A firm commitment such as a bid bond executed by an approved surety insurer, cash or certified or cashiers' check accompanying a bid as assurance the Contractor will, upon acceptance of his/her bid, execute such contractual documents as may be required within the time specified.
- B. Performance Bond. A bond executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- C. Payment Bond. A bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in all construction contracts.

### 17.3 General Requirements

The Department of Legal Services and Office of Risk Management shall determine whether security of any type would be in the best interest of MARTA in all contracts.

### 17.4 Construction Bid Bonds and Other Securities

- A. Risk Management may decide against requiring a bid security for procurements on a case by case basis should circumstances indicate that the benefits of not requiring a bid security outweigh the risks.
- B. The bid security for a construction contract is typically an amount equal to at least ten percent (10%) of the amount of the bid or price proposal; however, Risk Management shall make the final determination. Bid security for non-construction contracts is typically not required.
- C. When a bid security is required, the solicitation shall contain the following:
  1. A statement that bid security is required;

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2. Notice that the bid security will remain in effect for as long as the bid or proposal is required to remain effective; and
3. Sufficient information to allow Contractors to determine the amount of the required bid security.
- D. No action shall be taken against the bid security of a Contractor that is permitted to withdraw a bid or proposal prior to award due to a mistake in the bid or proposal, in accordance with the applicable provisions of this Manual.

#### **17.5 Noncompliance with Bid Security Requirements**

- A. If a bid fails to comply with the bid security requirements set forth in the solicitation the bid shall be deemed non-responsive.
- B. If the bid security becomes inadequate as a result of the correction of a mistake, the bid may be accepted if the Contractor agrees to increase the bid security to the level required for the corrected bid.


#### **17.6 Performance and Payment Security**

- A. Risk Management may require a Contractor to furnish a payment and/or performance bond or other security for any construction or non-construction contract, regardless of amount, when Risk Management determines that the security is necessary or advisable to protect the interests of MARTA.
- B. The amount of the performance security is typically one hundred percent (100%) of the original contract price.
- C. In construction contracts, the Contractor shall furnish all performance and payment bonds (or other securities) by the deadline identified in the Notice of Award letters. The bonds (or other securities) must be submitted before a Notice to Proceed is issued.
- D. The CPM Agent shall require additional performance security when a contract price is increased. The increase in performance security shall equal one hundred percent (100%) of the increase in the contract price.
- E. The amount of the payment bond shall be not less than one hundred percent (100%) of the total amount payable by the terms of the contract.
- F. When performance or payment security is required, the solicitation shall contain the following:
  1. A statement that security is required;
  2. The amount of the security expressed as a fixed sum or percentage of the contract price; and
  3. The deadline for submitting acceptable security.

#### **17.7 Surety Bonds and Other Securities**

- A. A new surety bond covering all or part of the obligation on a security previously approved may be substituted for the original security, if approved by Risk Management.
- B. When a new surety bond is approved, Risk Management shall notify the principal and surety on the original bond of the effective date of the new bond.
- C. When a payment security has been provided, the CPM Agent shall, upon request, furnish a copy of the bond to any subcontractor or Contractor who has furnished or been requested to furnish labor or material for a contract. In addition, general information concerning the work progress, payments, and the estimated percentage of completion may be furnished to persons who have provided labor or material and have not been paid.



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- D. If after completion of the work of a contract requiring payment and performance security, MARTA receives written notice from the surety regarding the Contractor's failure to meet its obligation to its subcontractors or Contractors, the CPM Agent shall withhold final payment. The CPM Agent shall authorize final payment upon agreement between the Contractor and surety or upon a judicial or other binding determination of the rights of the parties.

#### **17.8 Sureties**


- A. The CPM Agent shall obtain adequate security for bonds (including coinsurance and reinsurance agreements), required or used with a Contractor for supplies or services, including construction.
- B. A security bond may be obtained from a surety.
- C. Each surety shall be a company authorized to do business in the State of Georgia.
- D. Risk Management shall determine the acceptability of all sureties.

#### **17.9 Insurance Requirements**

- A. Contractors providing goods and services shall be required to carry sufficient general liability insurance, among others specified by Risk Management, coverage to protect MARTA from claims for bodily injury (including death), personal injury and property damage. Insurance may also be required for damage to MARTA property and for errors and omissions in the provision of professional services and any other types of insurance coverage that may be required to protect the Authority's interests due to the exposure inherent in the goods or services for which a contract is being let.
- B. Risk Management shall have responsibility for reviewing all procurement actions exceeding the small purchase threshold and other procurements, as requested, and approving the insurance requirements in small purchase forms.
- C. Risk Management shall determine insurance types and limits.
- D. Contractors shall comply with all insurance requirements.
- E. Contractors and subcontractors will be required to carry general liability, workers' compensation, and automobile liability and property damage insurance in amounts determined by Risk Management.

#### **17.10 Requirement for Bonds to be Executed by an Admitted Surety Insurer**

- A. Risk Management requires all bonds to be executed by a surety qualified to do business in Georgia.
- B. Risk Management has a duty to verify that the surety executes the bond or certificate of insurance.

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## Chapter 18 – Contract Payment and Funding

### 18.0 Purpose and Scope

This Chapter provides guidelines for all MARTA officials involved in the contracting process pertaining to contract payments.

### 18.1 Advance Payments

MARTA shall not to make advance payments on any contract, except for contracts for the payment of rents, insurance premiums, and subscriptions to publications. For federally funded contracts, advance payment is not authorized prior to the incurrence of costs by the Contractor.


### 18.2 Contract Payments

MARTA shall compensate its Contractors for their costs incurred to perform contract work in accordance with the work. Except for approved changes to the contract, the Contractor will not be reimbursed for costs incurred in excess of the Firm-Fixed-Unit Price, Total Estimated Cost and Fee, Time and Material amount, or contract funding limitations specified. The Contractor shall submit invoices to MARTA and maintain auditable records.

### 18.3 Firm-Fixed-Unit Price Contracts - Progress Payments

Each firm-fixed-unit price contract that contains a progress payment provision, will include some form of Progress Payment Schedule. The Schedule will list the deliverables agreed to between the Contractor and MARTA that are due at each scheduled contract milestone. Progress Payments will consist of payment for the percentage of work completed on each deliverable that had not been previously included in a previous invoice. The percentage of work completed will be verified by MARTA.

1. For the purpose of making progress payments and determining the limitations on progress payments, the CPM Agent may use the following in determining the contract price:
  - a. Under firm-fixed-unit price contracts, the contract price shall be the current contract price plus any unpriced modifications for which funds have been obligated; or
  - b. If the contract is subject to economic price adjustment, the contract price shall be the initial price until modified;
2. The CPM Agent shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.
3. A CPM Agent may provide for customary progress payments if the Contractor will not be able to bill for delivery of products (or other performance milestones) for a substantial time (not less than four (4) months) after work must begin and during the pre-delivery period, will make expenditures for contract performance that have a significant impact on the Contractor's working capital.
4. A CPM Agent shall not provide for progress payments in accordance with the terms of the contract if the contract items are quick turnover types for which progress payments are not practical or customary commercial practice, such as the following:
  - a. Subsistence; and
  - b. Standard commercial items not requiring a substantial accumulation of pre-delivery expenditures by the Contractor.

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#### **18.4 Time and Material Contracts - Contract Payments**

- A. Time and Material is defined as a contract that provides for acquiring services or goods on the basis of:
  - 1. Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
  - 2. Goods and expenses at direct cost only with no overhead profit or fee allowed.
- B. Time and Material rates are allowable only to the extent that any individual rate complies with the Payment provisions in the contract.

#### **18.5 Cost Reimbursable Contracts Cost Payments**


- A. MARTA shall make payments to its Contractors when requested as work progresses, but not more often than once per month, in amounts specified in the contract.
- B. The Contractor shall submit to the CPM Agent, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing a contract.

#### **18.6 Contract Fee Payments**

- A. MARTA shall pay the Contractor a fee as provided in the contract.
- B. In the case of a Fixed Fee under a Cost Plus Fixed Fee (CPFF) contract, the Contractor will earn the fixed fee for the contract by meeting the milestones for deliverables. The CPM Agent should review the contract for the following terms (a) whether there is a prohibition against the Contractor earning a fixed fee for any portion of the work not completed and accepted by MARTA and (b) if there is a reduction in the fixed fee if the Contractor fails to meet the schedule and or quality standards as required.
- C. For Incentive Fee contracts, the Contractor will earn the target incentive fee for the contract by meeting the milestones for deliverables.

#### **18.7 Limitation of Cost or Funds**

- A. If a CPM Agent learns from the Requestor Department, Finance and the Department of Legal Services that a partially funded contract will receive no further funds, the CPM Agent shall promptly give the Contractor notice of the decision not to provide funds.
- B. The CPM Agent, upon learning that the Contractor is approaching the limit of the budget authority allocated and encumbered, shall promptly obtain information about funding and programming pertinent to the continuation of the contract and notify the Contractor in writing of one (1) of the following:
  - 1. That additional funding is available in a specified amount;
  - 2. That the contract will not be further funded, and that the Contractor shall submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;
  - 3. That the contract will be terminated when funds have been expended fully; or
  - 4. That MARTA is considering whether to allot additional funds or increase the estimated cost, that the Contractor is entitled by the contract terms to stop work when the funding or cost limit is reached, and that any work beyond the funding or cost limit will be at the Contractor's risk.
- C. The CPM Agent may (after approval by the Department of Legal Services) issue a change order, a direction to replace defective items or work, or a termination notice without immediately increasing the

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funds available.

- D. Since a Contractor is not obligated to incur costs in excess of the estimated cost in the contract, the CPM Agent shall ensure availability of funds for directed actions.

## 18.8 Limitation of Cost Notice

Prior to expenditure of seventy-five percent (75%) of the contract cost, the contract should (when practical) contain a requirement that the Contractor shall notify the CPM Agent when the Contractor believes that the cumulative expenditure of reimbursable cost will reach one hundred percent (100%) of the total cost. Notice shall include the following:


1. Date on which the Contractor expects to reach the 100% level;
2. Contractor's best judgment of whether the work can be completed within the total cost and/or approved schedule; and
3. If the work cannot be completed within the total cost and/or schedule, the Contractor shall provide its best estimate of (1) costs and time to complete the work, (2) proposed changes to the work scope which would allow the contract to be completed within the total cost and/or schedule; and (3) a statement setting forth in detail the reasons why the work cannot be completed within the total cost and/or schedule.

## 18.9 Administration - Supervision of Contract Payments

- A. The CPM Agent shall, before processing contract payments, determine the following:
1. That MARTA is otherwise protected against loss by additional protective provisions in the contract; and
  2. The Contractor's accounting system and controls are adequate for proper administration of contract payments.
- B. When the Contractor's accounting system has been established pursuant to the Contract (or federal, state or local laws), the COTR may approve contract payment requests.
- C. The COTR may request an audit review of the Contractor's request for contract payments when there is reason to question the reliability or accuracy of the Contractor's certification.
- D. Contract payments made under a requirements contract or an indefinite quantity contract shall be administered under each individual order as if the order constituted a separate contract.

## 18.10 Review or Audit of Contract Payments

- A. The CPM Agent shall include provisions, approved by the Department of Legal Services giving MARTA the right to conduct post-payment reviews or audits at the discretion of the COTR, including reviews or audits to determine the following:
1. Whether the contract payments are fairly supported by the value of work accomplished;
  2. Whether the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or the Contractor has adequate resources to complete the contract; and
  3. Whether there is any reason to doubt the adequacy or reliability of the Contractor's accounting system, controls, or payment certification.
- B. The CPM Agent shall conduct contract payment reviews periodically, at intervals of six (6) months or less, and may conduct reviews or request audits by the Department of Audit at any time or upon receipt of any

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request for a contract payment.

#### **18.11 Suspension or Reduction of Progress Payments**


- A. In a contract that provides for progress payments, the CPM Agent shall include provisions, approved by the Department of Legal Services which assert MARTA's right to reduce or suspend progress payments, or increase liquidation damages in the following circumstances:
  1. If the Contractor fails to maintain an efficient and reliable accounting system and controls that are adequate for the proper administration of progress payments;
  2. If the COTR determines that contract performance, including full liquidation of progress payments, is endangered by the Contractor's financial condition or by a failure to make progress on the performance of the contract;
  3. If the inventory allocated to the contract exceeds reasonable requirements;
  4. If the Contractor is delinquent in paying the costs of contract performance in the ordinary course of business;
  5. If the un-liquidated progress payments exceed the fair value of undelivered work under the contract; and
  6. If the sum of the total costs incurred under a contract plus the estimated costs to complete performance are likely to exceed the contract price.
- B. Actions under this Section shall only be taken in accordance with the contract terms and only after consultation with the Department of Legal Services the following:
  1. The CPM Agent gives notice to the Contractor of the intended action and provides an opportunity for discussion; and
  2. The COTR evaluates the effect of the action on the Contractor's operations, based on the Contractor's financial condition, projected case requirement, and the existing or available credit arrangements.
- C. The CPM Agent shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.
- D. In all cases, the CPM Agent shall document the contract file with evidence supporting the COTR's decisions.

#### **18.12 Liquidated Damages**

- A. Liquidated damages shall be deducted from contract payments that would otherwise be due the Contractor for completed contract items if set forth in the Contract.
- B. The CPM Agent shall apply the liquidation rate identified in the contract.

#### **18.13 Protection of MARTA Title**

- A. The CPM Agent shall include a contract provision, approved by the Department of Legal Services, which provides that MARTA shall receive title to all of the materials, work-in-process, finished goods, and other items of property under the contract for which progress payments are made.
- B. The Department of Legal Services shall require additional protective provisions, if deemed necessary, to establish and protect MARTA's title.

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#### **18.14 Risk of Loss**

- A. The CPM Agent shall include a provision, approved by the Department of Legal Services, with the contract payment provisions of the contract, which provides that, except for normal spoilage, the Contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision, unless MARTA has expressly assumed that risk.
- B. The Contractor shall be obligated to repay MARTA the amount of payments received based on costs allocable to the property if the loss occurred prior to MARTA having assumed the risk of loss.
- C. The Contractor shall not be obligated to pay for the loss of property for which MARTA has assumed the risk of loss.

#### **18.15 Contract Debt Determination and Collection**


- A. In determining the amount of any contract debt, the CPM Agent, COTR and the Department of Legal Services shall fairly consider both MARTA's claim and any contract claims by the Contractor against MARTA.
- B. MARTA's Department of Finance shall use all proper means available for collecting debts as rapidly as possible.
- C. Except in cases in which an agreement has been entered into for deferment of collections, or when bankruptcy proceedings against the Contractor have been initiated, the Contractor shall liquidate the debt by either of the following methods:
  1. Cash payment in a lump sum, on demand; or
  2. Credit against existing payments due the Contractor.

#### **18.16 Demand for Payment of Contract Debt**

- A. The CPM Agent with assistance from the Department of Legal Services shall make a demand for payment as soon as the amount of contract debt due has been computed. If the debt arises from excess costs for a default determination, the CPM Agent shall make the demand without delay.
- B. The demand shall include the following:
  1. A description of the debt, including the debt amount;
  2. If applicable, notification that any amount not paid within thirty (30) days from the date of the demand, or from any earlier date specified in the contract, shall bear interest at the rate set forth in the Contract; and
  3. A notification that the Contractor may submit a proposal for deferment of collection if immediate payment is not practical or if the amount is disputed.

#### **18.17 Negotiation of Refund to Resolve Contract Debt**

- A. The CPM Agent, Department of Legal Services and COTR shall attempt to expeditiously resolve the amount of contract debt and refund through negotiation with the Contractor.
- B. If the CPM Agent, COTR, Department of Legal Services and Contractor agree upon a refund to MARTA, the CPM Agent shall promptly write a memorandum to document the agreement and the contract debt.
- C. The Department of Legal Services shall approve the memorandum for MARTA and the Contractor.
- D. The CPM Agent shall prepare a contract change to adjust the contract in accordance with the contract terms.

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#### **18.18 Setoff and Withholding of Payments**

- A. The CPM Agent shall make an appropriate setoff from the debt and Contractor invoices on hand for payment.
- B. The CPM Agent shall give the Contractor written notice of the setoff including a statement of the reasons for the setoff. The notice shall be delivered to the Contractor or mailed by certified mail, return receipt requested.
- C. To the extent that the setoff reduces the debt, the explanation of the setoff shall indicate the extent to which the demand amount described in this Section is reduced.
- D. During the thirty days following the issuance of a demand pursuant to this Chapter, the CPM Agent shall consider the advisability of withholding payments otherwise due the Contractor, based on the circumstances of each individual case.
- E. If, within thirty days of the issuance of the demand made pursuant to this Chapter, the Contractor has neither completed payment nor requested deferment, the CPM Agent may immediately withhold any contract payments due up to the amount of the debt plus interest.


#### **18.19 Contract Debt Interest Charges and Credits**

- A. The CPM Agent shall apply interest charges to any contract debt unpaid after thirty (30) days from the issuance of a demand, unless either of the following applies:
  1. The contract specifies another due date or procedure for charging or collecting interest; or
  2. The contract is excluded under the Section below.
- B. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on whichever of the following dates applies:
  1. The date on which the designated office received payment from the Contractor;
  2. The date of issuance of MARTA check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
  3. The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
- C. An equitable interest credit shall be applied under the following circumstances:
  1. When the amount of debt initially determined is subsequently reduced;
  2. When the collection procedures used result in an excess collection of the debt due; or
  3. When the CPM Agent determines that MARTA has unduly delayed payments to the Contractor on the same contract at some time during the period to which the interest charge applied, unless an interest penalty was paid for the late payment.

#### **18.20 Prompt Payment to Subcontractors**

- A. A prime Contractor or subcontractor shall pay to any subcontractor, no later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the Contractor on account for the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime Contractor or subcontractor to a subcontractor, then the prime Contractor or subcontractor may withhold no more than 150 percent of the disputed amount.



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- B. The CPM Agent should review the contract to ensure a provision is in all contracts above the small purchase threshold includes a contract clause to require prime Contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the receipt of each payment MARTA makes to the prime Contractor. The clause will also require the prompt return of retainage payments from the prime Contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed.

#### **18.21 MARTA Payment Process**

- A. CPM Agents will promptly process all valid contract payments with necessary controls to assure compliance with all contract terms and conditions in accordance with internal procedures.
- B. CPM Agents will clearly specify in solicitations and contracts, the form and content of an acceptable invoice, including a requirement that invoices be sequentially numbered, that they contain a date, contract number and the services for which they are invoicing, the period of performance being invoiced, and to whom, within MARTA, invoices are to be sent.
- C. CPM Agents will require that final invoices be clearly marked FINAL, and that those invoices cite the amount of the contract, the amount previously paid and the balance due.
- D. CPM Agents will maintain summary payment information.

#### **18.22 Payment of Retention on Construction Contracts**


Within 30 days after final audit or Board approval, MARTA shall release any retention withheld. In the event of a dispute between MARTA and the Contractor, MARTA may withhold from the final payment an amount not to exceed the lesser of two (2) times the disputed amount or the amount included in the contract terms.

#### **18.23 Progress Payments on Construction Contracts**

MARTA shall make progress payments within 45 days after receipt of an undisputed and properly submitted payment request from a Contractor on a construction contract.

#### **18.24 Retainage**

MARTA shall retain funds in the amount specified in the contract, if any, until all conditions/approvals are completed pursuant to the terms of the contract.

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## Chapter 19 – Quality Assurance

### 19.0 Purpose and Scope


This Chapter prescribes procedures to ensure MARTA contracts conform to quality requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements.

### 19.1 MARTA Responsibilities

- A. The COTR and Department of Safety and Quality Assurance (SQA) are responsible for ensuring that the Contractor complies with the quality requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance.
- B. The COTR shall ensure that matters of insurance and insurability, which may arise prior to and after contract award, are properly coordinated with the Office of Risk Management and the Department of Legal Services.
- C. The COTR in coordination with the Department of Legal Services, shall be responsible for the following:
  1. Ensuring that each contract includes inspection and other quality requirements, including warranty clauses when appropriate, which are necessary to protect MARTA's interests;
  2. Ensuring that contract quality assurance is conducted by MARTA before acceptance;
  3. Ensuring that no contract precludes MARTA from performing inspection;
  4. Ensuring that nonconformance is rejected, unless otherwise provided for in the contract;
  5. Ensuring that the quality assurance and acceptance services of the Requestor Department are implemented when it will be effective, economical, or in the best interest of MARTA;
  6. Obtaining any specifications for inspection, testing, and other contract quality requirements;
  7. Including in solicitations and contracts the necessary requirements for the Contractor's control of quality; and
  8. Ensuring that contracts clearly indicate the level of quality review required by referring to established standards, procedures, tests, and equipment, or by providing acceptance criteria and tolerances.
  9. Ensuring that Safety and Quality Assurance requirements are maintained throughout the Contract.
  10. Ensuring that Consultants performing safety functions meet all Safety and Quality Assurance minimum standards.

### 19.2 Contractor Responsibilities


- A. The Contractor shall be responsible for carrying out its obligations under the contract by doing the following:
  1. Controlling the quality of supplies, services, or construction;
  2. Ensuring that Contractors of raw materials, parts, components, and subassemblies have an acceptable quality control program as specified in their contracts;
  3. Tendering to MARTA for acceptance only those items that conform to the contract requirements;
  4. Maintaining and substantiating evidence, when required by the contract, that contract quality requirements, have been met; and
  5. Ensuring the quality of all subcontractor services.

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- B. The CPM Agent may require a Contractor provide and maintain an inspection system or program for the control of quality that is acceptable to MARTA, as specified in the contract.
- C. The control of quality by the Contractor may relate to, but is not limited to, the following:
  - 1. Manufacturing processes, to ensure the product produced meets the contract's technical requirements;
  - 2. Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;
  - 3. Testing and examination, to ensure that practices and equipment provide the optimum means of evaluating the characteristics of the product subject to inspection;
  - 4. Reliability and maintainability assessment, including life cycle, endurance and continued readiness;
  - 5. Fabrication and delivery of products, to ensure that only conforming products are tendered to MARTA;
  - 6. Providing technical documentation including drawings, specifications, handbooks, manuals, other technical publications, computer software and training required by the contract; and
  - 7. Procedures and processes for ensuring that contract performance requirements are continually met.

### **19.3 Contract Quality Requirements**

- A. The COTR/Project Manager based upon the advice of SQA shall provide appropriate quality requirements for each solicitation and contract. The type and extent of contract quality requirements needed in each solicitation or contract shall depend on the particular procurement and may range from inspection at time of acceptance to a requirement for the Contractor's implementation of a comprehensive quality control program.
- B. A solicitation or contract may provide for alternative, quality control methods to obtain broader competition and reduce costs.
- C. The COTR may authorize alternative quality control or inspection methods (recommended by the Contractor) when in the best interest of MARTA.
- D. Except as provided in the Section below, when supplies, services, or construction are procured by small purchase procedures pursuant to the Small Purchase Procedures, MARTA shall rely on the Contractor to accomplish all quality control needed to ensure compliance with contract quality requirements before the supplies, services or construction are tendered to MARTA.
- E. MARTA shall not rely on quality control by the Contractor if the COTR and SQA determine a need for testing of the supplies, services, or construction by MARTA in advance of their tender for acceptance, or determines that there is a need to review the adequacy of the Contractor's internal work processes. In making the determination, COTR and SQA shall consider the following:
  - 1. The nature of the supplies, services, or construction being procured and their intended use;
  - 2. The potential losses in the event of defects;
  - 3. The likelihood of uncontested replacements or correction of defective work;
  - 4. The cost of a detailed inspection by MARTA; and
  - 5. Warranties.
- F. With respect to contracts other than small purchase procurements, the CPM Agent shall include in each solicitation and contract a standard clause approved by the Department of Legal Services setting forth quality control guidelines that requires the Contractor to do the following:

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1. Provide and maintain a quality control and inspection system that is acceptable to MARTA prior to award of contract;
  2. Give MARTA the right to conduct inspections and tests while work is in progress;
  3. Keep complete records of its quality control work, which are to be made available to MARTA upon request; and
  4. Warranties
- G. The COTR and SQA shall determine the extent of contract quality requirements, including Contractor inspection required under each contract.

#### **19.4 MARTA Quality Assurance**


- A. Contract quality assurance shall be performed whenever it is deemed necessary to determine Contractor conformance to contract requirements.
- B. If the contract provides for performance of MARTA quality assurance at the source, the place or places of performance shall not be changed without the written authorization of the CPM Agent.
- C. If a contract provides for delivery and acceptance at destination and MARTA inspects the supplies at a place other than the destination, the supplies shall not be re-inspected at the destination but shall be examined for quantity, damage in transit, and possible substitution or fraud.
- D. Inspection shall be performed by MARTA personnel or their designee or under the direction or supervision of MARTA personnel.
- E. The individual delegated responsibility for MARTA inspection shall document the inspection in a report.

##### **19.4.1 Contract Quality Assurance at Source**

- A. MARTA shall perform contract quality assurance, including inspection, at the source, in the following circumstances:
  1. Performance at any other place would require uneconomical disassembly or destructive testing;
  2. Considerable loss would result from the manufacture and shipment of unacceptable supplies, or from the delay in making necessary corrections;
  3. Specially required instructions, test equipment, software, gauges, or facilities are available only at the source;
  4. Performance at any other place would destroy or require the replacement of costly special packing and packaging;
  5. Inspection by MARTA during contract performance is essential; and
  6. The COTR and SQA determine that source inspection is in the best interest of MARTA.

##### **19.4.2 Contract Quality Assurance at Destination**

- A. Contract quality assurance that can be performed at destination shall be limited to inspection of the supplies or services.
- B. Inspection shall be performed at destination under the following circumstances:
  1. Supplies are purchased off-the-shelf and require no technical inspection;
  2. Necessary testing equipment is located only at destination;

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3. The supplies are perishable;
4. The contract is for services performed at the destination;
5. The COTR and SQA determines that inspection at destination is in the best interests of MARTA;
6. The components are assembled on site and operation of components together is critical; and
7. Components are backed by a warranty.

#### **19.5 Contract Quality Assurance for Small Purchases**

- A. In determining the type and extent of MARTA contract quality assurance to be required for small purchases, the COTR and SQA shall consider the application of the supplies or services, the amount of potential losses, and the likelihood of uncontested replacement of defective work.
- B. Except as provided in this Chapter, when the circumstances set forth in the Contract Quality Requirements (Section 19.3) exist, MARTA shall inspect small purchases at destination only for type and kind, quantity, damage, operability, and may inspect for preservation, packaging, packing, and marking, if applicable.
- C. Except as provided for in the Requirements Section, detailed MARTA inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property.
- D. Except as provided for in the Requirements Section, when repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, MARTA inspection may be reduced to a periodic check of purchases.
- E. In special situations such as those specified in Section 19.4.1, Contract Quality Assurance at Source, the COTR and SQA may require a more detailed quality assurance assessment.

#### **19.6 Nonconforming Supplies, Services, or Construction**

- A. Except as provided in the Sections below, the COTR and SQA shall reject contract nonconforming items.
- B. If provided by the contract, the Contractor shall be given an opportunity to correct or replace nonconformance when the correction or replacement can be accomplished within the required delivery or performance schedule.
- C. In situations not covered by the Section above, the COTR and SQA shall reject the supplies or services when the nonconformance adversely affects safety, health, reliability, durability, performance, or any other basic objectives of the specification.
- D. In situations not covered by the Section above, the COTR and SQA may accept supplies or services if it is in the best interest of MARTA.
- E. In situations not covered by the Section above, the COTR and SQA shall consider the following when making a determination whether nonconforming items will be accepted:
  1. Advice of the delegated technical representative that the material is safe to use and will perform its intended purpose;
  2. Information regarding the nature and extent of the nonconformance;
  3. A request from the Contractor for acceptance of the nonconforming supplies or services, if feasible;
  4. A recommendation by the technical representative for acceptance or rejection, with supporting rationale;

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5. The contract adjustment considered appropriate, including any adjustment offered by the Contractor; and
6. Warranties and ease of replacement.

- F. The COTR and SQA shall reject the repeated tender of nonconforming items by appropriate action, including rejection of nonconforming items, when appropriate, and documentation of the Contractor's performance.
- G. Except when the nonconformance is minor, each contract under which nonconforming items are accepted shall be modified by the CPM Agent to provide for an equitable price reduction or other consideration.
- H. When the COTR and SQA reject nonconforming supplies or services the CPM Agent shall issue a notice of rejection in writing and include the reasons for rejection. The notice of rejection shall be issued to the Contractor within five (5) working days of the rejection.

## 19.7 Acceptance


- A. Acceptance shall constitute acknowledgment the supplies, services, or construction conform to the applicable contract quality and quantity requirements, except as provided in this Section and subject to other terms and conditions of the contract.
- B. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the terms and conditions of the contract.
- C. Supplies, services, or construction shall not be accepted before completion of MARTA contract quality assurance actions.
- D. Acceptance shall be evidenced by execution of an acceptance certificate on an inspection or receiving report form or on a commercial shipping document or packing list.

### 19.7.1 Place of Acceptance

1. Each contract shall specify the place of acceptance.
2. If applicable, contracts that provide for MARTA contract quality assurance at the source shall provide for acceptance at the source.
3. If applicable, contracts that provide for MARTA contract quality assurance at destination shall provide for acceptance at destination.
4. Supplies accepted at a place other than destination shall not be re-inspected at destination for acceptance purposes, but shall be examined at destination for quantity, damage in transit, and possible substitution or fraud.

## 19.8 Certification of Conformance

- A. A certificate of conformance may be used instead of source inspection, whether the contract calls for acceptance at the source or at destination, at the discretion of the COTR, if the following conditions apply:
  1. Acceptance on the basis of a Contractor's certificate of conformance is in the best interest of MARTA;
  2. Based on the Contractor's reputation or past performance, it is assured that supplies or services furnished will be acceptable and any defective work shall be replaced, corrected, or repaid without contest; and

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3. Warranties are not void.

B. Even when a certificate of conformance is used pursuant to the above Section, MARTA's right to inspect supplies, services, and construction under the inspection provisions of the contract shall not be prejudiced.


## 19.9 Transfer of Title and Risk of Loss

- A. The contract shall specify title to supplies, equipment and construction shall pass to MARTA upon formal acceptance regardless of when or where MARTA takes physical possession or such time as set forth therein. Title to stock items shall pass to MARTA upon receipt at destination and initial inspection for completeness and absence of damages.
- B. Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to MARTA upon either of the following:
  - 1. Delivery of the supplies to a carrier if transportation is F.O.B. origin;
  - 2. Acceptance by MARTA or delivery of the supplies to MARTA at the destination specified in the contract, whichever is later, if transportation is F.O.B. destination.
- C. The provisions of the above Section shall not apply if the Contractor fails to conform to contract requirements.
- D. The risk of loss of or damage to nonconforming items shall remain with the Contractor until cure or acceptance. After cure or acceptance, the provisions of the Section above shall apply.
- E. The Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of MARTA acting within the scope of their employment.
- F. The risk of loss or damage to supplies shall remain with the Contractor until formal acceptance by MARTA.
- G. If any of the items are excepted from formal acceptance by MARTA due to defects or failure to conform to the requirements and specifications of the contract, or are subject to contingent acceptance pending cure of defects, the risk of loss or damage shall remain with the Contractor until the defects are cured and the contingency is removed or the construction is formally accepted by MARTA.

## 19.10 Warranties

The Department of Legal Services and Requestor Department shall ensure that the warranty provisions in MARTA contracts clearly delineate the rights and obligations of the Contractor and MARTA for defective items and services and fosters quality performance.



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## Chapter 20 – Patents, Copyright, and Proprietary Information

### 20.0 Purpose and Scope

MARTA must comply with all applicable laws and regulations in acquiring or using rights in patents, copyrights, and proprietary information.

### 20.1 General Provisions


A Contractor shall obtain permission from the lawful owner(s) of copyrighted materials before including all or part of any copyrighted work in any item to be delivered under a contract, unless permission is not required under the fair use or other applicable provisions of Federal copyright statutes or regulations.

### 20.2 Patent Rights Under Contracts

If the contract permits the Contractor to retain title, and the Contractor elects to retain title to an invention, MARTA shall attempt to retain a nonexclusive, non-transferable, irrevocable, royalty free license to use or have used, for or on behalf of MARTA, any invention made in the performance of work under a contract.

### 20.3 Proprietary or Confidential Information in Bids and Proposals

- A. A Contractor may designate information contained in a response to the Invitation for Bids or Request for Proposals as proprietary or confidential by specifically identifying that information in writing in the bid or proposal.
- B. Each solicitation shall contain a provision which indicates the right of the Contractor to designate confidential or proprietary information with specificity in response to the solicitation, as well as the right of the Department of Legal Services to challenge the designation and either eliminate the bid or proposal or remove the designation.

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## Chapter 21 - Claims and Litigation Actions

### 21.0 Purpose and Scope

The Authority has a vested interest in the settlement of disputes, defaults, or breaches involving any contract. MARTA must comply with all appropriate project management guidelines in processing Contractor claims.

- A. It is the intent of MARTA to promptly review and evaluate all Contractor claims.
- B. This Chapter discusses MARTA's process for handling Contractor claims and disputes resolution proceedings, and identifies those MARTA officials and representatives responsible for administering such actions and for implementing decisions rendered by appropriate officials.
- C. The Department of Legal Services in conjunction with CPM is responsible for the review, evaluation, and determining the merit of Contractor claims. The COTR shall avail himself/herself of all MARTA resources including specialists in the fields of contracting, finance, law, audit, engineering and construction, and others.

### 21.1 Merit Determination


Merit determination is an evaluation of the Contractor's claim and facts sufficient to establish that the Contractor may or may not be entitled under the terms of the contract to additional compensation and/or a time extension. The merit determination must be reviewed and formally approved (or disapproved) by MARTA's Department of Legal Services and appropriate technical personnel before processing and negotiating the claim with the Contractor.

### 21.2 Contract Claims/Disputes

- A. A claim is a demand or assertion by one of the parties made in writing and seeking payment of money, adjustment or interpretation of contract, terms, or other appropriate relief. The claims process begins with the Notice of Intent to Claim (NOIC), submitted to MARTA by the Contractor. The COTR should forward the claim to the Department of Legal Services and review the NOIC and make a summary preliminary merit determination to insure that MARTA is not continuing conduct that may result in additional damages.
- B. The COTR with support from the Department of Legal Services may resolve Contractor claims.
- C. Meritorious claims (as approved by MARTA) that can be completely settled as to time and money issues should be processed by MARTA as contract changes.
- D. If the COTR determines (as approved by MARTA) that a claim has no merit or that equitable adjustment cannot be negotiated for a claim with merit, a final determination should be prepared.
- E. The final decision shall include the following elements: (1) Description of claim or dispute, (2) Reference to the pertinent contract terms, (3) Statement of factual areas of agreement and disagreement, statements of the decision, with supporting rationale and (4) Department of Legal Services statement of agreement or consent. The final decision shall be transmitted to the Contractor by the CPM Agent.

### 21.3 MARTA Claims Against the Contractor


MARTA may have reason to initiate claims against the Contractor (e.g. back-charges). The CPM Agent, based on direction provided by the Department of Legal Services, may give the Contractor written notice of the complaint and an opportunity to take corrective action, if appropriate. If, after a reasonable time, the Contractor has not taken satisfactory corrective steps, the CPM Agent with approval of the Department of

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Legal Services will take action to make the required corrections and to assess back-charges to the Contractor. The CPM Agent, in coordination with the COTR and the Department of Legal Services, shall attempt to settle all claims against the Contractor.

#### **21.4 Litigation Actions**

The Department of Legal Services shall be responsible for handling all court actions involving suits brought by or against MARTA

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## Chapter 22 – Lease Versus Purchase Alternatives

### 22.0 Purpose and Scope

This Chapter provides guidance for lease vs. purchases alternatives and factors to be considered in making these decisions.

It is often less economically advantageous to lease equipment than to purchase it. There are, in some instances, exceptions to this rule. For example, short-term leases of equipment required for a unique task may be reasonable and economically sound. In some cases, it is easier to have equipment maintained if it is leased. Also, quickly changing technologies, such as computers and copiers, may be better to lease. However, long term leases and leases for items that should be capitalized but cannot because budget rigidities are often not prudent from an economic perspective.


### 22.1 Determining Factors for Leasing

In determining whether the lease of equipment is feasible, the following factors among others, should be considered:

1. Estimated length of the period the equipment is required and the amount of time of actual equipment usage;
2. Financial and operating advantages of alternative types and makes of equipment;
3. Total rental cost for the estimated period of use;
4. Net purchase price, if acquired by purchase;
5. Transportation and installation costs;
6. Maintenance and other service costs;
7. Potential use of the equipment by other agencies after its use by MARTA is completed;
8. Trade-in or salvage value;
9. Imputed interest costs;
10. Availability of a servicing capability especially for highly complex equipment, e.g., can the equipment be serviced by MARTA if it is purchased; and
11. FASB 13 accounting calculations.

### 22.2 Funding Requirements

All leasing arrangements made with Federal, State or Local funding must comply with applicable laws.

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## Chapter 23 - Protests

### 23.0 Purpose and Scope

The purpose of this Chapter is to establish policy and procedures for administrative resolution of protests arising in the acquisition process and to implement applicable funding source requirements.

### 23.1 Requirement for Protester

In order to file a valid protest, an individual or entity must be an actual or prospective Contractor whose direct economic interest would be affected by the award or failure to award a contract. A protest filed by anyone who fails to establish standing to protest shall be rejected by the Authority.

### 23.2 Filing of Protest

All protests must be submitted in writing to the Authority within the time prescribed herein. The protest shall be addressed and delivered to the Head of CPM, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, N.E., Atlanta, Georgia 30324 with a copy to the Department of Legal Services, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, N.E., Atlanta, Georgia 30324.


All evidence and relevant information and referenced material supporting the protest must be attached. Protests should include the following:

- A. The solicitation number, name and/or other identifying information. If any addenda issued by the Authority in connection with a solicitation is the basis for a protest, the protest must also identify the specific addenda. If any other Authority communication is the basis for a protest it must also be identified.
- B. The name and address of the protester. If the name or address is different than that shown on any bid, quote or proposal of the protester, the protest should include a reference to the original name and/or address of the respondent to the bid, quote or proposal. Any protest filed under a name other than the original name of the respondent stated on the bid, quote or proposal submitted, then the protester must indicate the basis supporting standing in protest.
- C. A full and complete statement specifying in detail the grounds for the protest, including identification of any laws, regulations or procedures violated and providing all pertinent facts in support of the protest.
- D. The specific remedy requested by the protester.
- E. Identification of person(s) and address(es) of those to whom the Authority communications on the matter of the protest should be directed.
- F. Protest security, see 23.3 below.

If the protest (a) is not sufficiently clear, (b) does not contain the supporting evidence or the information provided is insufficient, (c) lacks standing or (d) was not filed timely, the Authority may deny the protest on this ground or request clarification, or additional information or evidence, as appropriate. If the protester's response is still unclear as to the action protested or the basis/grounds of the protest, or if the supporting evidence/information is still missing or insufficient, the Authority may deny the protest solely on this ground.

### 23.3 Protest Security

- A. Any protester must, at the time of filing the protest, post security in an amount equal to the lesser of (1) one (1) percent of the financial offer made by the protester in its Proposal, Bid or Quote or (2) a one

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hundred thousand and 00/100 U.S. Dollars (\$100,000.00). In the event the bid, quote or proposal does not involve a financial offer i or if it involves negotiated contract rates (e.g., architectural and engineering contracts) then the security to be posted must be equal to one hundred thousand and 00/100 U.S. Dollars (\$100,000.00). The protester must tender security in the form of a bond, certified check, or bank check in the name and favor of MARTA.

- B. If the Authority denies the protest, it may (in its sole discretion) assess against the protester and deduct from the protest security reasonable administrative costs incurred by the Authority in reviewing and responding to the protest (including without limitation attorneys' fees). Within fifteen (15) days of denying the protest, the Authority will calculate the Authority's cost in reviewing and responding to the protest and will deduct from the protest security such costs. Any remaining protest security balance will be returned to the protester along with a list of the deducted costs.

#### **23.4 Time to File**

All protests must be filed within the applicable times prescribed below:

- A. A protest to (1) the specifications, requirements, terms or conditions of a contract; (2) the procedures or conditions for submitting offers, proposal or bids; or (3) to any restrictions on eligibility to do so, must be filed with the Authority no later than fifteen (15) days before the closing date for receiving offers, proposals or bids. In the case of a formally advertised solicitation, a protest must be filed fifteen (15) days before the opening date listed in the solicitation.
- B. A protest to the acceptance or rejection of any or all offers, proposals or bids for a contract, or to the award, or to any such action proposed or intended by the Authority, must be filed with the Authority no later than ten (10) days after the protester first learned, or reasonably should have learned, of the action or the proposed or intended action which is the basis of the protest. In the case of a formally advertised contract, if the basis or ground of the protest is apparent on the face of the bid(s) or proposals in question, the ten (10) days shall begin on the bid opening date.

#### **23.5 Notification of Protest**


If the protest is received before the bid opening date or the proposal deadline, the Authority shall notify all known actual and prospective Contractors of the protest. If the protest is received after the bid opening date/proposal deadline but before award, the Authority shall notify all actual Contractors, whose direct economic interest would be affected by the award or failure to award the contract at issue of the protest. If the protest was received after the award of the contract, the Authority shall only notify the successful Contractor of the protest.

#### **23.6 Stay of Procurement**

Upon receipt of a protest, the Authority may (in its sole discretion) elect to suspend the solicitation and/or award of the contract until the protest has been resolved. If the contract has been awarded, the Authority may, in the Authority's discretion, suspend performance of the contract until the protest has been resolved.

#### **23.7 Procedures for Evaluating Protest**

The Authority will review, evaluate, resolve and issue a final administrative decision with respect to the applicable protest(s) as follows:

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- A. The Head of CPM shall promptly forward all protests to the Department of Legal Services, and notify all interested parties as set forth above.
- B. The Department of Legal Services and the Requestor Department for which goods or services are to be purchased under the contract in question shall be responsible for reviewing and evaluating all protests timely received, and for recommending appropriate action to the General Manager/CEO. They shall carry out this responsibility as expeditiously as practicable. In doing so, they shall consult such other departments, divisions, or offices of the Authority as they deem appropriate for information, advice, or assistance.
- C. The Department of Legal Services may notify the protester that an untimely protest is denied on that ground, but may, if it appears in the Authority's best interest, recommend to the appropriate Department Head and the General Manager/CEO that such a protest be considered. If the General Manager/CEO directs that an untimely protest be considered, it will be reviewed and evaluated as provided above.
- D. The General Manager/CEO, after receiving the recommendation of the Department of Legal Services and the appropriate Department Head, shall decide upon the action to be taken with respect to the protest. This shall be the final administrative decision thereon. The protester shall be notified promptly of the decision in writing, and advised that it is final.

### 23.8 Appeal to the FTA

For contracts involving Federal Transit Administration (FTA) funds only:


- A. A protester, or other person whose direct economic interest would be affected by the award or failure to award a contract involving FTA funds, may be entitled to appeal the Authority's decision to the FTA under Chapter VII of the FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revision thereto.
- B. If a further protest/appeal is filed with the FTA within five (5) working days of the date the protester received actual or constructive notice of the Authority's final decision, the opening of bids or the award of the contract by the Authority shall be subject to the directives of the FTA.
- C. If no such protest is filed within such period, the Authority may proceed to open bids or to award a contract as set forth in the MARTA Act and MARTA policies and procedures.

### 23.8 Appeal to the FTA

For contracts involving Federal Transit Administration (FTA) funds only:

- D. A protester, or other person whose direct economic interest would be affected by the award or failure to award a contract involving FTA funds, may be entitled to appeal the Authority's decision to the FTA under Chapter VII of the FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revision thereto.
- E. If a further protest/appeal is filed with the FTA within five (5) working days of the date the protester



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received actual or constructive notice of the Authority's final decision, the opening of bids or the award of the contract by the Authority shall be subject to the directives of the FTA.

- F. If no such protest is filed within such period, the Authority may proceed to open bids or to award a contract as set forth in the MARTA Act and MARTA policies and procedures.

## Chapter 24 - Special FTA Grantee Requirements

### 24.0 Purpose and Scope

- A. MARTA, as a recipient of FTA assistance, is required to implement as part of its contracting program, a variety of FTA laws and regulations
- B. This Chapter prescribes the most common applicable FTA laws and regulations for MARTA contracts and purchases, and where appropriate, indicates the specific contract types and dollar thresholds requiring contractual coverage.
- C. MARTA CPM Agents will assure that the required provisions are included in all appropriate solicitations and contracts. See attached link.

#### LIST OF FTA CLAUSES

<http://martanet/uploads/federal-clauses.pdf>

#### PROCUREMENT PROCESS CHECKLIST FOR FTA-FUNDED PROCUREMENTS

<http://martanet/data/CP-SOPs/Procurement-Process-Checklist-for-FTA-Funded-Procurement.pdf>

- D. The following Section represents the most frequently used FTA Grantee Requirements, but is not intended to be an all-inclusive listing. CPM Agents are encouraged to refer to the FTA Best Practices website for a current listing of Grantee Requirements.

#### FTA CONTRACT CLAUSE CHECKLIST

<http://martanet/data/CP-SOPs/Contract-Clause-Checklist.pdf>


- E. For guidance with FTA funded procurements consult the FTA's Best Practices Manual.

#### FTA BEST PRACTICES MANUAL

[http://www.fta.dot.gov/grants/13054\\_6037.html](http://www.fta.dot.gov/grants/13054_6037.html)

### 24.1 FTA Foreign Trade Requirements - Buy America

- A. MARTA shall comply with Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601 as amended, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 as amended, and 49 CFR, Parts 660-661, which impose Buy America Provisions on the procurement of foreign products and materials. MARTA CPM Agents shall assure that FTA Buy America requirements are observed in accordance with the following:
  - 1. All MARTA solicitations shall include the requirement for Contractors to certify they will comply with the above laws and regulations, as amended.

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2. 49 CFR Part 661 provides for waivers to be granted by FTA based upon justified applications requested by MARTA or in some cases, by the potential Contractors. MARTA CPM Agents shall assure that MARTA requests for waiver shall meet the conditions required by 49 CFR Part 661.7. Requests for waivers addressed to FTA shall be prepared by the Department of Legal Services.
3. MARTA solicitations and contracts shall include the appropriate contract provisions required by the above referenced laws and regulations, as may be amended.

B. The attached link provides a tutorial on Buy America.

*BUY AMERICA TUTORIAL*

<http://martanet/data/CP-SOPs/buy-america-act.pdf>

## 24.2 Options

The total of the base and option quantities shall not exceed the requirement for five (5) years in contracts for rolling stock and replacement parts funded with Federal monies as required by statute 49 USC 5326(b). The Requestor shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on the option price. The CPM Agent shall include the justification document in the contract file.

## 24.3 Geographical Preferences


Except when procuring A&E services, the FTA prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals unless Federal statutes expressly mandate or encourage geographic preference.

## 24.4 Procurement of Design-Build

MARTA must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in 4220.1F, VI, 3. h. when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in 4220.1F, VI, 3. f. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in 4220.1F, VI, 3. f, unless required by State law adopted before August 10, 2005.

## 24.5 Veterans Preference/Employment

The Authority, as a recipient of FTA assistance, shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in Title 5, United States Code, Section 2108) who have the requisite skills and abilities to perform the construction work required under the contract. The inclusion of this preference in contracts shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

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## 24.6 Piggybacking


Acquisition through Assigned Contract Rights. The Authority may find it useful to acquire contract rights through assignment by another Grantee. The Authority may use contractual rights through assignment after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements. The Authority need not perform a second price analysis if a price analysis was performed for the original contract. However, the Authority must still determine whether the contract price or prices originally established are still fair and reasonable before using those rights. The Authority using assigned contract rights is responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required Buy America preaward review and post-delivery review certifications. Before proceeding with the assignment, the Authority should review the original contract to be sure that the quantities the assigning Grantee acquired, coupled with the quantities the acquiring Grantee seeks, do not exceed the amounts available under the assigning Grantee's contract.

1. Ensure that the recipient files include sufficient documentation that the underlying contract was solicited and awarded in compliance with Federal and FTA requirements and included required contract provisions.
2. Verified that:
  - (a) the original contract contained an assignability provision, and
  - (b) the quantities acquired, coupled with the quantities already assigned, did not exceed the amounts available under the assigning recipient's contract.
3. Ensure that the recipient files include sufficient documentation that the original contract price remained fair and reasonable.
4. Ensure that the recipient files include sufficient documentation that the vehicle ordered under the option is substantially the same as the original vehicle in the contract (e.g., ordered a different size vehicle, fuel option, etc.).
5. Did the recipient exercise an assigned option for delivery of vehicles on a contract that was entered into before December 4, 2015? If yes:
  - (a) If the assigned option is exercised for delivery of vehicles in FY2018 or FY2019, did the original contract include a provision for domestic content of more than 65 percent?
  - (b) If the assigned option is exercised for delivery of vehicles in FY2020 and beyond, did the original contract include a provision for domestic content of more than 70 percent?

## 24.7 Revenue Contracts

To ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the Authority should conduct its revenue contracting as follows:

- (a) Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the Authority should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- (b) Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the Authority is

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willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

### 24.3 State/Local Government Purchasing Schedules

#### Innovative Procurement

The Authority may participate in a cooperative procurement contract without regard to whether the other Grantee is located in the same State as the parties to the contract. The initial contract term cannot be more than two years and may include three optional extensions of one year each. A lead procurement agency or lead nonprofit entity in such a procurement may charge participants in the contract no more than 1 percent of the total value of the contract.

When obtaining property or services in this manner, the Authority must 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 Authority's purchase document. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the Authority's procurement. When buying from these schedules, the Authority should obtain Buy America certification before entering into the purchase order. The Authority must also determine that the State contracts were awarded with full and open competition and were not subject to geographical preferences (e.g., giving in-state vendors a bidding preference - as some states have such practices that are prohibited by FTA)


### 24.9 Oversight of Sub-Recipients

The Authority is responsible for ensuring that each of its sub-recipients complies with the applicable requirements and standards of FTA C4220.1F, and that each of its sub-recipients is aware of the Federal statutory and regulatory requirements that apply to its actions as a sub-recipient.

### 24.10 Preference for U.S. Property – Buy America

For any FTA assisted project having third party construction contracts exceeding \$150,000, FTA's Buy America law and regulations require the third party contractor to provide property produced or manufactured in the United States for use in the construction project that the Authority acquired, unless FTA granted a waiver authorized by those regulations. If FTA funds are used for the project, Buy America requirements apply to all third party procurements contracts under the project irrespective of whether the Authority decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA's Buy America regulations would apply may the Authority disregard FTA's Buy America requirements. Buy America regulations are different from the Federal "Buy American Act" regulations in the Federal Acquisition Regulation (FAR) at 48 CFR Chapter 1, Subchapter D, Part 25, Subparts 25.1 and 25.2.

Property that the contractor acquires to perform its construction activities for the Authority, such as tools,

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machinery, and other equipment or facilities, is not covered by FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the Authority may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether that property would comply with FTA's Buy America regulations.

The Authority must certify to the FTA for service rolling stock that it will conduct or cause to be conducted pre-award and post-delivery audits as prescribed by the circular.

## 24.11 Standards of Conduct


MARTA's commitment to ethics begins with its compliance with the law. MARTA Board members, officer, employees and contractors must comply with all applicable laws and regulations. MARTA is subject to federal, state and local rules and regulations, including special laws that apply specifically to MARTA. If there is some uncertainty about the legality of an action then employees should consult with the MARTA Legal Department.

A violation of this Code shall result in discipline for each Code violation that fits the nature and facts of violation. An employee violating the Code of Ethics may be subject to discipline up to and including termination. A contractor/sub-contractor, and/or their agency violating the Code may be subject to disbarment from future MARTA contracts and a violation may be considered a breach of the contractor's contract with MARTA. Board members who violate this Code may be subject to censure and /or such other penalties as provided for by law.

## 24.12 Out of Scope Changes

The following actions are prohibited:

- (1) Improper Contract Expansion. A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the original recipient's reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity. The Common Grant Rules requires the recipient to have procurement procedures that preclude the recipient from acquiring property or services it does not need.
- (2) Cardinal Changes A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as "tag-ons." A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a "tag-on" or cardinal change.


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- (a) Identifying Cardinal Changes Recognizing a cardinal change can be difficult. A cardinal change cannot be identified easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases.
- (b) Changes in Quantity To categorize virtually any change in quantity as a prohibited cardinal change (sometimes referred to as an “out-of-scope” change) fails to account for the realities of the marketplace and unnecessarily restricts a recipient from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract.
- (c) Tests Among other things, customary marketing practices can influence the determination of which changes will be “cardinal.” Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was originally contemplated at the time the original contract was entered into, or the cumulative impact on the contract’s quantity, quality, costs, and delivery terms.
- (d) Rolling Stock In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.
- (e) Federal Procurement Standards. The broader standards applied in Federal contracting practice reflected in Federal court decisions, Federal Boards of Contract Appeals decisions, and U.S. Comptroller General Decisions provide guidance in determining whether a change would be treated as a cardinal change. FTA does not imply that these Federal procurement decisions are controlling. FTA intends to consider the collective wisdom within these decisions in determining the nature of third party contract changes along the broad spectrum between permissible changes and impermissible cardinal changes.
- (f) Changing Terms Before attempting to change the terms of its contract, the recipient should review the contract’s provisions to ensure that the contract permits the change sought.

FTA intends to monitor its recipients and oversight contractors to ensure that this concept is well understood and uniformly applied. This approach permits greater latitude but, because it requires analysis, it can sometimes require a greater knowledge of Federal contracting practices. In any event, before attempting to change the terms of its contract, the recipient should review the contract’s provisions to ensure that the contract permits the change sought.

## 24.13 Time Limits on Rolling Stock Contracts

- (1) Buses MARTA:

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- (a) May enter into a multi-year contract to acquire buses or replacement parts, with an option not exceeding five(5) years to buy additional buses or replacement parts, but
- (b) May not exercise the option to acquire buses or replacement parts later than five (5) years after the date of its original contract.

Rail MARTA:


- (a) May enter into a multi-year contract to acquire railcars or replacement parts, with an option not exceeding five(5) years to buy additional railcars or replacement parts, but
  - (b) May not exercise the option to acquire railcars or replacement parts later than seven (7) years after the date of its original contract.
- (2) FTA interprets five and seven-year periods as covering the recipient's "material requirements" for rolling stock and replacement needs from the first day when the contract becomes effective to its "material requirements" at the end of the fifth or seventh year, as applicable. The contract may not have options for more rolling stock and replacement parts than a recipient's material requirements for the applicable five or seven-year period. This does not mean the recipient must obtain delivery, acceptance, or even fabrication in five or seven years. Instead it means only that FTA limits a contract to purchasing no more than the recipient's material requirements for rolling stock or replacement parts for five or seven years based on the effective date of the contract.

## 24.14 Unnecessary Experience and Excessive Bonding

Prohibitions. The Common Grant Rules prohibits solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be impermissibly restrictive of competition include, but are not limited to, the following,

- (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 prequalification standards.
- (d) Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
- (e) Excessive Bonding. To encourage greater contractor participation bonding is not required on its third party contractors other than construction bonding specified by the Common Grant Rules and the circular for construction. FTA discourages unnecessary bonding because it



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increases the cost of the contract and restricts competition, particularly by disadvantaged business enterprises. Bond companies exercise their discretion and assure their profits primarily by declining to undertake excessive risks. Consequently, many bidders have limited “bonding capacity.” Unnecessary performance bonding requirements reduce a prospective bidder’s or offeror’s capability to bid or offer a proposal on bonded work. Small businesses with short histories may have particular difficulty obtaining bonds as may be specified.

Nevertheless, even though bonding can be expensive, FTA recognizes that a recipient might find bid, performance, or payment bonds to be desirable. Because bonding requirements can limit contractor participation, FTA expects the recipient’s bonding requirements to be reasonable and not unduly restrictive.

#### **24.15 Notification of Claims**

Upon receipt of a claim, MARTA’s Office of Chief Counsel will notify the FTA Regional Office of vendor’s dispute(s) and claims that exceed \$100,000 with concurrent notifications to the Office of Grants Management for inclusion in the Milestone Progress Report.