

The Central New York Regional Transportation Authority

Procurement Manual

2021



Procuring the goods and services necessary to provide safe and reliable public transportation at a reasonable cost.



The Central New York Regional Transportation Authority

As of June 2021

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Table of Contents

Part 1- General	3
1.1- Introduction	3
1.2- Authority of Regulations & Rules	4
1.3- Definitions.....	5
1.4- Protest Procedures	10
Part 2- General Procurement	13
2.1- Procurement Code of Conduct.....	13
2.2- Procurement Threshold for Authorization	15
2.3- General Procurement Guidelines	16
Part 3- Detailed Procurement Guidelines	32
3.1- Detailed Procurement Guidelines Summary.....	32
3.2- Informal Procurement Guidelines	32
3.3- Formal Procurement Guidelines.....	33
3.4- Procurement of Architectural and Engineering (A&E) Services.....	51
3.5- Procurement By Non-Competitive Negotiation (Sole Source).....	52
3.6- Rolling Stock Procurements.....	53
Part 4- Contract Administration	55
4.1- Contract Administration	55
Part 5- Appendices	61
5.1- Formal Procurement Contract File Checklist.....	61
5.2- Formal Procurement General Contract Clauses.....	64
5.3- Formal Procurement NYS Standard Contract Clauses.....	69
5.4- FTA Circular 4220 (Most Current Version)	69
5.5- FTA Best Practices Manual.....	69



1.1- Introduction

The Procurement Manual of the Central New York Regional Transportation Authority (CNYRTA) is designed to set forth the standards for processing all contracts and purchase orders. These standards are provided to ensure that materials and services are obtained timely, efficiently and economically, while adhering to principles of good public policy and practices and sound business judgment. This manual is organized to allow the user maximum flexibility to initiate, develop, execute and administer third-party contracts within the parameters of Federal, State, and local requirements. Any purchases using Federal funds are in compliance with *Federal Transit Administration ("FTA") Circular 4220 (most current version,)* *Third Party Contracting Guidelines*. Additionally, this manual is intended to be in full compliance with the applicable provisions of the NYS Public Authorities Law, NYS Finance Law, NYS Economic Development Law, NY Public Officers Law and NYS Executive Orders.

These Procurement Guidelines set forth the requirements that CNYRTA and its subsidiary corporations (individually or collectively referred to as "CNYRTA") must adhere to in the solicitation, award, and administration of its third-party contracts for goods and services.

These guidelines are meant to:

1. formalize practices which ensure that CNYRTA interests are protected,
2. assure that all Federal and State procurement laws and regulations are followed, and
3. communicate policies; give guidance to purchasing personnel, personnel assigned to the purchasing function, and others with delegated purchasing authority.

The Procurement Guidelines shall not restrict or eliminate competition. Examples of what is considered to be restricting competition include but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business, (2) organizational conflicts of interest, and (3) unnecessary experience and bonding requirements. The CNYRTA will not implement any procurement practices which give local or in-State Bidders/Proposers preference over other Bidders/Proposers.

This manual recognizes four basic contracting methods:

1. Micro Purchases;
2. Small Purchases;
3. Invitation for Bid; and
4. Request for Proposal;

These methods encompass third-party contracts currently utilized by CNYRTA in routinely expending funds to procure goods and services including, but not limited to, bus parts, support equipment, professional services, etc. for Federally funded or State and locally funded projects. Procedures have been developed for each method from inception of a project to its close out, and the person or department responsible for completing each specified action is designated. Particular emphasis has been placed on certain aspects of the procurement process, where warranted, by the importance of the subject matter.

The basic procurement objective is to secure the best goods and/or services at the lowest available price, consistent with quality requirements and delivery needs. The practice of competitive procurement, whether formal or informal, not only tends to assure reasonable prices, but guards against improper practices.

Procuring goods and services for the CNYRTA must be a cooperative effort, and it shall be the responsibility of all CNYRTA staff involved in procurement to employ sound judgment and appropriate standards of ethics and fairness to procure in a manner most advantageous to the CNYRTA.

These Procurement Guidelines have been duly adopted by Motion of CNYRTA Board of Members (the "Board") and detail CNYRTA's operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. These Guidelines shall be reviewed and approved by CNYRTA Board of Members on an annual basis.

NOTE: These Procurement Guidelines are intended for the guidance of officers and employees of the CNYRTA only, and nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation, any right, claim or benefit under, or by reason of, any requirement or provision hereof. Nothing contained in these Procurement Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these Procurement Guidelines.

1.2- Authority of Regulations & Rules

Legislative and Regulatory Authority: The Procurement Guidelines discussed in the Manual have been developed in conformance with the standards and limitations established by Federal and State law, and CNYRTA rules, regulations and policies as follows:

The applicable Federal laws, regulations, agreements, and guidelines affecting the procurement practices of Centro are as follows:

1. FTA Master Agreement.
2. FTA Circular 4220, Third Party Contracting Guideline (most current version.)
3. Participation by Disadvantaged Business in Department of Transportation Programs, 49 CFR Part 26.
4. FTA Best Practices Manual.

Failure to appropriately procure goods and services funded by the Federal government could seriously jeopardize Federal funding to CNYRTA. All CNYRTA staff involved in procurement activities must familiarize themselves with CNYRTA procurement guidelines, FTA regulations, and other pertinent documentation, as promulgated.

The CNYRTA Procurement Guidelines apply to all commodity, service, and professional service contracts procured by CNYRTA. These Procurement Guidelines adhere closely to the Federal Procurement Requirements outlined in *FTA Circular- 4220* (most current version.) CNYRTA has chosen to adopt the procurement practices outlined in the Circular and the Best Practices Procurement Manual as a way of ensuring compliance with FTA requirements in all CNYRTA procurement activities.

The applicable State laws, regulations and agreements affecting the procurement practices of CNYRTA are as follows:

1. NYS Public Authorities Law
2. NYS Finance Law
3. NYS Economic Development Law
4. NY Public Officers Law
5. NYS Executive Orders

Requirements for Competition in the Procurement Process: Pursuant to CNYRTA policy, full and open competition is required for all procurement actions over \$2,500.

Applicability: For all procurement actions estimated to be \$2,500 or more, the Procurement Department shall use the Department's vendor listing, recommendations from the User Departments, DBE Registries, M/WBE registries, SDVOB registries, conduct internet searches, and other directories as appropriate to assist in identifying sources.

NOTE: Where applicable Federal, state or local laws, ordinances, codes, rules or regulations contain requirements that are in conflict with, or that impose greater obligations upon CNYRTA than these Procurement Guidelines, those requirements shall take precedence over those contained herein. CNYRTA shall not be precluded from adopting additional requirements for particular contracts relating to the matters covered by these Guidelines.

1.3- Definitions

ADVERTISEMENT: The publication of a Notice of Procurement Opportunity in any of the following forums, as are appropriate: newspapers of general circulation in Onondaga County, Oswego County, Cayuga County, and Oneida County and/or any other member county within the CNYRTA District; regional, state and national trade journals and magazines; newsletters; and New York State Economic Development Department and/or Disadvantaged Business Enterprise publications,

1. the posting of a Notice of Procurement Opportunity on the CNYRTA's website, www.centro.org, accessible to the public,
2. the dissemination of a Notice of Procurement Opportunity to three (3) or more potential bidders, proposers or suppliers either by written, telephonic or electronic transmission, and
3. any or all methods of advertisement as are herein defined that are necessary or desirable to promote competition under these Guidelines.

APPROVED EQUAL: An item or service which has been approved by the procuring agency as equal to the brand name item originally specified.

BEST VALUE: A selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to the procuring agency.

BRAND NAME: A name of a product or service that is limited to the product or service produced or controlled by one private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one manufacturer.

BUYER/SENIOR BUYER: The individual(s) at CNYRTA responsible for purchasing general operating goods and services as well as preparing Invitations for Bids or Requests for Proposals for CNYRTA procurement contracts.

COMMODITIES: Standard articles of commerce in the form of material goods, supplies, products or similar items. Commodities do not include technology.

CONSTRUCTION: The supervision, inspection and building of, and all expenses incidental to the acquisition, construction, repair, painting or reconstruction of, facilities and equipment for use by CNYRTA.

CONTRACT OR PROCUREMENT CONTRACTS: As defined by the Federal Acquisition Regulation: a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. Contracts would include bilateral instruments, awards and notices of awards; job orders or task assignment letters

issued under basic ordering agreements; letter contracts, orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The parties to a contract must possess the legal capacity to enter into the contract, and they must assent to the terms of the contract.

CONTRACT ADMINISTRATOR: This individual will be the primary contact with the contractor and shall establish frequent and direct communications with the Contractor. This is the only individual who, with proper consents and documentation, can authorize changes to the contract. In most cases, this individual will be the staff member who led the procurement process for the project. If a cost reimbursement or progress payment form of contract is used, the Contract Administrator shall monitor contractor progress to ensure that the maximum allowable contract amount is not exceeded and that funds are not paid to the contractor in an amount greater than either the percentage of work completed or actual costs incurred.

CONTRACTOR: Any person, partnership, private corporation or association: Selling materials, equipment or supplies, or leasing property or equipment, to CNYRTA. Constructing, reconstructing, rehabilitating or repairing buildings or other improvements for or on behalf of CNYRTA. Rendering or providing services to CNYRTA pursuant to a Contract.

COST REIMBURSEMENT (CR) TYPE CONTRACT: A general compensation arrangement which requires the Authority to pay the Consultant a fixed fee plus all allowable actual costs (as established by predetermined cost principles and rates) provided such costs and fee do not exceed the final negotiated contract price, as incurred by the Consultant in performing the "agreed to" Scope of Work. This type of contract is appropriate for qualifications-based procurements and negotiated procurements based on a Scope of Services rather than detailed specifications.

DESIGN-BID-BUILD: The project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for at-risk construction, by engaging the services of a contractor through sealed bidding or competitive negotiations.

DESIGN-BUILD: A system of contracting under which one entity performs both architectural/engineering and construction under one contract.

DESIGN SPECIFICATIONS: Specifications based on the design of a product or service. Typical design specifications may include dimensions, materials used, commonly and competitively available components, and non-proprietary methods of manufacturing.

DISADVANTAGED BUSINESS ENTERPRISE: A small business concern as defined by 49 CFR 26 and has been certified as such by the UCP.

EMERGENCY PROCUREMENT: The procurement of goods or services under circumstances where a delay in procurement may result in danger to employees or the public, damage to CNYRTA facilities or equipment, or an impediment, delay or danger to the business operations of CNYRTA.

FEDERAL TRANSIT ADMINISTRATION: FTA is one of eleven modal administrations within the U.S. Department of Transportation. The Federal government, through the FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of state and local public transit providers. These grantees are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that grantees follow Federal mandates along with statutory and administrative requirements.

FIRM-FIXED-PRICE TYPE CONTRACT (FFP): A general compensation arrangement which places the risk of performance for a lump sum on the contractor, regardless of the actual costs incurred by the contractor. The only allowable adjustments to the lump sum contract price are those arising from authorized changes in scope of services or changes in specifications. This type of contract is appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications or design specifications where there are no substantial uncertainties relating to cost, performance, or schedule. This type of contract may only be used in sealed bidding procurements.

FORMAL BIDDING: bidding involving public advertising, sealed bids or RFP, and is required for procurements of goods or services in an amount of \$25,000 or more, except as otherwise provided herein. All formal bidding must be approved by the Chief Executive Officer. Formal Bids/Proposals in excess of \$50,000 and multi-year service contracts must be approved by the Board of Directors.

GENERAL SERVICES: those services provided by an individual or business which are not considered professional or construction.

GENERAL SERVICES ADMINISTRATION: GSA is one of three central management agencies in the federal government. GSA supports Federal employees wherever they work-in an office building, a warehouse, a national forest, or a government car. GSA provides workspace, security, furniture, equipment, supplies, tools, computers, and telephones. GSA also provides travel and transportation services, manages the federal motor vehicle fleet, oversees telecommuting centers and federal child care centers, preserves historic buildings, manages a fine arts program, and develops, advocates, and evaluates government-wide policy.

INDEPENDENT COST ESTIMATE: Such estimates may be obtained from published competitive prices, results of previous competitive procurements, including some type of price escalation percentage, or price quotes from manufacturers.

INFORMAL BIDDING: Bidding without public advertising but within formal procedures, which may include, without limitation, written, telephonic or electronic bidding.

INVITATION FOR BIDS (IFB): CNYRTA request for sealed bids setting forth the detailed specifications for the work to be performed.

KICK OFF MEETING: A meeting convened by the Procurement Department and attended by the Departmental Contract Administrator, Designated Contact, Selection Committee and Executive which includes a dialogue of the Scope of Work for the contract, establishment of the procurement timeline, and general discussion.

MAINTENANCE BOND: An instrument of security furnished by the contractor and his/her surety for the maintenance of the work after completion, in accordance with the contract documents.

DIRECTOR OF PROCUREMENT: Individual who has responsibility for the overall conduct of a particular procurement. This individual is responsible for ensuring compliance with applicable CNYRTA Guidelines and governmental regulations in the procurements under his/her purview.

MICRO-PURCHASE: Purchases under \$2,500. Purchases below this threshold may be made without obtaining competitive quotations if the CNYRTA determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers (in the local area) and no splitting of procurements to avoid competition.

MINORITY BUSINESS ENTERPRISE (MBE): Any business enterprise which is at least fifty-one percent (51 %) owned by, or in the case of a publicly owned business, at least fifty-one percent (51 %) of the capital stock of which is owned by citizens or permanent resident aliens who are minority persons, and such ownership interest is real, substantial and continuing. The minority ownership must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field. For the purposes of these guidelines "minority person" shall refer to persons as are defined in Section 2879(3) of the Public Authorities Law.

NEW YORK STATE CONTRACT REPORTER: A publication of procurement opportunities printed for the New York State Economic Development Bureau pursuant to the New York State Economic Development Law.

OFFER: A promise to provide goods or services according to specified terms and conditions in exchange for material compensation.

OGS BID CONTRACTS: Purchase prices established for various items which have been competitively bid by the New York State Office of General Services (the "OGS") and which may be used by CNYRTA and its subsidiaries to make procurements for goods/services provided FTA requirements are included in the contract (if Federal Funds are used for the procurement.)

ORGANIZATIONAL CONFLICT OF INTEREST: Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to CNYRTA; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.

PERFORMANCE BOND: An instrument of security furnished by the contractor and his surety for the performance of the work in accordance with the contract documents.

PERFORMANCE SPECIFICATIONS: Specifications based on the function and performance of a product or service under specified conditions, preferably conditions that can be reproduced for testing purposes. Performance specifications may include useful life, reliability in terms of average intervals between failure, and capacity.

PIGGYBACKING: Is an assignment of existing contract rights to purchase supplies, equipment, or services.

PROCUREMENT: The acquisition by the Authority of products, services, or public works by purchase process and policy as outlined in this manual, excepting:

1. The purchase of periodicals, reference materials, treatises, or professional research tools;
2. The payment of fees or tuition associated with continuing education courses, training courses, conferences, seminars, and symposiums,
3. Expenditures governed by the CNYRTA "Travel Policy and Guidelines"; and
4. The purchase of advertising space or advertising time in any medium.
5. Expenditures associated with internal or public meetings

PROFESSIONAL SERVICES: Services of a professional nature, including without limitation, accounting, legal, medical, occupational, architectural, engineering, consulting, advertising, marketing and planning.

PROFESSIONAL SERVICES CONTRACT: Any written agreement to provide a service, including but not limited to legal, accounting, management consulting, investment banking, planning, training, statistical, research, public relations, marketing, advertising, architectural, engineering, surveying or other personal services of a consulting, professional or technical nature, for a fee, commission or other compensation, by a person or persons who are not providing such services as officers or employees of a state agency or public corporation.

PROFESSIONAL SERVICES CONTRACTOR: Any person, firm or corporation performing a Professional Services Contract for CNYRTA.

PROJECT MANAGER: The individual(s) at CNYRTA responsible for preparing Invitations for Bids or Requests for Proposals specifications for CNYRTA procurement contracts involving Maintenance and Operations Departments. The individual(s) also acts as the liaison between the procurement department and requesting department.

PROMPT PAYMENT: Payment of a debt due and owing by CNYRTA before interest accrues thereon pursuant to a statement adopted in accordance with these Guidelines.

PROPER INVOICE: A written request for a Contract payment that is submitted by a Contractor setting forth the description, price and quantity of goods or services delivered or rendered in such form and supported by such other substantiating documentation as CNYRTA may reasonably require.

PUBLIC WORK: The construction, demolition, repair, rehabilitation, removal, restoration or maintenance of any building, roadway, structure, fixture, facility, improvement or property owned by or leased to CNYRTA.

RECEIPT OF AN INVOICE:

1. The date on which a proper invoice is actually received in the designated payment office; or
2. The date on which CNYRTA receives the purchased goods or services covered by the proper invoice, whichever is later.

RESPONSIBLE: A potential contractor is considered responsible if it can demonstrate that it has the ability to perform successfully under the terms of the proposed Contract, taking into account the offeror's technical and financial capability. Responsibility refers to the ability of the contractor to deliver the requested items/services.

RESPONSIVE: A bid which complies, in all material respects, with the terms of the solicitation and is completed, executed, and submitted in accordance with the instructions set forth in the solicitation. Responsiveness refers to the integrity of the submitted bids and the bid process.

SERVICE DISABLED VETERAN OWNED BUSINESS: A New York State small business, at least 51% owned by one or more service-disabled veterans, with a service-connected disability rating of 10% or more from the U.S. Department of Veterans Affairs (or from the New York State Division of Veterans' Affairs for National Guard veterans).

SEALED BIDDING: A competitive procurement method under which a contract is awarded to the lowest price, responsive bid, offered by a responsible bidder.

SERVICES: A professional, consulting, technical, or other service, including but not limited to, legal, testing, accounting, bookkeeping, secretarial, management consulting, audit, investment banking, planning, training, statistical research, insurance, advertising, public relations, architectural, engineering, appraisal, janitorial, surveying, housekeeping, and waste disposal, performed for a fee, commission or other compensation.

SINGLE BID: Two or more competitive bids are solicited and only one bid is received. A single bid is a subcategory of "Sole Source."

SMALL PROCUREMENT: The acquisition of goods or services under a written agreement or purchase order resulting in a cost to CNYRTA of more than \$2,500 but less than \$25,000 per year.

SMALL PROCUREMENT INFORMAL BIDDING: A small procurement method of procuring goods or services under \$25,000, based upon competitive selection; quotes are requested and received via fax or regular/electronic mail.

SOLE SOURCE: The goods or services to be procured are available from only one responsible source; or no other goods or services will satisfy CNYRTA requirements; or prior state, federal or Board approval has been granted.

SOLICITATION: A purchasing entity's request for offers, including a telephone request for price quotations, an invitation for bids, or a request for proposals.

SURETY BOND: Refers to an agreement between a transit industry contractor or supplier and a surety bond writer that guarantees a contract obligation with a transit property. Typically, transit agencies require bonds that cover 100% of the value of a contract. If a contractor defaults on a contract or faces financial difficulties, the surety bond underwriter will owe the transit agency the full amount of the contract.

TAG-ON: The addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.

TIME AND MATERIAL (T&M) TYPE CONTRACT: A general compensation arrangement which provides for a fixed rate including Overhead and Profit, and material paid for at cost, plus handling charges. This type of contract is permitted only:

1. After a determination that no other compensation arrangement is suitable;
2. The contract or purchase order contains a price ceiling that the contractor exceeds at its own risk, and
3. All labor and equipment rates (including overhead and profit) are predetermined and set forth in the contract and materials are to be paid for at cost.

WOMEN-OWNED BUSINESS ENTERPRISE (WBE): Any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly-owned business, at least fifty-one percent (51 %) of the capital stock of which is owned by citizens or permanent resident aliens who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing. Women business owners must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field.

1.4- Protest Procedures

The following Protest procedures apply to both the pre-and post-bid stages of procurement, both of which contain elements that may be subject to protest. If the pre-bid stage has passed and no protest or appeal has been filed in accordance with the regulations set forth herein, the pre-bid elements will no longer be subject to appeal. When the post-bid procedure begins, only issues that have become evident through the opening of the bids are subject to appeal. Any issue which falls within the definition of a pre-bid element cannot be appealed during the post-bid stage unless said issue is only detectable by award of the bid.

CNYRTA must notify FTA of written protests in all instances when FTA funds are involved in the procurement for which the protest is being filed. The CNYRTA will continue to inform the FTA of the status of any protests. If the CNYRTA denies a protest it will notify the FTA Regional Administrator. The following information will be provided to the FTA:

1. A list of protests involving third party contracts and potential third-party contracts that:
 - a. Exceed \$100,000
 - b. Controversial matter, irrespective of amount
 - c. Highly publicized matter, irrespective of amount
2. Information about each protest:
 - a. Brief Description of Protest
 - b. Basis of Disagreement
 - c. If open, how far the protest has proceeded
 - d. If resolved, the agreement or decision reached
 - e. Whether an appeal has been taken or is likely to be taken
3. The information will be provided to the FTA in the next quarterly Milestone Progress Report and at the next Program Management Oversight Review, if any.

All appeals and protests must be in writing and must be marked "Protest" and sent via certified mail or courier to the following address:

Central New York Regional Transportation Authority
ATTENTION: Chief Executive Officer
PROTEST
P.O Box 820
200 Cortland Ave
Syracuse NY, 13205-0820

CNYRTA assumes no responsibility for appeals or protests that do not reach the Chief Executive Officer's office on a timely basis.

No awards will be made until all bid protests are resolved.

Failure to maintain strict compliance with these procedures as set forth herein will result in automatic disqualification of the protest.

Pre-Bid Opening Protests: If a bidder can demonstrate that the specifications issued by CNYRTA are unduly exclusionary and restrictive, or that Federal, state or local laws or regulations have been violated during the course of the procurement process, the bidder may seek a review by the Chief Executive Officer or his appointed representative. Pre-bid opening protests shall be clearly identified "Protest" and submitted in writing to CNYRTA as early as possible, but in no event later than five (5) days prior to the date of bid opening. Within four (4) business days after receipt of a pre-bid/proposal protest, the Chief Executive Officer shall make one of the determinations outlined in paragraph (C) below.

Post-Bid/Proposal Opening Protests: If a bidder has grounds to protest the acceptance or rejection of any or all offers or bids to a contract, or to the award thereof, or to any such action proposed or intended by the Authority, the bidder must formally submit a written protest to CNYRTA Chief Executive Officer no later than five (5) business days after the bid/proposal opening date, outlining in detail the action or the proposed or intended action to which he/she protests.

Rulings on Protests: Within ten (10) business days after receipt of a pre-bid or post-bid protest, the Chief Executive Officer shall render one of the following determinations:

1. Protest is overruled.
2. Protest is substantiated. The Chief Executive Officer shall issue instructions to remedy issues relating to the protest.
3. Procurement activity is suspended until further written notification by the Chief Executive Officer.

The determination shall be in writing and shall provide, at a minimum, a general response to each material issue raised in the protest. All documents submitted by the protestor and/or Authority staff and reviewed by the decision-maker in the determination shall form and be retained by the Authority as the formal record of the dispute resolution process.

The issuance of the foregoing determination is the Authority's final decision of the dispute.

All interested parties (including the successful bidder, all rejected bidders and any other parties which CNYRTA in its sole discretion determines are interested parties) shall be notified of any protests that are filed.

CNYRTA shall refrain from awarding a contract within five (5) days of the date a decision is rendered by the Chief Executive Officer regarding a protest, unless CNYRTA determines that any one or more of the following criteria exist:

1. The items to be procured are urgently required;
2. Delivery or performance will be unduly delayed by the failure of CNYRTA to make a prompt award; or
3. Failure to make a prompt award will otherwise cause undue harm to CNYRTA or the Federal government.

Protester's Appeal to the FTA: In the event that CNYRTA fails to abide by the protest procedures set forth above, and Federal funds are being utilized in connection with the procurement, the protestor may seek a review by the FTA.

The FTA will only consider a protest if the CNYRTA:

1. Does Not have protest procedures; or
2. Has not complied with its protest procedures; or
3. Has not reviewed the protest when presented an opportunity to do so; or
4. There is a violation of Federal Law or regulations.

Protests shall be filed with the FTA Regional Administrator for the region administering the project no later than five (5) days after a final decision is rendered under CNYRTA's protest procedure. In instances where the protestor alleges that the grantee failed to make a final determination on the protest, protestors shall file a protest with FTA no later than five (5) days after the protestor knew or should have known of CNYRTA's failure to render a final determination on the protest.

Specific FTA filing procedures are set forth in FTA Circular 4220 (most recent version.) CNYRTA shall also provide all further information necessary to file a protest with the FTA.

Part II- General Procurement

2.1- Procurement Code of Conduct

The officers, employees, agents, and Board Members of the Central New York Regional Transportation Authority and its subsidiaries (individually and cumulatively referred to hereinafter as "CNYRTA") shall adhere to the following code of conduct governing their performance in connection with all aspects of the procurement process, including without limitation CNYRTA's use, awarding, monitoring and reporting of procurement contracts:

1. Consider the interests of CNYRTA first;
2. Give all bidders equal consideration and assurance of unbiased judgment in determining whether their proposed product(s) or service(s) meet the desired specifications;
3. Accord a prompt and courteous reception to all who call on legitimate CNYRTA business;
4. Never discriminate by dispensing special favors or privileges to anyone, whether or not for remuneration;
5. Never accept favors or benefits under circumstances, which might be construed by reasonable person as influencing the performance of CNYRTA duties.
6. Make no statements or private promises of any kind that another party might construe as being binding on CNYRTA and always made clear in your discussions that you have no individual authority to obligate CNYRTA in any way;
7. Engage in no business with Centro, either directly or indirectly, which is inconsistent with the conscientious performance of CNYRTA duties or in conflict with CNYRTA's written policies;
8. Maintain the confidentiality of all information that pertains to CNYRTA except to the extent you have been specifically authorized to make the information public or are required to do so by a court or regulatory authority with jurisdiction; and
9. Never use any information obtained confidentially in the performance of CNYRTA duties as a means for making private profit; and
10. While an employee, officer, agent, servant or Board Member of CNYRTA and for a period of one (1) year following such tenure, do not participate in or maintain, and assure that none of your immediate family members participates in or maintains, any interest, direct or indirect, in CNYRTA work, or in the selection, award, or administration of CNYRTA contracts, or the proceeds thereof except to the extent such interest has been fully disclosed to and approved by the Board. Such a conflict of interest is defined to be when any of the following has a financial or other interest in a firm that has submitted a bid or a proposal or has been selected for award of a contract:
 - a. The employee, officer, agent, or Board Member;
 - b. Any member of his/her immediate family,
 - c. His or her partner,
 - d. An organization that employs, or is about to employ, any of the above.

If you have a question about whether a conflict of interest exists, bring the situation to the attention of your supervisor.

11. The Authority's officers, employees, agents, or Board Members will not solicit, accept, or receive gifts, gratuities, favors, or anything of any monetary value, from contractors, potential contractors, or parties to sub agreements, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence or reward the recipient in the performance of his/her official duties or was intended as a reward for any official action on his/her part. The Authority's officers, employees, agents, and Board Members will not solicit, accept, or receive from contractors, potential contractors, parties to sub-agreements, or anyone else gifts, gratuities, or favors, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, promise, or in any other form having a wholesale monetary value: (i) greater than fifteen dollars (\$15.00) under any circumstances or (ii) equal to or less than fifteen dollars (\$15.00) under circumstances in which it could reasonably be inferred

that the gift was intended to influence or reward or influence the recipient in the performance of his/her official duties or was intended as a reward for any action pertaining to the Authority.

12. Violations: In addition to any penalty contained in any other provision of law any such commissioner, officer, or employee who knowingly and intentionally violates any of the provisions of this section may be subject to disciplinary action, suspended, or removed from office or employment in the manner provided by contract, law, or established employment policies.

Every CNYRTA officer, employee, agent, and Board Member involved in the award or administration of contracts shall be given a copy of these Written Standards of Conduct and will be required to sign a statement that they are familiar with, and will abide by, these standards.

2.2- Procurement Thresholds of Authorization

Delegation of Authority for Approval of Purchase Requisitions, Purchase Orders, Contracts, Contract Modifications, and/or Supplemental Agreements - The Board of Members has approved the following procurement authorization thresholds:

	Authorizing Personnel	Authorization Levels
	Board of Members	\$50,000+ or Multiyear Contract
	Executive Staff	
1	Chief Executive Officer	\$10,000+
2	Deputy Chief Executive Officer	\$10,000
	Maintenance	
4	VP of Fleet Maintenance & Facilities	\$7,500
5	Director of Fleet Maintenance	\$2,500
6	Inventory Control Manager	\$5,000
7	Storeroom Supervisor	\$2,500
8	Director of Facilities	\$5,000
9	Manager of Facilities	\$2,500
	Centro of Oneida	
11	Senior Director of Operations	\$5,000
12	Manager of Ops., Centro of Oneida	\$2,500
13	Manager of Maint., Centro of Oneida	\$2,500
	Other	
14	Senior VP Operations	\$5,000
14	VP of Finance	\$5,000
15	VP Business Dev & Corp Comm	\$5,000
16	VP of Human Resources	\$5,000
17	VP of IT	\$5,000
18	Senior Director of Operations	\$2,500
19	Manager of Subsidiary Operations	\$2,500

Approval of Purchase Requisitions: Purchase Requisitions are a request for material, supplies, equipment, or services that is submitted by a Department and approved by the appropriate authorizing personnel. Authority to approve requisitions over \$15,000 may only be approved by the Chief Executive Officer. All purchase requisitions must be submitted to the Procurement Department.

2.3- General Procurement Guidelines

CONTRACT ADMINISTRATION SYSTEM: CNYRTA maintains a Contract Administration System (Part 4) to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts, including purchase order contracts.

BOARD APPROVAL: The approval of the Board is required for all Procurement Contracts which are for the acquisition of goods or services in the **actual or estimated amount of \$50,000 or more and any contract involving services to be rendered over a period in excess of one (1) year.**

ENSURING MOST EFFICIENT AND ECONOMIC PURCHASE: All purchase requisitions shall be reviewed by Authorized Signatory, Director of Procurement, Senior Buyer, or Buyer to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach, as well as Federal/State funding constraints.

INTERGOVERNMENTAL PROCUREMENT AGREEMENTS: To foster greater economy and efficiency, the CNYRTA may enter into State and local intergovernmental agreements for the procurement or use of common goods and services. The requirements and standards of this document apply equally to procurements entered into under such agreements.

USE OF NY SOGS and GSA CONTRACT PRICES and EXCESS OR SURPLUS FEDERAL PROPERTY: If allowed, the CNYRTA may utilize either NYS Office of General Services (OGS) or the Federal General Services Administration (GSA) schedules for the procurement of particular goods and services. The NYS OGS, the Federal General Services Administration contract prices, and County contract prices are deemed competitive prices.

If allowed, contracts may be awarded based on the state, federal, or county contract price without additional competitive procedures. If the contract price available through the state, federal, or county price lists is lower than the lowest bid price after sealed bidding, formal bidding, or informal bidding, the bids shall be rejected and a contract awarded based upon the state, federal, or county contract price. If these sources are used, proper documentation shall be attached to the purchase order to ensure that an adequate and detailed procurement record exists.

If the Director of Procurement, Senior Buyer, or Buyer determines that the OGS Bid Contract price is not the lowest available, or if purchase under an OGS Bid Contract would result in an inordinate delay in delivery, then the regular bidding process provided in these Guidelines shall be used, and a contract awarded to the lowest responsive and responsible bidder.

If allowed the CNYRTA may use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is considered preferable and reduces project costs.

AWARDS TO RESPONSIBLE CONTRACTORS: The CNYRTA shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. In making a responsible contractor determination, consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. **Responsibility** differs from responsiveness in that responsibility generally applies to the offeror. Responsive applies to the bid submission and its conformance with the specifications or requirements of the solicitation document. See Parts 4-7 for detailed procedures for contractor selection.

WRITTEN RECORD OF PROCUREMENT HISTORY: A properly documented Procurement file should be a complete record of procurement actions and should fully support the successful contractor's bid price. It provides a complete background as a basis for informed decisions at each step in the acquisition process. A well-documented file also supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries. If the procurement action is the result of a contract amendment or exercise of an option, sufficient data should be included to fully support the basis for the price and procurement action.

CNYRTA shall maintain records detailing the history of all procurements. At a minimum, these records shall include the following: **Documentation Checklist for Formal Procurement Files: See Appendix 5.1.**

At a minimum, the Procurement File for micro and small purchases shall include the following documentation:

1. Purchase Requisition
2. Copies of any quotes received via fax, mail, or telephone
3. Statement that successful bidder's price is fair and reasonable
4. Copy of purchase order
5. Description of method used in determining that the successful bidder's price is fair and reasonable
6. Sole source justification, if applicable

USE OF TIME AND MATERIALS TYPE CONTRACTS: As required in FTA Circular 4220 (most current version), CNYRTA shall use time and material type contracts 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 risk.

SETTLEMENT OF CONTRACT ISSUES/DISPUTES: In accordance with good administrative practice and sound business judgment, CNYRTA will be responsible for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve CNYRTA of any contractual responsibility under its contracts.

Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

CONTRACT PERIOD OF PERFORMANCE: CNYRTA shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options.

All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. CNYRTA will be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification

INDEPENDENT COST ESTIMATES: CNYRTA shall perform an independent cost estimate for every procurement including contract modifications, *before* receiving bids or proposals. An independent cost estimate is an estimate of the proper price level or the value of the supplies or services to be purchased. This estimate can be used in determining the reasonableness of the actual price offered. For procurements using Federal funds, this cost estimate shall be the estimated cost contained in the most recent version of the local Transportation Improvement Program (TIP).

In some cases, obtaining cost estimates may be difficult or may lie outside the competence of agency personnel. In the case of construction projects, a design firm may already be under contract and may perform this service.

Equipment estimates can often 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 supplier.

Professional services often range widely in both price and quality. It may be worth obtaining a professional cost estimate by a firm not interested in the final procurement. In the case of facility design services, industry standards to estimate design as a percent of construction are available. Other transit authorities are also a valuable source of cost estimating information if they have undertaken similar projects.

CONTRACT COST AND PRICE ANALYSIS: A cost or price analysis is a determination that the cost or price offered by a contractor is reasonable, given current market conditions. The purpose of cost or price analysis is to ensure that CNYRTA does not pay unreasonably high prices. A cost or price analysis must be performed in connection with every procurement, including contract modifications. The method and degree of analysis is dependent on facts surrounding the particular procurement situation. Prices that are unreasonably low can also be detrimental to good procurement if they prove to be an indication that the offeror has made a mistake or misunderstood the work to be performed. All procurement files shall contain minimum documentation that the offered price is fair and reasonable.

Cost Analysis: A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost of the services offered (e.g., under professional consulting and architectural and engineering services contracts). The cost analysis must verify the proposed cost data, the projections of the data, and must evaluate each specific element of costs and profit. The cost analysis shall include an evaluation of labor and other direct costs, overhead rates, G&A rates, and the profit factor.

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

Price Analysis: A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price. CNYRTA will determine which of the following price analysis techniques is appropriate for each procurement:

1. Comparison of proposed prices received in response to the solicitation,
2. Comparison of all prices received for recent (within last 12 months) prior procurement actions for the same or similar items. Prior price comparison may be affected by:
 - a. Changes in economic conditions between the times of the two procurements,
 - b. Differences in quantities, and
 - c. Inclusion of non-recurring cost in the prices. To make a fair comparison, nonrecurring costs can be removed from both prices;
3. Comparison with competitive published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements, and
4. Comparison of proposed prices with the cost estimates performed prior to the solicitation, although this alone is seldom adequate to warrant a determination that the price is reasonable.

Cost analysis differs from price analysis in that it focuses on the reasonableness of the *estimated costs of performance*, *not on the reasonableness of the price*. Cost analysis entails reviewing each element of cost (e.g., labor, overhead rates, and a profit factor) to determine whether the offeror's estimate contains an accurate and reasonable prediction of the cost incurred during performance. The contract price is figured by adding a rate of profit that is determined to be fair. All reasonable costs of performance can be considered. Price analysis involves examining and evaluating a

proposed price without evaluating its separate cost and profit elements. Price analysis is based essentially on data from the offeror that can be independently verified.

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

Federal Cost Principles: Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with Federal Cost Principles. CNYRTA shall use Federal Cost Principles to determine allowable costs for all Federally-funded cost-reimbursement type contracts.

Cost Plus Percentage of Cost: The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used by CNYRTA.

PROCUREMENTS WITH STATE AND FEDERAL FUNDS: In all cases where procurements are made by CNYRTA with state and/or Federal funds and are conditioned upon, or subject to, laws or regulations for purchasing, CNYRTA shall observe such laws and/or regulations. This shall apply to all matters, including bidding, advertising for bids, reviewing bids, awarding Contracts, monitoring awarded Contracts and reporting awarded Contracts.

Federal regulations permit grant applicants, such as CNYRTA, to incur project costs before receiving formal approval or grant awards. It is the practice of CNYRTA not to incur costs or entertain the award of contracts for capital projects to be funded in whole or in part with Federal aid unless Federal aid supporting the projects is dedicated in an adopted Federal budget as a formula appropriation to CNYRTA or as an earmarked appropriation to CNYRTA.

FULL AND OPEN COMPETITION: All procurement transactions above the micro-purchase level, as defined in P1-4 of this manual, will be conducted in a manner that provides maximum open and free competition. The following are considered to be restrictive of competition and may not be used in any solicitation:

1. Excessive Qualifications: Imposing unreasonable business requirements for bidders or offerors.
2. Unnecessary Experience: Imposing unnecessary experience requirements for bidders and offerors
3. Improper Prequalification: Using prequalification procedures that conflict with the prequalification standards described in Section II.16.
4. Brand Name Only: Specifying only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered. Brand names are among the most restrictive types of specification;
5. Restraint of Trade: Non-competitive practices between firms or affiliated companies;
6. Retainer Contract: Noncompetitive awards to any person or firm on retainer contract if that award is not for the property or services specified for delivery under the retainer contract.
7. Organizational Conflicts of Interest: An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
8. Arbitrary Action: Taking any arbitrary in the procurement process, such as awarding to other than the most favorable contractor is prohibited by CNYRTA;
9. Excessive Bonding: Imposing unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
10. Improper Sole Source: Negotiation without proper justification.

GEOGRAPHIC PREFERENCES: CNYRTA shall not use statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This requirement does not preempt State-licensing laws.

Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

PREQUALIFICATION CRITERIA: CNYRTA does not currently pre-qualify products or persons prior to solicitation. However, in the event that pre-qualification becomes necessary in the future, CNYRTA will ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring goods and services are current and include no less than three (3) sources to ensure maximum full and open competition. As such, pre-qualification lists must obtain a date as to when the list was last updated and a signature of the person who updated it. CNYRTA will not use pre-qualification lists that are over one (1) year in age and do not contain at least three persons, firms, or products. Also, the CNYRTA will not preclude potential bidders from qualifying during the solicitation period. This period is defined as the period from issuance of the solicitation to its closing date.

WRITTEN PROCUREMENT SELECTION PROCEDURES: The CNYRTA shall use written selection procedures for procurement transactions as follows: Solicitations shall include a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

FAILURE TO RESPOND TO BID SOLICITATION: A potential bidder may be removed from a list of prospective bidders by the Director of Procurement, or designee, if the potential bidder fails to respond to a bid solicitation for similar goods or services on three (3) consecutive occasions.

REQUESTS FOR DEVIATIONS FROM SPECIFICATIONS: Specifications for goods and/or services shall be written clearly and concisely to minimize ambiguity and to ensure that CNYRTA receives the goods and/or services that are ideally suited for its needs. Where appropriate, provisions should be made in the specifications to allow bidders to seek deviations from the specifications. The purchaser and user should consider all such requests and approve those requests that enhance flexibility in bidding without sacrificing the quality or integrity of the goods and/or services being procured.

All requests for deviations that are submitted, accompanied by CNYRTA responses, shall be shared with all potential bidders. Such documentation shall be provided to all bidders prior to bid opening.

The following clause is recommended for use in all specifications for goods:

"The specifications released herewith represent the _____ which CNYRTA feels are ideally suited for its operations; however, CNYRTA will consider requests for deviations and requests for "approved equals" to the specifications. CNYRTA will accept such requests in writing up until _____."

All requested deviations from these specifications will be responded to, in writing, in one of the following manners:

1. Approved as an equal
2. Rejected

CNYRTA will respond in writing to all requests no later than five (5) calendar days prior to bid opening. All requests, and CNYRTA responses thereto, will be furnished to all prospective bidders and become addenda to these specifications.

WRITTEN ADDENDA: CNYRTA reserves the right to issue clarifying information regarding the content of a procurement document should the Authority, in its sole judgment, determine it is necessary to do so.

If a request for interpretation, approved equal or clarification of specifications are submitted to the Designated Contact in writing regarding an IFB or RFP Document, the purchaser shall proceed in accordance with one or more of the following actions:

1. Requests for interpretations, approved equals, clarification of Specifications shall be made only in writing. Such requests must be received by the CNYRTA no later than fifteen (15) days prior to the date scheduled for Bid opening. No such request received by the CNYRTA less than Fifteen (15) days prior to the date scheduled for Bid opening will be considered without the prior written authorization of the CNYRTA Chief Executive Officer or his authorized representative.
2. Any request for an approved equal or protest of the Specifications must be submitted on a copy of the form, if provided, fully supported with, if applicable, technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the Specifications requirement.
3. CNYRTA's reply to such request(s) will be in the form of an Addenda and, where possible, sent TEN (10) DAYS prior to the scheduled Bid opening. Such addenda, if issued, will be e-mailed to each prospective Proposing Contractor and shall become part of the contract. All Proposing Contractors shall be bound by such Addenda whether or not received by them. Addenda will be on file in the procurement offices of the CNYRTA.

WRITTEN PROTEST PROCEDURES: The CNYRTA shall include written protest procedures in its solicitations to handle and resolve disputes relating to their procurements. The Authority shall disclose information regarding all protests to FTA. All protest decisions must be in writing. It is understood that reviews of protests by FTA will be limited to CNYRTA's failure to review a complaint or protest (Per 4220.1), failure to comply with the Protest Procedures set forth in these Procurement Guidelines or violations of the Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

OPTIONS: An option is a unilateral right in a contract by which, for a specified time, CNYRTA may elect to purchase additional equipment, supplies, or services called for by the original contract, or may elect to extend the term of the original contract. If CNYRTA elects to use options, the following requirements apply:

1. **Evaluation of Options:** The option quantities or periods contained in the contractor's bid or offer must be evaluated to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards)
2. **Exercise of Options:** The exercise of an option must be in accordance with the terms and conditions of the option stated in the initial contract awarded. An option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised. The option price must be determined to be fair and reasonable, and a written justification of this determination must be included in the procurement file.

DISADVANTAGED BUSINESS ENTERPRISES, MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES AND SERVICE DISABLED VETERAN OWNED BUSINESSES: It is the desire of CNYRTA to promote and assist participation by DBEs, M/WBEs, and SDVOBs and to facilitate a fair share of the awarding of contracts thereto.

The CNYRTA will follow Article 15A of Executive Law and Parts 140-145 of the regulations of the Commissioner of the Department of Economic Development – and place the 30% mandated utilization goal on all State funded procurements. (M/WBE)

The CNYRTA will follow NYS, Article 17B, Chapter 22 of NYS Executive Law and Parts 252 of the regulations for the Participation by Service-Disabled Veterans with Respect to State Contracts – and place the 6% mandated utilization goal on all State funded procurements.

The Director of Procurement shall maintain a list of DBE, M/WBE, and SDVOB entities certified to perform public work, supply items for purchase contracts, or perform personal or professional services of a kind and nature that may be needed by the Authority. The Procurement Department shall be responsible for referencing such lists prior to the publication of a notice of procurement opportunity or informal solicitation to determine the availability of certified DBE, M/WBE, and SDVOB entities.

The CNYRTA will, on a routine basis, notify all vendors, contractors, consultants, or other firms with which it does business, that it will affirmatively ensure that DBEs, M/WBEs, and SDVOBs will be afforded full opportunity to submit bids, quotes, or proposals in response to CNYRTA solicitations. CNYRTA will comply with all applicable equal opportunity laws and regulations.

PAYMENTS:

Advance Payments: CNYRTA shall not participate in advance payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. CNYRTA contracts shall not contain advance payment provisions, unless prior written concurrence is obtained from FTA.

Progress Payments: Progress payments may be used, provided the following requirements are followed:

1. Progress payments are made only to the contractor for costs incurred (as opposed to percent of completion) in the performance of the contract, and
2. When progress payments are used, CNYRTA must obtain adequate security (materials, work in progress, and finished goods) for which progress payments are made. Adequate security for progress payments may include taking title, irrevocable letter of credit or equivalent means to protect CNYRTA's interests in the progress payments.
3. Percent of Completion payments are used by CNYRTA in its professional services and large construction contracts.

Final Payment: Final payment is made to the contractor when it has satisfied all the deliverable requirements called for by all provisions of the contract, including submission of all required documentation. Final payment signifies that the performance obligations of both parties to the contract have been satisfied. Before making a final payment, the Contract Administrator or Purchaser shall obtain a signed release from the contractor releasing the Authority from any further claims by the contractor. The Contract Administrator/Purchaser shall also obtain a signed receiving and inspection report from the department head certifying that all deliverable items have been received, inspected, and accepted as being in conformance with the contract specifications.

EMERGENCY PROCUREMENTS: From time to time, emergency situations may arise which require that a procurement be made without following normal purchasing procedures. Emergency situations should be restricted to those times when delay in completing the procurement could result in jeopardy to persons or property. In addition, the situation leading to the emergency should be one that could not be normally anticipated. If an emergency situation occurs, it must be documented, and this documentation must be attached to the purchase order or placed in the procurement file. The procurement must be approved by the Chief Executive Officer.

Emergency procurements shall, to the extent that time permits, follow regular procurement guidelines concerning the solicitation of quotes and the approval of the procurements. Emergency procurements of goods and/or services costing \$10,000 or more must be authorized by the Chief Executive Officer of CNYRTA. A written memorandum justifying the emergency nature of the procurement shall be maintained in the procurement file. In all cases of emergency purchases, solicitations should be requested from as many potential sources as is practicable under the circumstance, if soliciting from only one source a sole source justification in writing must accompany the procurement documentation and prepare a cost /price analysis.

PROFESSIONAL SERVICES CONTRACTS: The following guidelines apply to the procurement of consulting or professional services such as legal, audit, planning, testing, accounting, architectural, engineering or surveying services, except to the extent that the procurement of such services are governed by State or Federal regulations.

Responsibility: The Chief Executive Officer of CNYRTA and/or his designee shall have the responsibility for overseeing the awarding and monitoring of Professional Services Contracts. Professional Services Contractors shall be utilized by CNYRTA for those areas in which the Board determines such services may not be reasonably provided by the staff of CNYRTA or its subsidiary corporations or by the officers or employees of another state agency or public corporation.

Requirements Regarding the Selection of Professional Services Contractors: To the maximum extent feasible, the selection of Professional Services Contractors shall be on a competitive basis, except that the Board may waive competition by resolution if it is in the best interest of CNYRTA for the Board to do so. The determination to waive competition in a particular case may be based upon any of the following criteria, but is in no way limited thereto:

1. Specialized or unique skills, expertise, knowledge, qualification or experience are available from one source only;
2. Specialized facilities or equipment are available from only one source;
3. A contractor has geographical proximity to CNYRTA and such proximity is a material consideration in the award of a contract;
4. There is a lack of responsible competition, in the sole opinion of CNYRTA, among contractors capable of performing the desired services;
5. Selecting a contractor on a competitive basis would discourage innovative methods or technologies because, by way of example and not of limitation, a contractor has proprietary data, trade secret information or the like; or
6. Selection without competition is otherwise necessary to the operations of CNYRTA or any of its subsidiary corporations.

Any Professional Services Contracts involving services to be rendered over a period in excess of one (1) year shall require (1) the approval of the CNYRTA Board by Resolution and (2) an annual review of the Contract by the Board.

The procedures for competitive negotiation outlined in these Procurement Guidelines shall be followed in the selection of Professional Service Contractors.

Professional Services Contracts with Former Officers or Employees of CNYRTA: Professional Services Contracts shall not be awarded to former officers or employees of CNYRTA within two (2) years of their termination as an officer or employee of CNYRTA. This prohibition does not apply if:

1. Clear evidence exists that such a contract is in the best interest of, and is fair to, CNYRTA, and complies with Section 2879 of the *New York Public Authorities Law*, and
2. The CNYRTA Board adopts a resolution authorizing such a contract.

Annual Report: Within ninety (90) days of the end of its fiscal year, CNYRTA shall prepare, and the Board shall approve, a report on Professional Services Contracts, which shall include:

1. A copy of the CNYRTA Procurement Guidelines;

2. An annual report on procurement contracts as required by section 2879(7) of the Public Authorities Law
3. An annual report on procurement contracts as required by section 2879(6) of the Public Authorities Law

Such report may be a part of any other annual report that CNYRTA is required to make. The annual report shall be filed with the New York State Division of the Budget, with copies filed with the New York State Department of Audit and Control, the New York State Senate Finance Committee, the New York State Assembly Ways and Means Committee and the Department of Economic Development.

Public Access: CNYRTA shall make available to the public copies of its annual Public Authorities Law reports upon reasonable request thereof and in compliance with the CNYRTA Freedom of Information Law procedures.

CONSTRUCTION CONTRACTS: Every construction contract should include a "Changes" clause giving the grantee the unilateral right to order changes in the contract work during the course of performance, and the Contractor the duty to proceed with the work as changed upon receipt of the change order, assuming that the change is within the scope of the contract. The "Changes" clause must contain language deferring the pricing of the changed work until some later time, while obligating the Contractor to proceed with the work and resolve the issue of compensation later. Failure to reach an agreement on compensation would be a dispute to be processed according to the procedures of the *Disputes* clause of the contract.

BONDING REQUIREMENTS:

Bid and Performance Bonds: To insure the adequate and expeditious provision of goods, equipment and/or services procured by CNYRTA, bid or performance bonds may be required where appropriate, or as stipulated by state or Federal law. Final payment, however, will be withheld from a vendor until the department head requesting the procurement certifies as to the successful and total completion of the goods, equipment and/or services procured.

1. Bid Guarantee

- a. All construction contracts **equal to or in excess of \$100,000** shall require bid security equal to five percent (5%) of the bid price. The Bid Guarantee shall consist of a firm commitment that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time period specified. Bid guarantee may be in the form of a bid bond, certified check or other guaranteed negotiable instrument, or letter of credit in a form acceptable to CNYRTA.
- b. The bid security of the successful bidder will be retained until execution of the Contract. Bid security of the unsuccessful bidders will be returned upon execution of the Contract with the successful bidder, but in no event in excess of 60 calendar days after the bid date.
- c. In the event of neglect or refusal on the part of the successful bidder to execute the Contract and furnish the performance security and evidence of insurances within ten (10) days after written notification of the award of the Contract, the entire bid security shall be forfeited to and retained by CNYRTA as liquidated damages for such neglect or refusal.

2. Performance Bond

- a. All construction contracts in **excess of \$100,000** shall require a performance bond or certified check or other guaranteed negotiable instrument or letter of credit for 100 percent (100 %) of the contract price in a form acceptable to CNYRTA guaranteeing the contractor's faithful performance of all terms under such contract.
- b. Performance security is not mandated for product contracts.
- c. In instances where a performance bond is offered, the bond shall be in the amount of the Contract and issued by a duly incorporated entity authorized to guarantee the faithful performance of Contracts and to do business in the State of New York as a surety.

3. Letter of Credit

- a. A letter of credit used as bid or performance security must:
 - i. be an irrevocable letter of credit issued by a bank or financial institution of B-rating or better,

- ii. be signed by an authorized representative of the issuing institution,
- iii. name CNYRTA as beneficiary, and
- iv. Be in a form otherwise acceptable to CNYRTA. The letter of credit must state that an amount representing at least ten percent (10%) of the bid price is available to be drawn on, unconditionally, by CNYRTA under the expressed terms and conditions. These terms and conditions, including the location at which CNYRTA can draw the funds, an effective date and an expiration date, should be clearly stated in the letter of credit.

4. Labor and Material Payment Bonds

- a. All construction contracts, regardless of amount, shall require labor and material payment bonds. Payment bonds are executed in connection with contracts to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Minimum payment bond amounts required from contractors are as follows:
 - i. 50% of contract price, for contracts of \$1 million or less;
 - ii. 40% of the contract price if the contract price is more than \$1 million, but less than \$5 million,
 - iii. \$2.5 million if the contract price is more than \$5 million.

5. Maintenance Bonds

- a. All construction (Public Work) contracts, in excess of \$25,000 shall require, at a minimum, a one (1) year maintenance bond, which period shall commence as of the date of final acceptance. The maintenance bond shall be in the full amount of the Contract.

6. Waiver

- a. Bid and maintenance bond requirements may be waived prior to the bid date by the Chief Executive Officer or his designee for cause. In instances where such bonds are not required, payment shall be withheld until full and complete performance has been accomplished under the terms of the contract.
- b. Performance and security and labor and material payment bonds may be waived by the Chief Executive Officer or his designee, prior to the bid date, in accordance with State Finance Law 3 137(1), provided that the aggregate amount of the Contract is under \$15,000 and that CNYRTA retains twenty percent (20%) from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the Chief Executive Officer or his designee may authorize, pending the payment of the final estimate, the release of up to seventy-five percent (75 %) of the retained percentage.

INSURANCE: Each Contractor/Vendor shall maintain the following kinds and limits of insurance as imposed by law or the contract upon him with respect to all work and operations performed under the contract by the Contractor/Vendor and each of their subcontractors. Additionally, CNYRTA will request its Insurance Consultant to review insurance limits on a contract-by-contract basis.

During the Contract Period, the Successful Bidder shall maintain insurance at its own expense for itself and any other person or entity acting for or on its behalf with respect to the Performance. All required coverage shall be written through insurance carriers licensed to do business in the State of New York and shall be amended to provide sixty (60) days prior written notice of cancellation, non-renewal or reduction in coverage to the CNYRTA and to eliminate the insurance carriers' rights of subrogation as they pertain to the CNYRTA.

All liability insurance policies secured and maintained by the Successful Bidder shall include the CNYRTA, its related entities and its Directors, Officers, Agents, Employees, guests and invitees as additionally named insureds.¹ All insurance policies must state that the coverage is primary insurance protection on behalf of the CNYRTA, and at no time

¹ See Footnote 2 for the CNYRTA's related entities which must be identified as additionally named insureds.

may any liability insurance policy eliminate or reduce the coverage provided to the CNYRTA, expressly including in the event of a breach by the Successful Bidder, its agents, employees, officers, directors and/or subcontractors to comply with the terms, provisions and conditions of such liability insurance policies.

For any liability coverage provided on a claims-made basis, the policy date or retroactive date shall predate this contract. Termination of a claims-made policy or applicable reporting period shall be no earlier than five (5) years after the actual date on which Performance is completed and accepted by the CNYRTA.

Certificates of insurance must be filed with the CNYRTA by sending or delivering them to the CNYRTA, Attention: Procurement, 200 Cortland Ave., PO Box 820, Syracuse, NY 13205-0820. All certificates must contain specific language adequately demonstrating compliance with all insurance requirements. The Bidder agrees to provide the CNYRTA with physical certified copies of required insurance policies.

Worker's Compensation, Employers Liability, and Disability Insurance: By submitting a Bid, the Successful Bidder agrees that it will secure Worker's Compensation Insurance and keep it in effect during the life of a contract awarded under this IFB for the benefit of such employees as are required to be insured by the provisions of the New York State Worker's Compensation Law, and also by the provisions of Article 9 of the Worker's Compensation Law known as the Disability Benefits Law. The Successful Bidder further agrees that any contract awarded hereunder shall be void and of no effect unless it complies with this provision.

Comprehensive General Liability Insurance: By submitting a Bid, the Successful Bidder Agrees that it will secure Comprehensive General Liability Insurance and keep it in effect during the life of a contract awarded under this IFB, and that such Insurance shall, at a minimum, include the following coverage:

- a. Premises-Operations;
- b. Products/Completed Operations (to be kept in force for a minimum of two years from the date performance is completed);
- c. Contractual;
- d. Broad Form Property Damage;
- e. Independent Contractor; and
- f. Advertising and Personal Injury Liability.

Each policy shall have Bodily Injury and Property Damage limits of not less than:

- a. \$1,000,000 per occurrence;
- b. \$2,000,000 Products/Completed Operations Aggregate;
- c. \$1,000,000 Personal & Advertising Injury Aggregate; and
- d. \$2,000,000 General Aggregate.

Comprehensive Automobile Liability Insurance: The Successful Bidder must maintain Comprehensive Automobile Liability Insurance including coverage for owned, non-owned or hired automobiles with limits not less than \$1,000,000 per accident for bodily injury or property damage.

Excess (Umbrella) Liability Insurance: The Successful Bidder must maintain Excess (Umbrella) Liability coverage providing Bodily Injury and Property Damage Liability coverage with a limit not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

THE CNYRTA RESERVES THE RIGHT TO AMEND INSURANCE REQUIREMENTS AS IT MAY DEEM NECESSARY OR APPROPRAITE AT ANY TIME AND IN ITS SOLE DISCRETION.

PROMPT PAYMENT PROCEDURES: In accordance with Section 2880 of the New York Public Authorities Law, CNYRTA has developed the following rules and regulations detailing its prompt payment policy:

Requesting a Payment: The Contractor may submit an invoice for goods and/or services only after properly completing an appropriately executed Purchase Order and providing the goods and/ services contracted for.

A proper invoice submitted by the Contractor shall be required to initiate any payment, except where the Contract provides that the Contractor will be paid at predetermined intervals.

Schedule for Making a Payment: CNYRTA will make payment on the properly submitted invoice within thirty (30) days of receipt of a complete and proper invoice.

Interest will be paid when prompt payment is not made; interest will accrue to the Contractor at the same rate as the rate CNYRTA is receiving on its invest able funds. Interest will be paid from the mortgage tax revenues received by CNYRTA on a monthly basis.

Conditions Which Justify an Extension of the Payment Date: In the opinion of CNYRTA, the following conditions may reasonably justify extension of the date by which Contract payment must be made:

1. When, in accordance with specific statutory or Contractual provisions, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a Contractor in fulfilling the terms of the Contract;
2. When the necessary governmental appropriation required authorizing payment has yet to be enacted;
3. When the invoice must be examined by the federal or state government prior to payment; or
4. When the date by which the Contract payment must be made is modified in accordance with the following section.

CNYRTA shall have fifteen (15) calendar days after receipt of an invoice at its designated payment office to notify the Contractor of:

1. Defects in the delivered goods or services;
2. Defects in the invoice; or
3. Suspected improprieties of any kind, and the existence of such defects or improprieties shall prevent the commencement of the time period for computing interest.

In the event CNYRTA fails to notify a Contractor of such defects within fifteen (15) calendar days of receiving the invoice, the number of days allowed for payment of a properly corrected invoice will be reduced by the number of days between the fifteenth (15th) day and the day that notification of said defect was actually transmitted to the Contractor. If CNYRTA, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which the Contract payment must be made in order for CNYRTA not to become liable for interest payments shall be calculated from the date of receipt of an invoice.

Inapplicability: These procedures shall not apply to payments due and owing by CNYRTA:

1. Under New York's Eminent Domain Procedure Law;
2. As interest allowed on judgments rendered by a court pursuant to any provision of law other than those contained in this procedure;
3. To the Federal government, to any state agency or its instrumentalities, to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities, to any other public authority or public benefit corporation, or to any employees of the foregoing when acting in, or incidental to, their public employment capacity; and
4. In situations where CNYRTA exercises a legally authorized set-off against all or part of the payment due the Contractor.

BUY AMERICA REQUIREMENTS: CNYRTA is a grantee of the FTA. As a recipient of FTA funds, CNYRTA is required to comply with the Buy America requirements specified in 49 CFR Part 661, which state that, except in certain enumerated situations, no funds may be obligated by the FTA for a grantee project unless all iron, steel and/or manufactured items used in the project are produced in the United States. The "Buy America" requirements apply to Construction Contracts and Acquisition of Goods or Rolling Stock. Currently, there is no dollar threshold in the FTA regulations, thus "Buy America" provisions apply to all contracts, both operating and capital, regardless of the dollar amount involving Federal funds. However, FTA has established a general waiver for inclusion of this provision in small purchase procurements (defined by Federal Regulations as less than \$100,000), so actual applicability for this clause is for contracts greater than \$100,000.

The "Buy America" requirements state that:

1. CNYRTA shall adhere to the "Buy America" clause set forth in its grant contract with the FTA.
2. CNYRTA shall include in its bid specification for procurement an appropriate notice of the "Buy America" provisions; such specifications to require, as a condition of responsiveness, that the bidder submit with its bid a completed "Buy America" certificate.
3. Whether or not a bidder certifies that it will comply with the applicable requirement, such bidder is bound by its original certification and is not permitted to change its certification after bid opening. A bidder that certifies that it will comply with the applicable "Buy America" requirements is not eligible for a waiver of those requirements.

The following statement is contained in CNYRTA's grant contracts with FTA:

"Sections 165(a) and (b) of the Surface Transportation Assistance Act of 1982, as amended, require that Federal funds shall not be appropriated or utilized for any contract awarded unless all iron, steel and manufactured products used in FTA-funded projects are produced in the United States; however, these general requirements may be waived by the Administrator of the FTA or his/her designee if the Administrator finds:

1. That the application of such general requirements would be inconsistent with the public interest;
2. That the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
3. That the inclusion of a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than twenty-five percent (25 %). The Administrator will grant this "price differential" waiver if the amount of the lowest responsive and responsible bid offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid offering the item or material produced in the United States; or
4. With regard to the procurement of buses and other rolling stock (including train control, communication and traction power equipment) under the Urban Mass transportation Act of 1964, that (1) the cost of components produced in the United States is more than sixty percent (60%) of the cost of all components, and (2) **final** assembly takes place in the United States.

A Certificate of Compliance with Section 165(a), whereby the bidder certifies compliance with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations contained in 49 C.F.R. Part 661, shall be completed for all federally-assisted procurements of steel, iron, or manufactured products. A Certificate of Compliance with Section 165(b)(3), whereby the bidder certifies compliance with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations contained in 49 C.F.R. Part 661, shall be completed for all federally-assisted procurements of buses, other rolling stock and associated equipment."

LIQUIDATED DAMAGES: When liquidated damages are included as a potential remedy in any solicitation there must be a reasonable expectation that damages will be suffered through a delay in the contract completion. The method of assessment

for damages will be established within the solicitation, along with the calculation and rationale to be used in establishing damages. For Federally funded contracts, any damages recovered must be credited to the project involved unless FTA permits otherwise.

CONSTRUCTION PROJECTS – DESIGN-BID-BUILD METHOD: Procurement method for construction projects requiring separate contracts for design services and for construction services.

Design Services: For design services, CNYRTA must use qualifications-based procurement procedures in compliance with applicable Federal and State law and regulation.

Construction: Depending on the estimated dollar value of the construction contract, CNYRTA must use either the sealed bid method of procurement or small purchase procedures to procure construction services

CONSTRUCTION PROJECTS-DESIGN BUILD METHOD: Procurement method consisting of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction.

Procurement Method Determined by Value: Because both design and construction are included in a single procurement, CNYRTA must use the procurement method appropriate for the services having the greatest cost for the entire procurement, even though other necessary services would not typically be procured by that method. If construction costs are predominant then CNYRTA must use the sealed bid method of procurement to select the contractor. If design costs are predominant then CNYRTA must use qualifications-based procurement procedures to select the contractor.

Selection Processes: CNYRTA may structure the design-build procurement using a single step or two-step method.

REVENUE CONTRACTS: A contract in which the CNYRTA or sub recipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities with the use of FTA assisted property. The recipient has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the CNYRTA should conduct its revenue contracting as follows:

1. **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 CNYRTA should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
2. **Open Contract Opportunities:** If one party seeks access to a public transportation asset, and the CNYRTA is willing and able to provide contracts or licenses to other parties similarly situated, then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

PIGGYBACKING: Within the conditions set forth below, FTA permits the CNYRTA to use existing contract rights held by another recipient commonly called “piggybacking”:

Exercise of Options: The CNYRTA may use contract options held by another recipient with the following limitations:

1. **Consistency with the Underlying Contract:** FTA expects the CNYRTA to ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
2. **Price:** The CNYRTA may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.
3. **Awards Treated as Sole Source Procurements.** The following actions constitute sole source awards:

- a. Failure to Evaluate Options Before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
- b. Negotiating a Lower Option Price. Exercising an option after the recipient has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.

In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third-party contract standards for sole source awards.

Acquisition Through Assigned Contract Rights: Although FTA does not encourage the practice, the CNYRTA may find it useful to acquire contract rights through assignment by another recipient. A recipient that obtains contractual rights through assignment may use them after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. See, FTA's "Best Practices Procurement Manual" for further information about procurements through assignment of another's contract rights. The recipient using assigned contract rights is responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. For further details, please refer to FTA's Pre-Award and Post-Delivery Handbooks for buses and rail cars, which contain copies of those certifications. The recipient seeking to use assigned contract rights will not usually be able to determine whether the assigning recipient originally procured unreasonably large quantities. Before proceeding with the assignment, however, FTA does expect the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract.

VIOLATION OR BREACH OF CONTRACT REMEDIES: Third-party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor.

TERMINATION: Termination for cause and termination for convenience provisions must be included in contracts exceeding \$10,000.

CHANGE ORDER PROCEDURE: Change Order means an order authorized by the CNYRTA directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor ("change orders" must be within the scope of the original competition). All Change Orders must include the following:

1. Signed approval of the project manager.
2. The Procurement Department must receive a requisition for the Change Order with the proper approval authorizations and must have an Independent Cost Estimate (ICE) attached.
 - a. ICE must support the price provided.
3. Must have a cost or price analysis performed to determine that the change price is fair and reasonable.
4. The contract must be evaluated to determine if the change in contract amount has raised the total contract threshold so that additional clauses or certifications are required (i.e., Buy America, Lobbying, etc.)
 - a. Any change order greater than \$50,000 must be approved or ratified by the CNYRTA Board of Members.
5. In all cases Federal Transit Administration circular 4220 (most current version) Third Party Contracting Guidelines must be followed. The Best Practices Procurement Manual (http://www.fta.dot.gov/grants/13054_6037.html) can be referenced for additional information.

Cardinal Change Order: A contract change which is outside the scope of the original contract, and thus not within the authority of the changes clause. Such changes are "sole source procurements" and must be processed accordingly.

Part III- DETAILED PROCUREMENT GUIDELINES

3.1- Detailed Procurement Guidelines

When a purchase is initiated by CNYRTA, it will fall into one of the following three procurement categories:

Micro-Purchases: purchases resulting in cost to CNYRTA under \$2,500.

Small Purchases: purchases resulting in cost to CNYRTA between \$2,500 and \$24,999.99 per year.

Large Purchases: purchases resulting in an aggregate cost to CNYRTA of \$25,000 or more per year.

1. Invitation for Bids
2. Request for Proposals
3. Procurement of Architectural and Engineering Services
4. Non-competitive Negotiation/Sole Source
5. Rolling Stock Procurements

Following are the steps that must be performed to correctly acquire goods and services on behalf of CNYRTA. All documents used in any procurement must be filed in the Procurement file. The Formal Procurement Binders should be labeled with the User Department name, name of the actual item or service procured, and the contract term. The CNYRTA Formal Procurement Checklist shall be first following the front cover of the binder. All applicable documents shall then be filed in the order they are listed on the Procurement Checklist. The responsibility for assuring that the file contains the required documents rests with the lead Purchaser/Designated Contact for the particular procurement.

CNYRTA reserves the right to determine the time frame concerning the solicitation and awarding of bids.

3.2- Informal Procurement Procedures

Informal procurement procedures are appropriate and applicable to those relatively simple and informal procurements of goods and/or services costing, in the aggregate, **less than \$25,000**. Purchases of this amount are exempt from Buy America Requirements. Following is a summary of CNYRTA micro and small procurement procedures:

For all procurements of goods and/or services costing less than \$25,000, the following procedures must be followed:

1. The department requesting the purchase shall prepare an **independent cost estimate** (approximate cost) for the desired item or service.
2. The requesting department shall develop **written specifications** for use in the solicitation of quotations. The nature and extent of items and/or services requested should be limited to only that deemed necessary to meet the needs of the user department.
3. The requesting department shall prepare and submit a **purchase requisition** to the Procurement Department for review and processing. The independent cost estimate shall be attached to the requisition with appropriate levels of approval, proper account number and suggested vendors.
 - i. Non- Bus Parts: Requisition must be submitted in the electronic requisitioning system.
 - ii. Bus Parts: Requisition is in the format of the Below Re-order Point Report. The stockroom personnel run the report on a daily basis and submit to the Procurement Department for purchase. All documentation to support bus part purchases is noted on the Entry Update Register Report.
4. A determination that the price is fair and reasonable and how this determination was derived must accompany the requisition or be present in the procurement file; completed by the Procurement Department.
 - i. Documentation of quotations shall accompany the requisition or be present in the procurement file, when applicable.

CNYRTA procurement files contain vendor lists that are compiled and maintained by the Procurement Department. These lists include interested vendors, who request to be placed on the lists, as well as M/WBE, SDVOB and DBE-certified vendors and former vendors supplying goods and/or services to the CNYRTA. These lists are to be used when obtaining quotations for this type of procurement. Whenever possible, CNYRTA seeks to award contracts for goods/services with M/WBE, SDVOB and DBE-certified vendors.

Procurement by Micro-Purchase: <\$2,500: Procurements of goods and/or services costing less than \$2,500 do not require competitive quotations. When employing this type of procurement, the Procurement Department must ensure equitable distribution among qualified suppliers in the local area. Determination that the price is fair and reasonable, and how this determination was derived, must accompany the requisition or be present in the procurement file. For micro-purchases, a fair and reasonable price determination is made based on price analysis. NOTE: *The Davis-Bacon Act applies to federally funded construction contracts over \$2,000.*

Procurement by Small Purchase: >\$2,500 and >\$24,999: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, bus parts or other goods/services that cost more than \$2,500 but do not cost more than \$24,999.99. To assure reasonable competition these purchases require a minimum of 3 quotations. The Procurement Department shall make every effort to provide an opportunity for qualified vendors, including certified M/WBE, SDVOBs, and DBEs, to offer quotes for procurements. Solicitations may be limited to one source only if the Purchasing Department determines that only one source is reasonably available.

Any purchase >\$10,000 requires Chief Executive Officer Authorization. Depending on the project, it may be appropriate for the Chief Executive Officer to approve a purchase that is less than \$10,000. The Chief Executive Officer relies on staff to evaluate such need and proceed accordingly via communications and discussions before proceeding with such projects.

3.3- Formal Procurement Procedures

Pursuant to New York's Public Authorities Law and Article 4-C of the New York Economic Development Law, all procurements of **\$25,000 or more** require the selection of contractors on a formal, competitive basis, unless otherwise indicated in these Guidelines, and must be advertised in the *New York State Contract Reporter*. Advertisements may also be placed in local newspapers or trade publications as deemed appropriate by the Purchasing Department.

Procurements in this category fall into one of two types: Invitation for Bids (IFB) or Request for Proposals (RFP). Chief Executive Officer approval must be given in order to proceed with purchases greater \$25,000. Board approval is required prior to award for contracts in excess of \$50,000 and for services to be rendered over a period in excess of one year. Contracts for all formal procurements must contain *termination for cause* and *termination for convenience* provisions, as well as *breach of contract* provisions and *remedies for breach of contract*.

The CNYRTA will follow NYS Executive Order #8, Article 15A of NYS Executive Law and Parts 140-145 (most current version) of the regulations of the Commissioner of the Department of Economic Development – and place the 30% mandated utilization goal on all State funded procurements. If the goal cannot be achieved the Waiver Application process will be followed.

The CNYRTA will follow NYS, Article 17B, Chapter 22 of NYS Executive Law and Parts 252 (most current version) of the regulations for the Participation by Service-Disabled Veterans with Respect To State Contracts – and place the 6% mandated utilization goal on all State funded procurements. If the goal cannot be achieved the Waiver Application process will be followed.

INVITATION FOR BIDS (IFB): This method of procurement is the preferred method for acquisitions with an annual cost totaling **twenty-five thousand dollars (\$25,000) or more** when one or more of the following factors is present:

1. A complete, realistic, and exact specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business;
3. The procurement lends itself to a firm, fixed-price contract, and the selection of the successful bidder can be made on the basis of lowest price among responsive bids and responsible bidders;
4. No discussion with bidders is needed either before or after bid submission.

IFB Procedures: Sealed bids shall be publicly solicited and a firm, fixed-price contract (lump sum or unit price) shall be awarded to the bidder whose bid is (1) lowest in price and (2) conforms with all the material terms and conditions of the bid specifications, including a successful responsible bidder and responsive bid determination.

The following procedures must be followed in this type of procurement:

1. **Kickoff Meeting:** A meeting convened by the Procurement Department and attended by the Departmental Contract Administrator, Designated Contact, Selection Committee, Project Manager, and Executive which includes a dialogue of the Scope of Work for the contract, establishment of the procurement timeline, and general discussion.
2. **Determination of Funding Source and Grant Status – Purchase Requisition:** Purchasing Department shall review the Purchase Requisition with the appropriate personnel to determine the funding source for the procurement. The funding source GL account number shall be indicated on the Purchase Requisition. In instances where a procurement activity is to be financed in whole or part by either federal or New York State grants, the procurement activity will not be commenced until there is written confirmation from the Director of Grants and Revenue Contract Administration that grant funding is available.

The department or CNYRTA subsidiary corporation requesting the purchase shall prepare an *independent cost estimate* (approximate cost) of the desired item or service. The cost estimate ensures a clear basis for CNYRTA determination that the benefits of the procurement warrant its cost. The cost estimate also provides a basis for price analysis prior to contract award to assure reasonableness of prices received in the procurement process.

The independent cost estimate may be presented in the following formats:

- a. An estimate included in the purchase requisition;
- b. The estimate included in the local Transportation Improvement Program;
- c. An independent estimate prepared by a professional services consultant retained by CNYRTA to prepare the specifications.

The cost estimate must be included in the Procurement File as part of the procurement history.

The department requesting the procurement shall prepare a Purchase Requisition with the appropriate authorization and submit it to the Purchasing Department for review at least 6 months prior to date of Board approval for standard goods/services and non-standard goods/services. This form shall include a written statement containing, at a minimum, a description of the services required, the reason(s) such services are required, and the required or estimated schedule or duration of the services.

All Purchase Requisitions >\$10,000 must have the Chief Executive Officer signature of authorization. The independent cost estimate shall accompany the Purchase Requisition.

3. **Preferred Source Consideration**
4. **Sole Source Applicability**
5. **Pre-BID/RFP M/WBE Goal Waiver**

6. Rationale for the Method of Procurement**7. Prevailing Wage Consideration**

- 8. Bid Development:** The Invitation for Bids (IFB) shall provide prospective offerors with all the information necessary to develop a responsive bid. The IFB shall inform bidders of the specific steps in the bid process, the 30% M/WBE utilization goal and requirements, the scope of commodities, services, hardware, or software to be provided, the method of award, and the terms and conditions of the contract. A copy of the IFB shall be included in the Procurement File.

Specifications defining the items or services sought shall be outlined, in detail, by the requesting department or applicable Subsidiary Corporation of CNYRTA, with the advice and assistance of Procurement Department. These specifications/product descriptions must be complete, adequate and realistic.

Specifications must not only describe the product but must also include reliability and quality assurance requirements. Criteria for inspecting, testing, and accepting the product shall also be included in all CNYRTA specifications.

CNYRTA may request specifications for information regarding a product or service from qualified vendors but must exercise great care to ensure that the final specification is generic.

The detailed specifications shall be forwarded to the Procurement Department for review and inclusion in the bid package. The DBE Officer will assist in determining DBE percentage goals for individual contracts and review applicable DBE clauses – Federally Funded Procurements ONLY. The Director of Procurement shall aid in the searching/inclusion/preparation of a listing of M/WBE, SDVOB and DBE firms eligible to provide a quote for the particular procurement.

Bid specifications must clearly define the scope of work or clearly describe the desired item. The nature and extent of items and/or services requested should be limited to only that deemed necessary to meet the needs of the user department; there shall be no "gold plating" in CNYRTA specifications.

Specifications shall encourage full and open competition and must not rule out one or more vendors or favor a particular vendor. Therefore, use of brand names in specifications is allowed solely for the purpose of providing a standard for quality of performance. When requesting a "brand name or equal" the CNYRTA shall carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

Purchasing Department shall:

- a. Review trade magazines, attend trade shows, conferences, etc. to ensure thorough knowledge of new technologies regarding the equipment or services to be procured.
- b. Review bid documents and specifications used in former bids for the requested item/service as a starting point for developing the current solicitation.
- c. Incorporate relevant information from previous bids or other transit authority bids to meet the needs of the current bid.
- d. Review and update current bid with regard to all recently promulgated regulations.

After the completion of draft bid specifications, and prior to public advertisement, the Purchasing Department shall provide a copy of the specifications to the department or division representative requesting the procurement for review and comments. The department or division representative shall return his/her comments to the Purchasing Department within five (5) business days.

The Bid Package shall include, at a minimum, all elements noted within the document's Table of Contents. NOTE: Required information differs depending on funding source.

The Bidder's Qualifications section of an IFB defines the minimum acceptable qualifications for a bidder to be considered acceptable for an award. In addition to a determination of the bidder's responsibility when drafting this section, CNYRTA shall consider which qualifications should be specified to ensure the bidder:

- a. Is technically qualified to perform the proposed work;
- b. Has, or can secure, adequate financial resources to perform the proposed work or deliver the proposed goods;
- c. Is able to comply with the delivery or performance schedule, taking into account all existing business commitments;
- d. Has a satisfactory record of past performance;
- e. If selected, would not result in a conflict of interest, with regard to other work performed by the firm, or individual staff conflicts.

Qualifications may include the length of time a firm has been in business, the expertise and experience of staff and the bidder's experience with projects of similar scope and size. Appropriate business references shall also be required.

To ensure uniformity, all IFB's must include an Official Tender Form on which bidders insert bid prices in a uniform format. This form shall provide bidders the ability to record all relevant costs in an organized manner.

The Method of Award must be:

- a. Determined in advance of releasing the IFB,
- b. Specified in the IFB,
- c. Followed in awarding the contract, and
- d. Documented in the Procurement File. Awards can be made by item, by lot, by grand total bid for all items, by district or zone, if CNYRTA is bidding for multi-location delivery, or a combination of these methods.

To protect both the bidder and CNYRTA, the IFB shall specify that the bids shall be sealed.

CNYRTA shall identify possibilities where a firm or its subcontractors may have the corporate capability to compete for follow-up work resulting from a contractual design effort or R&D effort. In these cases, a firm may have a bias in performing design work; therefore, consideration will be given to restricting the firm's eligibility for follow-up contracts in such situations.

It is often necessary to communicate with potential contractors prior to receipt of bids or proposals. These communications usually involve the need to clarify CNYRTA requirements or are requests to modify specifications. It is important that all communications be documented in writing and, when appropriate, distributed to other bidders or proposers. Bid and proposal documents should state that verbal communications are non-binding.

The Purchasing Department shall anticipate the possibility of additional quantity requirements when preparing bid specifications and, if necessary, will include option provisions for additional quantities in the bid document and the contract.

9. DBE Consideration

10. M/WBE Consideration

11. SDVOB Consideration

- 12. Vendor Listing Preparation:** CNYRTA shall maintain current list of vendors for regular procurements. A bid package shall be emailed to all vendors on these lists on the day of release. Vendors shall be advised that such vendor lists are a courtesy offered by CNYRTA and that all prospective bidders are responsible for keeping themselves apprised of upcoming bid opportunities with the Authority. Any vendors requesting a bid package shall be emailed a package and shall be added to the bid list. M/WBE, SDVOB, and DBE-certified vendors shall be noted on the vendor lists.
- 13. Proof of Publication/Distribution:** Advertisements requesting bids shall be placed in at least one newspaper of general circulation in Onondaga County, the *New York State Contract Reporter*, and other publications as deemed advisable to promote the opportunity for competitive bidding. The Purchasing Department shall advertise solicitations in such a way as to ensure free and open competition and shall make every reasonable effort to apprise bidders of solicitation opportunities. Such efforts may include, but are not limited to:
- Notifications in local news publications, trade journals and magazines, and national publications;
 - Mailings to industry associations;
 - Notifications to known offerors on CNYRTA Bid Lists;
 - Mailing lists maintained by OGS and other State Agencies; and
 - Contact with the Department of Economic Development to determine known M/WBE bidders.

Potential bidders shall be advised as to the date, time and place of the bid opening in any bid advertisements.

It is advisable when publishing in a local newspaper to publish the advertisement for one (1) day. In national trade magazines, one publication is considered to be sufficient. CNYRTA advertises in the *Post Standard* (fulfilling local advertisement requirements), the *Citizen*, the *Palladium Times*, the *Rome Sentinel*, the *Observer Dispatch*, the *New York State Contract Reporter*, and, for those items with a national market, *Passenger Transport*, published by APTA (fulfilling national public advertisement requirements). CNYRTA currently publishes with *CNY Vision* and *Minority Commerce Weekly* to fulfill minority business advertisement requirements.

Requests for publication shall be e-mailed to the above-referenced publications at least one week prior to the desired publication date.

As a general rule, bidding time (time from bid release to bid opening) will be not less than fifteen (15) calendar days when procuring standard commercial goods and/or services and not less than thirty (30) calendar days when procuring other than standard goods and/or services. Bidding time may be limited to fifteen (15) days for non-standard goods and/or services upon prior written authorization of the Chief Executive Officer of CNYRTA.

CNYRTA shall provide all information to all prospective bidders for any procurement which is formally bid. When deemed appropriate, the Purchasing Department and technical support staff shall conduct a pre-bid conference with prospective bidders regarding applicable bidding procedures, forms, terms and conditions, goals, requirements, and other relevant information. Attendance at such pre-bid conferences shall be determined on an event-to-event basis. A written record of questions posed and answered at pre-bid conferences shall be distributed to all prospective bidders.

- 14. Accept Bids:** All bids received under formal bidding procedures shall remain sealed until the bid opening time and date specified in the Invitation for Bids and the advertisements. Immediately upon receipt, bids must be date stamped and the time must be written on the package. The package must be initialed by the CNYRTA employee taking receipt of the package.

Within five minutes prior to bid opening, a survey should be performed of the mailroom, stockroom and reception area to determine if any additional bids have arrived. No bids shall be accepted after the due date and time. Bids

received after the due date and time shall be returned unopened to the vendor with a cover letter of explanation, a copy of which shall be maintained in the Procurement File.

Vendor bids contain confidential information, which is protected under the law and may not be released prior to opening. It is therefore essential to keep vendor bids under secure, locked conditions.

Prior to bid award, vendor bid information is excluded from Freedom of Information Act requirements.

- 15. Conduct Bid Opening:** The Purchasing Department shall determine when the time set for bid opening has arrived and will so declare to those present.

The designated Procurement Department personnel shall make the following announcement prior to opening any bids:

"We are here to open bids for _____ I will not answer any questions at this bid opening. Vendors may submit question in writing, and I will respond in writing. Nothing said at this meeting shall change any information contained in the written Invitation for Bid document."

The bid opening shall be open to all bidders, as well as the general public.

Bids shall be publicly opened and read at the date, time and place specified in the *Invitation for Bids*. Only bids registered up to the time indicated in the IFB shall be opened. Any bid received after the date and time specified shall be retained unopened by the Purchasing Department, unless return is requested by the late bidder/proposer.

At least two (2) representatives of CNYRTA or its subsidiary companies shall be present during bid opening.

Specific information other than the announcement of the bid price and name of the bidder shall not be given to prospective bidders at the bid opening. The Purchasing Department will inform all present that any such request must be submitted in writing and will be responded to in like form.

Upon request, CNYRTA general counsel shall provide an attorney for a bid opening to assure compliance with the bid opening procedures and provide advice as needed. Other CNYRTA personnel may attend upon request by the Purchasing Department.

During the opening of each bid, an indicator shall be placed in the *Received* column of the *Procurement Documentation Information* section of the *Bid Procurement Checklist* as each required document is found to be included in the bid submission. Remaining sections of this form are utilized in the post award review of each bid.

All bids received on time will be opened and the bid information will be read aloud to all present and recorded as part of the bid file. Specific information other than announcement of the bid price and name of the bidder will not be given to prospective bidders at bid opening. The Purchasing Department will inform all present that any such request must be submitted in writing and will be responded to in like form.

No determination as to the validity of any bid, the qualification of any bidders or the compliance of any bid package with the provisions of the bid documents will be made at the bid opening.

When specified in bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which is the lowest bid. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

The Purchasing Department shall compile a list of all CNYRTA personnel, bidders, and their representatives present at the bid opening. This list shall be placed in the Procurement File.

- 16. Review Bids for Conformity and Responsiveness:** Immediately after the bid opening, the Purchasing Department shall review all submitted bids to determine which bid packages are complete and responsive to the bid requirements as set forth in the official Invitation for Bids document.

Contractors must be considered responsible to receive an award, regardless of the procurement method used to select the contractors. The Procurement File shall include a written outline of the specific basis for a determination of contractor responsibility.

Factors which should be considered by the Authority in evaluating **responsiveness** should include the following:

- a. Has all required information been provided?
- b. Does the bid contain mistakes?
- c. Has bidder failed to commit to a firm price?
- d. Are there unacceptable qualifications or conditions tied to the bid?
- e. Has the bid been prepared in accordance with the bidding instructions?
- f. Are unacceptable provisions included in the bid?
- g. Has the bidder altered or limited any of the contract or solicitation provisions?
- h. Has the bidder offered non-conforming products or services?
- i. Has the bidder failed to acknowledge amendments to the IFB issued by the Authority?

To be considered **responsible**, consideration must be given to all the following requirements:

- a. Financial resources adequate to perform the contract, or the ability to obtain them
- b. Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and government business commitments
- c. A satisfactory performance record with CNYRTA or references
- d. A satisfactory record of integrity and business ethics (talk with references)
- e. The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them
- f. Compliance with applicable licensing and tax laws and regulations
- g. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them
- h. Compliance with Affirmative Action and Disadvantaged Business Program requirements
- i. Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations

Note that the foregoing list is not exhaustive. Minor deviations which are immaterial and do not affect quantity, quality or delivery may, be waived by the Authority if such waiver does not prejudice or affect the relative standing of the bidders.

In evaluating the **responsibility** of an apparent low bidder or proposed subcontractor, the Authority may consider, among other factors, whether the subject's record with the Authority or other public owners includes or demonstrates:

- a. Lack of adequate expertise, prior experience with comparable projects, or financial resources necessary to perform the work outlined in the contract in timely, competent, and acceptable manner. Evidence of such factors may include failure to submit satisfactory evidence of insurance, surety bonds, or financial responsibility, or a history of terminations for cause.

- b. Engagement in criminal conduct in connection with any other government contracts or the conduct of business activity that involves such crimes as extortion, racketeering, bribery, fraud, bid-rigging and embezzlement.
- c. Grave disregard for the safety of employees, State personnel, or members of the public. Consideration will be given to whether employees who will be assigned to work on the project are properly trained and whether the equipment to be used is safe and functioning properly.
- d. Willful noncompliance with the State's Labor Laws regarding prevailing wage and supplement payment requirements, including consideration of any pending violations.
- e. Disregard for other State Labor Laws, including child labor, proper and timely wage payments and unemployment insurance laws.
- f. Violations of the State Workers' Compensation Law including failure to provide proof of proper workers' compensation or disability coverage.
- g. The failure to abide by State and federal statutes and regulations regarding efforts to solicit and utilize disadvantaged, minority and women-owned business enterprises as potential sub-contractors.
- h. The submission of a bid that is mathematically or materially unbalanced.
- i. The submission of a bid, which is so much lower than the Authority's confidential engineer's estimate that it appears unlikely that the contractor will be able to complete the project satisfactorily at the price bid.
- j. The presentation of false or misleading statements or any other issue that raises serious questions about the responsibility of the bidder or proposed subcontractor,

CNYRTA must award to the lowest bidder whose bid is responsive and who is determined to be a responsible bidder. Not only must the submitted bid be responsive to the bid solicitation, but the vendor must also exhibit that (s)he is responsible.

CNYRTA shall award the contract in accordance with the Method of Award set forth in the IFB.

CNYRTA may award all items bid, or award some and not others, provided that the Method of Award description allows for award by item or lot. The Authority may elect not to award a contract. The Authority may award a contract to an offeror, even if only one bid is submitted.

The Purchasing Department shall analyze the lowest responsive bid from the responsible bidder to determine if the price quoted is fair and reasonable. This analysis can be performed by comparing the quoted price to other recent equivalent purchases and/or current published catalog pricing.

The low responsive bid shall be compared to the independent cost estimate. If only a single bid is received, staff will prepare a cost and/or price analysis to determine if the bid is fair and reasonable.

Previous to awarding any procurement, the *New York State List of Debarred Contractors* and the U. S. *General Comptroller's List of Debarred Contractors* must be reviewed to assure that the apparent successful vendor is not included on that list.

The Purchasing Department shall complete the *Bid Procurement Checklist* and place in the Procurement File.

When a bid is rejected because the prospective contractor is found to be not responsible, the Purchasing Department shall sign, and place in the file a *Determination of Non-Responsibility* form that states the basis for this determination. Documents and reports supporting a determination of responsibility or non-responsibility, including any pre-award survey reports, shall also be included in the contract file.

Rejection of Low Bid: Any and all bids may be rejected if there is a sound documented business reason. In all cases where a low bid is being rejected, or is being recommended for rejection, whether the procurement is being solicited through formal or informal bidding procedures, the Purchasing Department, in concert with the originating department or division, shall submit a memorandum to the Chief Executive Officer, copied to all parties concerned, stating the reasons for such rejection and summarizing the bids received. Reasons may include, without limitation, the failure to meet DBE goals or to show a good faith effort regarding the same, or that the proposed goods and/or services are not in conformance with the bid specifications. A copy of the recommended vendor's quote and the rejected vendor's quote shall be attached to the memorandum.

With respect to Contracts funded by the Federal Transit Administration (the "FTA"), FTA concurrence (approval) must be obtained in cases where the lowest responsive and responsible bid is being rejected.

- 17. Prepare Certified Bid Tabulation:** The Purchasing Department shall prepare a *Certified Bid Tabulation*, listing all the vendors who participated in the bid, and the prices they submitted. The bids are ranked from lowest to the highest, based on the stated Method of Award.

The selection process shall begin with the lowest bid and continues upward until a responsive bid/responsible bidder is determined. If the award is not being made to the lowest price or best value offer among responsive and responsible bidders, CNYRTA shall document in the Procurement File the reason(s) for rejection of each bid. In all cases, the award must be made in accordance with the Method of Award outlined in the IFB.

Upon request, copies of the bid tabulation may be sent to those vendors who submitted bids and could not attend the bid opening.

A copy of the *Certified Bid Tabulation* must be placed in the Procurement File.

- 18. M/WBE Low Bid Notice to Vendor**
- 19. M/WBE Notice of Acceptance to Vendor**
- 20. M/WBE Notice of Deficiency to Vendor**
- 21. M/WBE Contractor Remedy Submission**
- 22. M/WBE Notice of Vendor for Waiver Submission**
- 23. M/WBE Notice of Disqualification**
- 24. M/WBE Waiver Request**
- 25. M/WBE Notice of Waiver Acceptance by CNYRTA**
- 26. M/WBE NYS Waiver Application Submission**
- 27. M/WBE NYS Waiver Granted Authorization**
- 28. Prepare Resolution for Board of Directors:** All contracts in excess of \$50,000 and multi-year services contracts must be approved by the CNYRTA Board of Members. The Purchasing Department shall prepare a resolution for approval by the Board of Members authorizing the ED to enter into a contract with the apparent successful vendor. The resolution must be prepared and adopted prior to contract award.

The resolution shall include the procurement method used, the advertising venues used, successful vendor's name, the unit price of the item solicited, the estimated annual cost of the contract, and an award recommendation.

A copy of the resolution shall be included in the Procurement File.

- 29. Award Bid:** In cases where a substantial effort has been made to solicit bids and no bids are tendered, the Chief Executive Officer shall be so advised by the Purchasing Department. A decision regarding the iteration of the bid

process or the negotiation of a contract for the purchase of the goods and/or services from a Sole Source shall be made by the Chief Executive Officer of CNYRTA.

Notice of Award: After all pre-award approvals have been obtained, a firm, fixed-price contract award will be made to the lowest responsive bid from a responsible bidder. The Purchasing Department shall send a "Notice of Award." This letter shall notify the contractor that it has been determined as the lowest bidder and shall request submission of any post-award documentation required by the bidding documents or by legal counsel.

Bonds and insurance certificates received from the contractor will be reviewed to assure that the contents comply with the requirements of the bid documents. To make this assurance, it is useful to seek the review of CNYRTA insurance consultant and legal counsel. Once the bonds and insurance certificates are approved, the contract documents are sent to the successful vendor.

Notice to Proceed: The Purchasing Department will issue a "Notice to Proceed" to the successful vendor when the appropriate *Certificates of Insurance*, bonds and/or any other documents necessary in completing the procurement have been received by CNYRTA from the vendor. Such documents must be placed in the Procurement File. The "Notice to Proceed" makes reference to the bid documents in combination with the successful vendor's submission thereto constituting the subject contract. The "Notice to Proceed" executes the contract.

Notification of Unsuccessful Bidders: The Purchasing Department shall notify unsuccessful vendors promptly in writing. Upon request, an unsuccessful offeror shall be provided a debriefing as to why his/her bid was unsuccessful; this debriefing shall occur as soon as possible after selection of the successful bidder.

Contract Execution: A Purchase Order shall be issued for each contract awarded (with the exception of those procurements exempt from the PO process) at the request of the Purchasing Department, against which all charges for the contracted item shall be made for the term of such contract. However, if the contract award does not commit CNYRTA or its subsidiaries to a fixed price amount but rather is a function of the number of units to be acquired, the amount of the Purchase Order is to be based upon the best estimate of costs to be incurred, as determined by the end-user in consultation with the Purchasing Department.

30. M/WBE Utilization Plans/Waivers Uploaded to Website

31. M/WBE Quarterly Submission for Life of Contract

REQUEST FOR PROPOSAL (RFP): Competitive negotiation is generally used when conditions are not appropriate for the use of sealed bids. As costs become less important in relation to other factors driving the procurement, competitive negotiation becomes a more appropriate procurement tool. In competitive negotiation, proposals are requested from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers. Either a fixed-price or cost reimbursable type contract is awarded in this type of procurement.

This method of procurement is the preferred method for acquisitions of **twenty-five thousand dollars (\$25,000) or more** when one or more of the following factors is present:

1. The desired goods or services cannot be precisely defined, described or standardized.
2. The desired end product is conceptual in nature.
3. A Cost Reimbursement type contract is contemplated.
4. Discussions concerning the technical aspects and price negotiation are intended.
5. Offerors are to be given the opportunity to revise the price or technical aspects of their proposal.

6. Price alone cannot be the determinative factor in award. Quality, qualifications, performance data, or other contractual factors are to be considered in selecting the most advantageous offering.
7. Artistic or aesthetic values supersede price as primary selection criteria.

RFP Procedures:

1. **Kickoff Meeting:** Does not differ from IFB Method of Procurement.
2. **Determination of Funding Source and Grant Status – Purchase Requisition:** Does not differ from IFB Method of Procurement.
3. **Preferred Source Consideration**
4. **Sole Source Applicability**
5. **Pre-RFP M/WBE Goal Waiver**
6. **Rationale for the Method of Procurement**
7. **Prevailing Wage Consideration**
8. **Request for Proposal Development and Distribution**

Investigate new technologies: Purchasing Department shall review trade magazines, attend trade shows, conferences, etc. to ensure thorough knowledge of new technologies regarding the equipment or services to be procured.

Review former RFP documents and specifications; Incorporate relevant information: The Purchasing Department shall review RFP documents and specifications from previous procurements of the desired item/service as a starting point for developing the current solicitation. The Purchasing Department shall perform research and incorporate relevant information to meet the needs of the current bid. The Purchasing Department shall review and update current RFP with regard to all recently promulgated regulations.

Prepare RFP: Requests for Proposals shall set forth generic specifications or requirements that define the goods or services sought, but may not, knowingly, favor a particular offeror, product, or service offering.

Specifications, or a Scope of Work, shall be outlined by the end-user department or applicable subsidiary corporation of CNYRTA, with the advice and assistance of the department or division requesting the procurement and, when necessary, any and all supporting departments.

Specifications are critical in communicating to the vendors the services requested. In an effort to provide vendors with a clear understanding of their role and responsibilities, CNYRTA shall provide as much specificity as possible in describing the scope of work, thereby reducing vendor risk and providing an opportunity for the proposal of the best solution at the least cost.

The nature and extent of items and/or services requested should be limited to only that deemed necessary to meet the needs of the user department.

CNYRTA may request specifications for information regarding a product or service provided by a vendor but will exercise great care to ensure that the final product or service specification is generic.

For procurements of technology, if a vendor has sole responsibility for preparing and furnishing specifications for a technology proposal which is to be competitively procured, that vendor is prohibited from subsequently bidding on the procurement either as a prime vendor or as a subcontractor.

Similarly, a vendor may not be awarded a contract to evaluate offers for products or services which would include evaluation of the vendor's own products or services. These prohibitions shall be discussed with potential vendors as early as possible in the procurement process and prior to issuing an RFP.

The above prohibitions shall not apply if:

- a. The vendor is the sole source or single source of the product or service;
- b. More than one vendor has been involved in preparing the specifications for a procurement proposal;
- c. The vendor has furnished specifications or information regarding a product or service it provides at the request of the agency, but the vendor has not been directly requested to write specifications for the product or service or for the agency technology proposal.

The detailed specifications/scope of work shall be forwarded to the Purchasing Department for review and inclusion in the RFP. The Director of Procurement will assist in determining M/WBE and DBE percentage goals for individual contracts and review applicable DBE clauses. The Director of Procurement shall aid in the searching/inclusion/preparation of a listing of M/WBE and DBE firms eligible to provide a quote for the particular procurement.

After the completion of draft specifications, and prior to public advertisement, the Purchasing Department shall provide a copy of the specifications to the department or division representative requesting the procurement for review and comments. The department or division representative shall return his/her comments to the Purchasing Department within five (5) business days.

The RFP shall include the following minimum elements:

Vendor Qualifications: The Vendor Qualifications section defines the minimum acceptable qualifications a vendor must have to be considered acceptable for an award. In addition to a determination of the vendor's responsibility when drafting this section, CNYRTA shall consider which qualifications should be specified to ensure the bidder:

- a. Is technically qualified to perform the proposed work;
- b. Has, or can secure, adequate financial resources to perform the proposed work or deliver the proposed goods;
- c. Is able to comply with the delivery or performance schedule, taking into account all existing business commitments;
- d. Has a satisfactory record of past performance;
- e. If selected, would not result in a conflict of interest, with regard to other work performed by the firm, or individual staff conflicts.

Qualifications may include the length of time a firm has been in business, the expertise and experience of staff and the bidder's experience with projects of similar scope and size. Appropriate business references shall also be required.

Evaluation Methodology and Method of Award: Given the unique character of proposal evaluation methods, the CNYRTA Procurement Guidelines do not set forth strict evaluation procedures or all inclusive processes and methods. Typically, evaluations comprise a comparative analysis of the technical proposals, a separate comparative analysis of the cost proposals, and a method for combining the results of the technical and financial proposal evaluations to arrive at the selection of the proposal judged most advantageous to the Authority.

The objective of the evaluation process is to develop and apply evaluation criteria to ensure that:

- a. Proposals are evaluated objectively, and
- b. CNYRTA selects the proposer who will provide the "best value" taking into consideration the most beneficial combination of qualifications, services and cost and who has met the requirements of the RFP.
- c. The Evaluation Instrument/Methodology and Method of Award must be:
- d. Determined in advance of releasing the RFP,
- e. Specified and described in the RFP,
- f. Followed in evaluating the submitted proposals and awarding the contract, and

- g. Documented in the Procurement File.

The overall evaluation criteria must not be altered after opening the proposals, with the exception of minor changes and only if the modifications are justified and evidence presented to ensure that the changes would not materially benefit or disadvantage an offeror.

The evaluation criteria and methodology must be documented in the procurement file **prior to** receipt of proposals.

Financial Proposal Requirements: CNYRTA shall provide instructions in all its RFPs for developing cost proposals. The objective of this component of the vendor's proposal is to ensure that both CNYRTA and the vendor understand the financial terms and conditions associated with the services to be provided.

CNYRTA shall structure the requirements to ensure that financial terms and conditions are defined for purposes of both Cost Proposal evaluation and terms and conditions of the contract, if awarded.

With respect to the latter, CNYRTA shall require that fees be defined for services over the life of the contract term. For example, to the extent that CNYRTA desires to cap fee increases over time, the bases for the cap shall be defined in the cost requirements (e.g., annual inflation capped by the Consumer Price Index).

CNYRTA shall require the following information from vendors in their cost proposals:

Outline Cost Proposal Approach

- a. Distinguish one-time fees (e.g., development) from on-going fees (e.g., operations) and specify appropriate assumptions (e.g., annual volumes).
- b. Define and Describe Reimbursement Approach; examples include:
 - c. Fixed fee for deliverables,
 - d. Daily rates for defined categories of staff services,
 - e. Price per unit, possible sliding scale based on volume increments,
 - f. Cost plus profit margin,
 - g. Maximum upset price.
- h. Describe Pricing Strategies for Future Services (development, goods and operations);
- i. Describe Potential Fee Increases, including adjustments for inflation, etc. over life of contract (CPIU, or cost based justification);
- j. Describe Strategies for Providing Savings to CNYRTA;
- k. Financial Proposal shall be inclusive of all fees.
- l. Means of Compensation
- m. Define billing structure and frequency,
- n. Define reimbursement mechanism (direct fee).

Standards and Penalties: CNYRTA shall consider approaches to be used during the life of the contract to monitor vendor performance. To the extent that CNYRTA plans to monitor performance against standards, CNYRTA shall include the standards in the RFP, along with any plans for enforcing the standards (e.g., financial penalties).

Standards shall be structured to be easily quantified and objectively measurable. For example:

- a. Standards may be set for timeliness, quality, and performance;
- b. Sanctions for not meeting these standards may include:
 - c. Reduction in fees,
 - d. Liquidated damages,
 - e. Cost recovery (e.g., interest).

Sample Agreement: CNYRTA shall publish invariable and mandatory contract terms and conditions in the RFP. These conditions assist the offerors in assessing the risk associated with the required contract terms and the extent to which the contract terms are compatible with the offerors' policies.

Prior to public advertisement, the Purchasing Department shall circulate the Request for Proposals ("RFP") to the following persons for written approval:

- a. Chief Executive Officer of CNYRTA;
- b. End user department head;
- c. CNYRTA legal counsel; and (when deemed necessary)
- d. DBE Liaison Officer.

CNYRTA will identify possibilities where a firm or its subcontractors may have the corporate capability to compete for follow-up work resulting from a contractual design effort or R&D effort. In these cases, a firm may have a bias in performing design work; therefore, consideration will be given to restricting the firm's eligibility for follow-up contracts in such situations.

It is often necessary to communicate with potential contractors prior to receipt of proposals. These communications usually involve the need to clarify the CNYRTA requirements or are requests to modify specifications. It is important that all communications be documented in writing and, when appropriate, distributed to other proposers. Proposal documents should state that verbal communications are non-binding.

9. DBE Consideration

10. M/WBE Consideration

11. SDVOB Consideration

12. Vendor List Preparation: CNYRTA shall maintain current list of vendors for regular procurements. A bid package shall be emailed to all vendors on these lists on the day of release. Vendors shall be advised that such vendor lists are a courtesy offered by CNYRTA and that all prospective bidders are responsible for keeping themselves apprised of upcoming bid opportunities with the Authority. Any vendors requesting a bid package shall be emailed a package and shall be added to the bid list. M/WBE, SDVOB, and DBE-certified vendors shall be noted on the vendor lists.

13. Proof of Publication/Distribution: Advertisements requesting proposals shall be placed in at least one newspaper of general circulation in Onondaga County, the *New York State Contract Reporter*, and other publications as deemed advisable to promote the opportunity for competitive proposals. The Purchasing Department shall advertise solicitations in such a way as to ensure free and open competition and shall make every reasonable effort to apprise proposers of solicitation opportunities. Such efforts may include, but are not limited to:

- a. Notifications in local news publications, trade journals and magazines, and national publications;
- b. Mailings to industry associations;
- c. Notifications to known offerors on CNYRTA Bid Lists;
- d. Mailing lists maintained by OGS and other State Agencies; and
- e. Contact with the Department of Economic Development to determine known M/WBE bidders.

Potential proposers shall be advised as to the date, time and place of the bid opening in any proposal advertisements.

It is advisable when publishing in a local newspaper to publish the advertisement for one (1) day. In national trade magazines, one publication is considered to be sufficient. CNYRTA advertises in the *Post Standard* (fulfilling local advertisement requirements), the *Citizen*, the *Palladium Times*, the *Rome Sentinel*, the *Observer Dispatch*, the

New York State Contract Reporter, and, for those items with a national market, *Passenger Transport*, published by APTA (fulfilling national public advertisement requirements). CNYRTA currently publishes with *CNY Vision* and *Minority Commerce Weekly* to fulfill minority business advertisement requirements.

Requests for publication shall be e-mailed to the above-referenced publications at least one week prior to the desired publication date.

Notice of the RFP shall also be placed on CNYRTA's web site.

The due date and time and delivery location for proposals shall be included in any advertisements.

As a general rule, bidding time (time from RFP release to due date) will be not less than thirty (30) calendar days.

Pre-Proposal Conference: CNYRTA shall provide all information to all prospective proposers for any procurement which is formally let. When deemed appropriate, the Purchasing Department and technical support staff will conduct a pre-proposal conference with prospective proposers regarding applicable proposal procedures, forms, terms and conditions, goals, requirements, and other relevant information.

Attendance at such conferences shall be determined on an event by event basis. A written record of questions posed and answered at pre-proposal conferences shall be distributed to all prospective proposers.

Events may arise which require CNYRTA to modify RFP requirements prior to submission of proposals. In such cases, CNYRTA shall communicate such modifications, in writing, to all vendors participating in the process, and shall require written acknowledgement from each vendor that the modifications have been received.

CNYRTA shall maintain a current vendor list for regular procurements. All vendors on this list shall be emailed an RFP on the day of release. Vendors shall be advised that such vendor lists are a courtesy offered by CNYRTA and that all prospective proposers are responsible for keeping themselves apprised of upcoming proposal opportunities with CNYRTA.

Any vendors requesting an RFP shall be emailed a package and shall be added to the bid list. M/WBE, SDVOB, and DBE-certified vendors shall be noted on the vendor lists.

- 14. Accept Proposals:** All proposals received under formal procedures shall remain sealed until the proposal due date and time specified in the Request for Proposals and the advertisements.

Immediately upon receipt, proposals must be date stamped and the time must be written on the package. The package must be initialed by the CNYRTA employee taking receipt of the package.

Within five minutes prior to proposal due date and time, a survey should be performed of the mailroom, stockroom, and reception area to determine if any additional proposals have arrived. No proposals shall be accepted after the due date and time. Proposals received after the due date and time shall be returned unopened to the vendor with a cover letter of explanation, a copy of which shall be maintained in the Procurement File.

Proposals contain confidential information that is protected under the law and may not be released prior to opening. It is therefore essential to keep proposals under secure, locked conditions. Prior to bid award, proposals are excluded from the Freedom of Information Act.

- 15. Open proposals:** The Purchasing Department shall determine when the due date and time set for proposals has arrived.

Only proposals received up to the time indicated in the RFP shall be opened. Proposals received after the filing date must be returned to the offeror(s) unopened.

Deleting Requirements After Proposal Submission: CNYRTA may eliminate requirements provided that the basis for the change is justified and the discretionary authority to make such changes is set forth in the RFP. The RFP need not be reissued, although vendors submitting proposals must be notified, in writing, of the deletions.

Modifying or Adding Requirements After Proposal Submission: CNYRTA may elect to either modify or add requirements. Under these circumstances, the RFP must be reissued, with the changes, to all vendors known to be participating in the RFP.

If the RFP is reissued after 45 days from the original date of RFP issuance, a notice must be published in the publication(s) where the original RFP notice appeared;

CNYRTA shall establish a new proposal submission date and modify the evaluation criteria and instrument to reflect the requirement modifications or additions;

CNYRTA shall request written acknowledgements from the vendors that the reissued RFP has been received.

16. Review Proposals for Conformity and Vendor Responsibility:

- 17. Prepare Certified Proposal Tabulation:** A *Certified Bid Tabulation* shall be prepared, listing all the vendors who submitted proposals, and the prices they quoted. Upon request, copies of the bid tabulation may be faxed to those vendors who submitted proposals. A copy of the *Certified Bid Tabulation* shall be placed in the Procurement File.

- 18. Proposal Evaluation:** Depending on the scope and breadth of the procurement, CNYRTA may organize an evaluation team to meet the unique nature of the procurement.

The Purchasing Department shall distribute the proposals to the appropriate staff members or evaluation team for review, with a Proposal Review Spreadsheet. The Purchasing Department shall schedule a proposal review meeting for the Evaluation Team and include this date with the distribution memorandum.

Technical proposals shall be evaluated by measuring the extent to which the proposal and the offeror can attain the objectives of the solicitation as set forth in the RFP and fulfill the requirements outlined in the RFP. Criteria used in evaluating proposals may include, but not be limited to:

- a. Proposal work plan and methodology.
- b. Experience of vendor in providing similar services and/or goods.
- c. Management capability of vendor.
- d. Vendor's overall past performance.
- e. Extent to which the proposal is responsive to RFP requirements,
- f. Qualifications and experience of vendor's proposed staff.
- g. Conformance with the schedule of work set forth in the RFP.

Numerically based quantitative approaches (e.g., Criterion A is four times more important than Criterion B, which is two times more important than Criterion C).

Price shall be considered in the evaluation unless the procurement is a federally funded Architectural and Engineering procurement.

Overall cost and/or distribution of cost over the scope of work may be considered (distribution of cost across tasks).

Qualitative approaches (e.g., Criterion A is more important than Criterion B, which is more important than Criterion C).

CNYRTA may award all or parts of the proposed scope of services provided that such agency discretion is set forth in the RFP. The agency may elect not to award a contract. CNYRTA may award a contract to an offeror if only one proposal is submitted.

Rejection of Proposals: Any and all proposals may be rejected if there is a sound documented business reason.

In all procurements, the Purchasing Department, in concert with the originating department or division, shall prepare and place in the Procurement File, a memorandum stating the rejection reasons for the unsuccessful offerors and summarizing the proposals received. Reasons may include, without limitation, the failure to show a good faith effort regarding M/WBE and/ or DBE Goals, or that the proposed goods and/or services are not in conformance with the RFP requirements. A copy of the recommended vendor's quote and the rejected vendors' quotes shall be attached to the memorandum.

Negotiation:

- a. The Evaluation Team shall identify the proposals that are technically compliant with the RFP.
- b. The Evaluation Team shall individually review and evaluate all technically compliant proposals and develop scores for each proposal.
- c. The full Evaluation Team will then convene to review and discuss the individual evaluations and to combine the individual scores to arrive at a composite technical score for each firm.
- d. Once the overall ranking of the technical proposals is determined, firms with an unacceptably low technical score will be eliminated from further consideration. The remaining proposals are within the "competitive range" (those proposals that can potentially be awarded the contract).
- e. After the composite technical score for each firm has been established, the cost proposal will be opened and additional points will be added to the technical score, based on the price bid. The maximum score for price will be assigned to the firm offering the lowest total all-inclusive maximum price. Appropriate fractional scores will be assigned to other proposers.
- f. CNYRTA may select one (1) or more firms with which to negotiate after preliminary evaluation of the proposals or, if negotiations are not necessary, the Evaluation Team may select the firm with the highest composite score.
- g. Invariable required contract conditions should be set forth as such in the RFP to facilitate negotiations.
- h. For strategic advantage, CNYRTA shall negotiate any controversial contract terms prior to the notice of award.
- i. Best and final offers (BAFOs) shall be requested of all proposers determined to be in the "competitive range" (technically compliant with the RFP).
- j. The Authority must evaluate the BAFOs and award either a Firm Fixed Price-type or a Cost Reimbursement-type contract to the vendor whose BAFO is most advantageous to the Authority.
- k. Previous to awarding any procurement, the *New York State and United States Lists of Debarred Contractors* shall be reviewed to assure that the apparent successful vendor is not included on that list.

- l. The award shall be made to the firm(s) whose proposal(s) will be the most advantageous to CNYRTA, with price, qualification and other factors considered, using the evaluation criteria set forth in the RFP as the basis for CNYRTA decision.
- m. The Purchasing Department shall analyze the successful vendor's price or cost quote to determine if the cost/price is fair and reasonable. The Purchasing Department may also obtain support information from the department requesting the procurement and evaluating the proposals.
- n. The successful vendor's quote shall be compared to the independent cost estimate. Staff shall prepare a cost and/or price analysis to determine if the bid is fair and reasonable.

19. M/WBE Notice of Acceptance to Vendor

20. M/WBE Notice of Deficiency to Vendor

21. M/WBE Contractor Remedy Submission

22. M/WBE Notice of Vendor for Waiver Submission

23. M/WBE Notice of Disqualification

24. M/WBE Waiver Request

25. M/WBE Notice of Waiver Acceptance by CNYRTA

26. M/WBE NYS Waiver Application Submission

27. M/WBE NYS Waiver Granted Authorization

- 28. Prepare Resolution for Board of Members:** All contracts in excess of \$50,000 and multi-year services contracts must be approved by the CNYRTA Board of Members. The Purchasing Department shall prepare a resolution for approval by the Board of Members authorizing the ED to enter into a contract with the apparent successful vendor. The resolution must be prepared and adopted prior to contract award.

The resolution shall include the procurement method used, the advertising venues used, successful vendor's name, the unit price of the item solicited, the estimated annual cost of the contract, and an award recommendation. A copy of the resolution shall be included in the Procurement File.

- 29. Award Contract:** In cases where a substantial effort has been made to solicit proposals and none are submitted, the Chief Executive Officer shall be so advised by the Purchasing Department. A decision regarding the iteration of the RFP process or the negotiation of a contract for the purchase of the goods and/or services from a Sole Source shall be made by the Chief Executive Officer of CNYRTA.

Notice of Award: After all pre-award approvals have been obtained, a contract award will be made to the successful vendor. The Purchasing Department shall send a "Notice of Award." This letter shall notify the contractor that it is the successful vendor and shall request submission of any post-award documentation required by the RFP documents or by legal counsel (insurance certificates, bonds, etc.).

Notice to Proceed: The Purchasing Department will issue a "Notice to Proceed" to the successful vendor when the appropriate *Certificates of Insurance*, bonds and/or any other documents necessary in completing the procurement have been received by CNYRTA from the vendor. Such documents must be placed in the Procurement File. The "Notice to Proceed" makes reference to the bid documents in combination with the successful vendor's submission thereto constituting the subject contract. The "Notice to Proceed" executes the contract.

Notify Unsuccessful Vendors: The Purchasing Department shall notify unsuccessful vendors promptly in writing. Upon request, an unsuccessful vendor shall be provided a debriefing as to why his/her proposal was unsuccessful; this debriefing shall occur as soon as possible after selection of the successful vendor and must be limited solely to the evaluation results as they apply to the requesting vendor's proposal.

30. M/WBE Utilization Plans/Waivers Uploaded to Website**31. M/WBE Quarterly Submission for Life of Contract****3.4- Procurement of Architectural and Engineering (A&E) Services**

CNYRTA shall use a qualification-based procurement method based on the **Brooks Act** when contracting for Federally-funded A&E Services Contracts (as required in 40 U.S.C., Section 541 and 49 U.S.C. Section 5325(d)). Other types of services considered to be A&E Services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer.

The CNYRTA will follow NYS Executive Order #8, Article 15A of NYS Executive Law and Parts 140-145 (most current version) of the regulations of the Commissioner of the Department of Economic Development – and place the 30% mandated utilization goal on all State funded procurements. If the goal cannot be achieved the Waiver Application process will be followed.

The CNYRTA will follow NYS, Article 17B, Chapter 22 of NYS Executive Law and Parts 252 (most current version) of the regulations for the Participation by Service-Disabled Veterans with Respect To State Contracts – and place the 6% mandated utilization goal on all State funded procurements. If the goal cannot be achieved the Waiver Application process will be followed.

The **Brooks Act** requires that:

1. Offeror's qualifications are evaluated excluding price as a factor.
2. Negotiations be conducted only with the most qualified offeror.
3. Failing agreement on price, negotiations with the next most qualified offeror are conducted until a contract award can be made to the most qualified offeror whose price is determined to be fair and reasonable.

The procedures for general competitive bidding outlined in P3-2, above, apply to procurements of this type, with the following changes in the evaluation process:

RFP PREPARATION: CNYRTA shall solicit only technical proposals from each offeror. The RFP shall not request any price information.

PROPOSAL EVALUATION/NEGOTIATION: The methodology for evaluating proposals shall be qualifications based. The evaluation factors and the weighting of each factor must be included in the RFP package. Submitted proposals are ranked based solely on the evaluation factors outlined in the RFP.

Price negotiations commence with the most qualified firm resulting from the evaluation factor review. If price negotiations are not successful, negotiations will end, and can then commence with the second most qualified firm. This process continues until a successful negotiation is achieved. Once negotiations end with a potential contractor, they cannot be re-established at a later time.

According to Federal Requirements, this "qualifications-based procurement method" can be used only for the procurement of A&E Services. This method of procurement cannot be used to obtain other types of services, even if a firm that provides A&E Services is also a potential source to perform other types of services.

These requirements apply except to the extent that any state adopts, or has adopted by statute, a formal procedure for the procurement of architectural and engineering services.

In this procurement type, knowledge of local conditions and building codes is a relevant factor in the quality of the A&E services, so the prohibition against geographic preferences does not apply. A&E Proposals may be evaluated in terms of their knowledge of the locality of the project, provided that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project.

3.5- Procurement by Non-Competitive Negotiation (Sole Source)

Non-competitive negotiation involves procurement through solicitation of a proposal from a Sole Source, or, after solicitation of a number of sources, competition is determined to be inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a Sole Source procurement that must comply with this section.

Procurement by noncompetitive negotiation may be used only when procurement is infeasible under micro-purchase, small purchase, competitive bidding (formal advertising), or competitive negotiation procedures and at least one of the following circumstances applies:

1. The item is available only from a Single Source;
2. A public exigency or emergency exists whereby the urgency for the requirement will not permit a delay resulting from competitive solicitation
3. The FTA authorizes non-competitive negotiation (for Federally-funded contracts only)
4. After solicitation of a number of sources, competition is determined to be inadequate
5. For *Federally funded procurements*, the item is an associated capital maintenance item as defined in 49 U.S.C. Section 5307 (a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. CNYRTA shall certify, in writing, to FTA that: (1) such manufacturer or supplier is the only source for such item; and (2) the price of such item is no higher than the price paid for such item by like customers.

When a non-competitive procurement is necessary in circumstances other than those outlined above, written FTA approval is required only if Federal funds are involved in the procurement.

A single source is not acceptable for purposes of sole source award until CNYRTA staff investigates and documents one (1) or more of the following circumstances:

1. The proposed source is the original manufacturer, and the terms and conditions of a viable warranty would be violated by the installation of unauthorized parts or components in existing equipment, machinery, vehicles, or systems, or "servicing" by uncertified or unauthorized personnel, and there are no other sources from which authorized parts or servicing from certified or authorized personnel may be obtained.
2. The proposed source possesses exclusive, limited rights in data, patent rights, copyrights, secret processes, or control of the basic raw material.
3. The proposed source is the provider under an existing "term contract" and the procurement constitutes a sub-award thereunder.
4. The goods or services or services are not available through an existing contract awarded through a competitive procurement method.
5. A price or cost analysis establishes that the proposed price is fair and reasonable.

A single bid is not acceptable for purposes of sole source award until CNYRTA staff:

1. Canvas all prospective bidders from whom bids were solicited to learn the causes for the lack of bid submissions,
2. Evaluate and document the responses received in number 1, above,
3. Reconsider the bid requirements and specifications,
4. Document findings supporting the need for the original requirements and the sufficiency of the specifications, and that the single bidder is responsive and responsible or that the proposer is qualified and the proposal is acceptable, and

5. Conduct a price or cost analysis to establish that the bid price is fair and reasonable.

ADVERTISING SOLE SOURCE PROCUREMENTS: For Proposed Single Source awards in the actual or estimated amount of twenty-five thousand dollars (\$25,000) or more, for which competitive bids or proposals have not been solicited in the preceding twelve (12) months, a *Notice of Procurement Opportunity* must be published in the New York State Contract Reporter.

The notice shall set forth the Authority's intent to award the contract without competitive bidding or proposals on the basis that the goods or services are available from one (1) responsible source. Further, the notice shall invite any person or firm to submit data and information proving that the required item/service can be obtained from other than the proposed single source.

3.6- Rolling Stock Procurements

Rolling stock procurements shall be conducted in accordance with the requirements of Section 120) of the Federal Mass Transit Act of 1964, as amended, and the FTA regulations contained in 49 CFR Part 663 ("Pre-Award and Post-Delivery Audits of Rolling Stock Purchases"). Specifically, CNYRTA shall complete a pre-award audit prior to entering into a formal contract for the purchase of rolling stock. The pre-award audit shall include:

1. A Buy America Certification;
2. A Purchaser's Requirements Certification; and
3. Where appropriate, a manufacturer's Federal Motor Vehicle Safety Standards ("FMVSS") Certification.

The pre-award Buy America Certification certifies that FTA granted a written waiver from the Buy America requirements for the rolling stock to be purchased, or CNYRTA is satisfied that the rolling stock to be purchased meets the following requirements of the *Surface Transportation Assistance Act of 1982*, as amended:

1. The procured rolling stock will contain a minimum of 60% domestic products;
2. Final assembly of the procured rolling stock will occur in the United States.

Each vendor must complete Buy America Certification (included in the bid package) certifying compliance with the Buy America Requirements and the Federal Motor Safety Standards as prescribed in 49 CFR 663.1 and 663.43. In addition, each vendor must supply documentation verifying that their vehicles meet the criteria listed in #2 above. The pre-award Purchaser's Requirements Certification certifies that:

1. The rolling stock presented for purchase is the same product described in the solicitation specifications, and
2. The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets CNYRTA specifications as set forth in its solicitation.

If a vehicle is procured that is subject to the FMVSS issued by the National Highway Traffic Safety Administration (the "NHTSA"), CNYRTA shall maintain all applicable certifications received (in both the pre-award and post-delivery stages) in the procurement file, including a copy of the manufacturer's self-certification that the vehicle complies with the relevant FMVSS. In the event the procured vehicle is not subject to the FMVSS issued by the NHTSA, CNYRTA shall compile a memorandum certifying receipt of a statement to that effect from the manufacturer.

CNYRTA shall complete a post-delivery audit prior to accepting title to the rolling stock. The post-delivery audit shall include:

1. A post-delivery Buy America Certification;
2. A post-delivery Purchaser's Requirements Certification; and
3. When appropriate, a manufacturer's FMVSS Self- Certification Information Form.

The Buy America and FMVSS post-delivery certification processes are similar to those completed during the pre-award audit, with the exception that the post-audit review reflects information based on the buses actually delivered, as opposed to the buses proposed for purchase.

The post-delivery purchaser's requirements certification process is different from the pre-award purchaser's requirements certification process. For the post-delivery purchaser's requirements certification, CNYRTA must certify that:

1. For procurements involving ten (10) or more vehicles:
 - a. CNYRTA sent an inspector to the manufacturer's final assembly facility to visually inspect and road test the vehicles.
 - b. The inspector prepares a report that includes, at a minimum, accurate records of all bus construction activities, description of how the construction and operation of the buses fulfills the contract specifications.
 - c. The delivered vehicles were visually inspected and road tested.
2. For procurements of ten (10) or fewer vehicles, or any number of primary manufacturer standard production and unmodified vans:
 - a. The vehicles were visually inspected and road tested and they meet the contract specifications.

CNYRTA staff shall review FTA publication No. *DOT-T-94-06 Conducting Pre-Award and Post-Delivery Audits for Bus Procurements* for further guidance.

PART IV- CONTRACT ADMINISTRATION

4.1- Contract Administration

Any contract involving the expenditure of public funds is subject to review/audit during and after performance to ensure that, at the very broadest level, the Government got what it paid for. This concept means that, at the contract administration level, the file (standing alone and without need of interpretation or augmentation of the contract administrator or other staff element) should demonstrate that the Purchasing Department and the contractor have complied with the terms of the contract (i.e., bonds have been submitted, contractual issues requiring the approval of the contracting officer have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.) and that contractual and administrative issues in dispute have been addressed and settled in accordance with good administrative practice and sound business judgment.

PROJECT INITIATION: Proper actions taken immediately after contract award can be critical to the success of the project. The first step to be taken by CNYRTA will be to designate a Contract Administrator or Project Manager for each project involving a contract. This individual will be the primary contact with the contractor and is the only individual who, with proper consents and documentation, can authorize changes to the contract. In most cases, this individual will be the staff member who led the procurement process for the project.

MONITORING CONTRACTOR PROGRESS: The CNYRTA Contract Administrator/Project Manager shall establish frequent and direct communications with the Contractor. For complex projects and/or projects which require more extensive periods of time to complete, CNYRTA may establish regular progress meetings with CNYRTA and the Contractor; such meetings will assist in identifying and correcting problems as they arise.

If a cost reimbursement or progress payment form of contract is used, the Contract Administrator/Project Manager shall monitor contractor progress to ensure that the maximum allowable contract amount is not exceeded and that funds are not paid to the contractor in an amount greater than either the percentage of work completed, or actual costs incurred.

CNYRTA shall require two types of reports from contractors, both of which will be reviewed by the Contract Officer:

1. Cost Control Report
2. Monthly progress report. This report should contain the status of the contractor's work and any problems or delays perceived by the contractor to completing the project on schedule and/or within budget.

PROGRESS PAYMENTS: When contractor invoices are submitted to CNYRTA, the Contract Administrator or Project Manager shall compare the invoices to the Contract Document to ensure compliance with the price information outlined in the contract.

MODIFY AN EXISTING PROJECT: Occasionally, additional funding will be needed which exceeds the amount of the originally awarded funding amount of the contract. The following represent various modification scenarios and related documentation requirements:

1. Modification to extend term (where options to extend are in original contract)
 - a. Two copies of Renewal Request signed by vendor and CNYRTA Purchasing Department.
2. Modification to extend term (where options to extend are not in original contract)
 - a. Two copies of Renewal Request signed by vendor and CNYRTA CEO.
 - b. Sole source justification
 - c. Board of Members Approval
2. Additional funding needed for work within the scope of a requirements contract and within the original term of the contract.

- a. Board of Members Approval
3. Increased scope of Work
4. Sole Source justification

Cost and Price Analysis Requirement Circular 4220.1F states that "*grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications.*"

TERMINATING A CONTRACT:

1. Termination for Convenience
2. Termination for Default/Clause

CONTRACT CLOSEOUT: When the contracted services have been adequately performed and all invoices have been paid under the contract, the contract will be closed out. Project Managers should submit a completed Contract Closeout Memorandum to the Procurement Department. The Procurement Department will change the status of the contract to "closed." The contract file located in the Procurement Department files will be removed from the active file section to the inactive section.

STANDARD CONTRACT ADMINISTRATION FUNCTIONS: Responsibilities of the Contract Administration function include:

1. Review contractors' compensation structures.
2. Review contractors' insurance plans.
3. Conduct post-award orientation conferences.
4. Review and evaluate contractors' proposals and, when negotiation will be accomplished by the contracting officer, furnish comments and recommendations to that officer.
5. Determine the allow-ability of costs suspended or disapproved, direct the suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved, and approve final vouchers.
6. Issue Notices of Intent to Disallow or Not Recognize Costs.
7. Attempt to resolve issues in controversy, prepare findings of fact and issue decisions under the Disputes clause on matters in which the administrative contracting officer (ACO) has the authority to take definitive action.
8. Review and approve or disapprove the contractor's requests for payments under the progress payments or performance-based payments clauses.
9. Ensure timely notification by the contractor of any anticipated overrun or under-run of the estimated cost under cost-reimbursement contracts.
10. Monitor the contractor's financial condition and advise the contracting officer when it jeopardizes contract performance.
11. Track any limitations (quarterly, etc.) on payments and recover overpayments from contractor.
12. Issue tax exemption forms, upon request from contractors.
13. Issue work requests under maintenance, overhaul, and modification contracts.
14. Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures when prescribed by agency acquisition regulations.
15. Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience.
16. Negotiate and execute contractual documents settling cancellation charges under multiyear contracts.
17. In facilities contracts evaluate the contractor's requests for facilities and for changes to existing facilities and provide appropriate recommendations to the contracting officer; ensure required screening of facility items before acquisition by the contractor; approve use of facilities on a noninterference basis; and ensure payment by the contractor of any rental due.
18. Monitor contractor industrial labor relations matters under the contract. apprise the Purchasing Department and, if designated by the agency, the appropriate labor relations advisor, of actual or potential labor disputes;

and coordinate the removal of urgently required material from the strikebound contractor's plant upon instruction from, and authorization of, the contracting officer.

19. Ensure contractor compliance with contractual quality assurance requirements.
20. Ensure contractor compliance with contractual safety requirements.
21. Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.
22. Report any inadequacies noted in specifications.
23. Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system.
24. Consent to the placement of subcontracts.
25. Review, evaluate, and approve disadvantaged and women-owned business subcontracting plans.
26. Obtain the contractor's currently approved plan for disadvantaged and women-owned business subcontracting, or, if there is no currently approved plan, assist in developing such a plan.
27. By periodic surveillance, ensure contractors' compliance with disadvantaged and women owned business subcontracting plans, and maintain documentation of the contractor's performance under, and compliance with, these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.
28. Assign and perform supporting contract administration.
29. Ensure timely submission of required reports.
30. Cancel unilateral purchase orders when notified of non-acceptance by the contractor..
31. Accomplish administrative closeout procedures.
32. Determine that the contractor has a drug-free workplace program and drug-free awareness program.
33. Monitor contractors' compliance with the requirements of environmental laws including the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, et seq.) and other environmental requirements as specified in the contract.
34. Verification of contractor compliance with specifications requiring the use of environmentally preferable and energy-efficient materials and the use of materials or delivery of end items with the specified recovered material content. This shall occur as part of the quality assurance procedures set forth in Part 46.

CONTRACT ADMINISTRATION DOCUMENTS: Documents resulting as part of Contract Administration include, but are not limited to, the following:

1. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
2. Modifications/changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
3. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., city council, board of directors, chief executive officer) of the settlement amount;
4. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
5. Documentation relating to contract close-out.

CONTRACT CLOSE OUT: A completed contract is one that is both physically and administratively complete. A contract is *physically complete* only after all deliverable items and services called for under the contract have been delivered and accepted by the grantee. These deliverable items include such things as reports, spare parts, warranty documents, and proof of insurance (where required by the contract terms). These deliverable items may or may not have been priced as discrete pay items in the contract, but they are required deliverables, and the contract is not physically complete until all deliverables are made. A contract is *administratively complete* when all payments have been made and all administrative actions accomplished. The steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

Routine commodity procurements: The closeout of routine purchase orders and contracts for commodities and other commercial products is usually a straightforward and uncomplicated process. The procurement person responsible for closeout will need to ensure that his end item user has inspected and accepted the deliverable items as being in conformance with the purchase order/contract specifications. An inspection/acceptance form should be in the file attesting to the contractor's delivery of all contract end items, including any descriptive literature or warranty documentation. There must also be documentation attesting to final payment by the accounts payable department.

Non-routine contracts for services, construction, rolling stock, etc.: Contracts for personal services, complex equipment, construction, and other one-of-kind items will require a number of steps to affect an administrative closeout. Major elements of the closeout process, and related documentation, might include:

1. Resolution of all contract changes, claims, and final quantities delivered.
2. Determination/recovery of liquidated damages
3. Review of the insurance claim file by counsel/insurance specialist to determine if funds need to be withheld from final payment to cover unsettled claims against the contractor.
4. Settlement of all subcontracts by prime contractor
5. Performance of all inspections (and acceptance tests if any) by the grantee's project management office, with appropriate documentation
6. Conduct of a cost audit for cost-reimbursement contracts and resolve questioned costs, if any.
7. Generation of a Contractor Performance Report, See *Best Practice* below.
8. The submittal of all required documentation by the Contractor, including such items as:
9. Final reports
10. Final payroll records and wage rate certifications
11. Spare parts list
12. Manufacturer's Warranties and Guarantees
13. Final corrected shop drawings
14. Operation and maintenance manuals
15. Catalogues and brochures
16. Invention disclosure (if applicable)
17. Federally-owned property report (if there was Government-furnished property)
18. Resolution of final quantities (construction contracts)
19. Final invoice
20. Consent of Surety to release final payment to Contractor
21. Contractor's Affidavit of Release of Liens
22. Contractor's General Release (releasing the grantee from any further liabilities/claims under the contract)
23. Maintenance Bond (if required)
24. Conduct a Post-delivery Audit for rolling stock contracts as required by 49 CFR Part 663 Pre-award and Post-delivery Audits of Rolling Stock Purchases.

BEST PRACTICE

Establishing That a Contract Is Completed: It is generally the responsibility of the Project Manager (PM) to establish that the work under a contract has been completed and the contract is ready for closeout. When the PM determines that the work is complete, the PM should prepare a checklist showing all the contract deliverables and submittals and indicating on the checklist that all submittals and deliverables have been reviewed, inspected and accepted. The PM should notify the contract administrator by memorandum that the contract is complete, and all required deliverables have been inspected and accepted.

Contract Closeout Checklist: The PM or contract administrator should have a *contract closeout checklist*, listing all the administrative steps required to close out a contract. The checklist is an extremely useful tool for the contract

administrator or project manager who is responsible for contract closeout. Given the different requirements for the various contracting situations, grantees may wish to have different checklists for different types of contracts; e.g., commodities, services, construction, cost-type contracts, etc.

Contractor Performance Report: Documentation of a contractor's performance for future source selection decisions is an option that grantees should consider for certain types of procurements such as professional services, complex equipment, construction, etc. These performance reports can be an important reference point for future source-selection decisions. If the grantee chooses to document a contractor's performance, input to the report should be received from the technical office, contracting office, disadvantaged business office (if contract contained DBE requirements) and end users of the product or service (if appropriate). Contractors should be furnished with the report and given an opportunity to submit comments, rebutting statements or additional information. The Contractor's comments should be retained in the report file. It would be advisable to have a review level above the Purchasing Department to consider disagreements between the parties regarding the evaluation. However, final decision on the content of the report must rest with the grantee. Copies of the final evaluation should be furnished to the Contractor. Grantees should have a time limit on the retention of these reports!

Review by Legal Counsel: For procurements involving services, construction, and larger dollar value equipment purchases, grantees may wish to have their legal counsel review the closeout file to ensure the adequacy of the contractor's legal documents, including the contractor's general release, insurance certificates, surety's release, maintenance bonds, etc.

Proof of Insurance Coverage: For all contracts requiring the Contractor to maintain insurance for its products or services (e.g., professional liability or product liability insurance), the contract administrator should obtain *proof of insurance* from the Contractor as part of the closeout process. This documentation should be submitted to the grantee's Insurance Department for approval prior to final payment of the Contractor. The Insurance Department will be required to maintain these documents as "active" files until such time as the insurance requirement ceases under the terms and conditions of the contract; i.e., these insurance terms will continue past (survive) the final contract payment.

Final payment: The contract administrator (CA) must be sure that all administrative steps have been accomplished prior to final payment. Contract administrators should make use of a *contract closeout checklist* to the extent that the Program Manager's checklist does not cover everything in the closeout process (e.g., the contract administrator may have certain areas of concern not assigned to the Program Manager). The CA must ensure that all required inspections have been performed by the technical program office, and a memorandum has been received from the project manager certifying to the satisfactory completion of the contract, which includes all required documentation from the Contractor, before they authorize final payment, or the release of any funds being retained under the contract. Contract administrators need to pay careful attention to those types of documents that are notoriously problematic, such as warranties. In fact, grantees may wish to consider making these warranty documents a pay item in their contracts when the contract pay items are being established, so that the Contractor will be motivated to deliver the documents in a timely manner, and there will be no dispute as to the proper amount that should be paid for these items.

Contractor's General Release: As part of the contract closeout process, the contract administrator must send the Contractor a closeout letter that includes the Contractor's "general release." This document must be a standard statement prepared by the grantee's legal counsel for use on all of the grantee's contracts. The release will say that for the payment of a sum certain, which is the final contract amount agreed to by both parties, the Contractor releases the grantee from any and all claims of every kind arising directly or indirectly out of the contract. The release may also contain a certification that the contractor has paid its subcontractors and suppliers for all their labor, materials, services, etc. furnished under the contract. The release is to be signed by a corporate official authorized to bind the Contractor. The *general release* is important to obtain prior to final payment because it assures the grantee that there will be no further claims from the Contractor once the final payment has been made. The grantee should have the release

reviewed by its legal counsel if the Contractor makes any changes to the grantee's standard release language that was sent to the Contractor for signature. Of course, it will be necessary for the grantee and the Contractor to have resolved all open issues of a financial nature prior to the execution of the release (change orders, claims, liquidated damages, etc.), and this resolution of all outstanding claims is an important step in the contract closeout process.

Retainage and the problem of contractors who quit work: Occasionally a construction contractor may "walk away" from a project that is almost complete, refusing to sign a general release and forgoing final payment. This situation may occur when the contractor lacks sufficient financial incentive to complete the contract, e.g., if the "punch list" is large and there is very little money left in retainage, the contractor may profit by refusing to correct the punch list items and leave the retainage with the grantee. Or the contractor may have been awarded another contract which requires the reassignment of his personnel to another job. Whatever the reason, *the grantee should anticipate this possibility by carefully estimating the amount of retainage in such a way that it represents twice the amount of the punch list work and undelivered items (manuals, drawings, spare parts, etc.).* For example, MARTA's procedures (which are spelled out in the contract provisions) call for the retainage of at least 5% of the total contract value as the work progresses (10% if there are problems observed with the work). At the point of final inspection and punch list preparation, the resident engineer estimates the value of the punch list items and the undelivered items such as spares, manuals, warranties, etc., and then MARTA pays out the retainage minus twice the value of all the unfinished work. By establishing the retainage in this way, the contractor is motivated to complete the contract, because the contractor will actually receive twice the amount of money that it takes to finish the work. In other words, the contractor is given a strong incentive to complete the contract. When all else fails, the grantee should definitely involve the surety in the issue of unfinished work (even if the amount of work is relatively small) because the contractor's relationship with its surety is a vital one for its future business. If the contractor loses the confidence of its surety, it is effectively foreclosing on its ability to bid on future work requiring performance bonds.

Warranty and Guarantee Register: The contract specifications may require that individual warranties or guarantees be furnished for various installed equipment or building systems. For each completed contract requiring warranties, the contract administrator should develop a *Warranty and Guarantee Register*, which is a status form listing:

1. Each individual item of equipment and system for which a warranty or guarantee is specified (roofing, doors, sealants, etc.);
2. The pertinent section in the contract specification;
3. The name of the company providing the warranty;
4. The expiration date of the warranty; and
5. The address of the providing company

An example of a *Warranty and Guarantee Register*, used by MARTA, can be found in Appendix B.13. The *Warranty and Guarantee Register* will enable the grantee to monitor upcoming warranty expirations so that the equipment or building system can be inspected before the expiration date, and corrective actions taken by the Contractor if required.

The Federal policy is to retain these reports for not more than three years [FAR Part 42.1503(e)]

PART V- APPENDICES

5.1- Formal Procurement Contract File Checklist



Contract File Checklist

Contract ID #:
Contract Title:
Procurement type: IFB ___ RFP ___ Emergency ___
Vendor Name:
Vendor Address:
Contract Period:
Contract Value:
Buyer:

FTA	NYS/Reg #		Completed	N/A
		1 Contract Kickoff Meeting Sign In/Notes		
		2 Purchase Requisition:		
		Appropriate Authorization Per Approved Thresholds		
		Evidence of Availability of Funds		
E-7		Independent Cost Estimate		
	x	3 Preferred Source Consideration		
E-38		4 Sole Source Applicability		
E-39		Cost Analysis Required		
		5 Pre Bid/RFP M/WBE Goal Waiver		
		Waiver Application		
		NYS Waiver Granted - Authorized Waiver/Memo Attached		
E-26-28		6 Rationale for the Method of Procurement		
	x	7 Prevailing Wage Consideration		
		8 IFB or RFP Package:		
E-31		Sufficient Bid Time (Minimum 3 Weeks)		
E-24		Clear, Accurate and Complete Specifications		
E-22		Prevailing Wage Schedule Attached (Davis Bacon)		
E-36		Evaluation Criteria		
	x	State Finance Law 139		
	x	Tax Law Section ST220TD		
	x	Tax Law Section 5-A Certification		
	x	Iranian Divestment Act		
	142.2	M/WBE Contract Established Goal		
	252.2	SDVOB Contract Established Goal		
	143.2/3	EEO Form 100, 101		
	142.4/6	MWBE Form 100, 101, 101 Instructions		
	142.7	MWBE Waiver Form 102, 102 Instructions		
	142.8	Good Faith Effort Form 103		
	252.2	SDVOB Form 101, 101 Instructions		
	142.13	Provision in Contract; Violations		
	142.3	Diversity Practices Considerations		
	143.2	EEO Language		
	143.4	EEO Compliance Language		
E-37		Price & Other Factors (Best Value/Most Advantageous)		
E-56		FTA Contract Clauses (Federally Funded Procurements)		
		Supporting Documents (as noted in Section A., III., A.)		

		9	Addendum/Amendments		
E-30		10	DBE Consideration - (https://nysucp.newnycontracts.com/)		
E-30	142.8	11	M/WBE Consideration -(https://ny.newnycontracts.com/Default.asp?)		
E-30	252.2	12	SDVOB Consideration - (https://online.ogs.ny.gov/SDVOB/search)		
E-30	141.6	13	Vendor Listing		
			Authorization to Proceed with Public Letting:		
E-29		14	Proof of Publication: (Suggested vendors as follows):		
			Auburn The Citizen - citizenads@yahoo.com		
			CNY Vision - dmcclary@cnyvision.com		
			Minority Commerce - imssjim@aol.com		
			NYS Contract Reporter - www.nyscr.com		
			Oswego Palladium Times - classifieds@palltimes.com		
			Rome Sentinel - classad@ny.com		
			Syracuse Post Standard - legals@syracuse.com		
			Utica Dispatch - legals@uticaod.com		
			CNY Centro Website - IT Helpdesk Ticket/Email to Lynette Paduano and Confirmation		
		15	Vendor List - Bid Sent Verification		
		16	Requests for Bids/Proposal Package		
		17	Bidder/Proposer IFB/RFP Clarification Questions		
		18	Bidder/Proposer IFB/RFP Clarification Answers		
		19	PreBid/PreProposal Meeting Sign In Sheet		
		20	PreBid/PreProposal Meeting Minutes		
		21	Public Opening Bid Sign In Sheet		
E-32		22	Non-Bidding/Proposing Notices		
		23	Bid/Proposal Tabulation		
E-34		24	RFP Evaluation Committee Meeting Sign In Sheet		
		25	RFP Evaluation Committee Notes		
		26	Evaluation of Options		
E-40		27	Evaluation of Responsiveness/Responsibility		
E-33/18		28	Debarment & Suspension Consideration		
			https://www.sam.gov/portal/public/SAM/		
			https://dbr.labor.state.ny.us/EDList/searchPage.do		
		29	Lobbying Certification		
			(FTA contracts over \$100k)		
		30	Buy America Certification		
			Iron, Steel, and Manufactured Goods Over \$100k -		
			Certification is needed for all NYS contract purchases regardless of dollar value		
		31	Cost or Price Analysis		
E-41			Authorization to Proceed with Board Approval:		
		32	Board Resolution/Minutes		
		33	Notice of Award		
		34	Certificate of Insurance		
		35	Bond Documents		
			Consider Excess Bonding		
			Bid Security (Construction Over \$100K)		
E-53			Performance Security (Construction Over \$100K)		
E-54			Payment Security (Construction Over \$100K)		
E-55		36	Purchase Order		
		37	Notice to Proceed		
		38	Notice to Unsuccessful Bidders/Proposers		
		39	New York State Contract Reporter Bid Results Posting - Online		
		40	Vendor Contract KickOff Meeting - Prior to Start Date		

		41	Contract Modification Justification/Change Orders and Out of Scope		
E-44		42	Renewal/Exercise Options Letters		
E-43		43	Records of Protest		
		44	Misc. Information/Correspondence		
		45	Contract Closeout Documentation		

Individual Bid/Proposal Responses - See Red Weld File

Bus Procurement

			Bus Testing Certification & Report (Buses & Modified Mass Produced Vans)		
			TVM Certifications (All Rolling Stock)		
			Buy America Certification (Rolling Stock >\$100,000)		
			Pre-Award Audit FMVSS Certification (Rolling Stock >\$100,000)		
			Pre-Award Buy America Certification (Rolling Stock >\$100,000)		
			Pre-Award Purchaser's Requirement (Rolling Stock >\$100,000)		
			Post Delivery Audit FMVSS Certification (Rolling Stock >\$100,000)		
			Post Delivery Buy America Certification (Rolling Stock >\$100,000)		
			Post Delivery Purchaser's Requirement (Rolling Stock >\$100,000)		
E-50			Piggybacking Checklist		
			On-Site Inspector's Report		

Additional Considerations and/or Documentation

E-51			Qualifications Exclude Price (A&E)		
E-52			Serial Price Negotiations (A&E)		
E-8			A&E Geographic Preference		
E-9			Unreasonable Qualifications Requirements		
E-10			Unnecessary Experience		
E-11			Organizational Conflict of Interest		
			Annual Survey Completed		
			Any Known Conflicts on this Procurement		
E-12			Arbitrary Action		
E-13			Brand Name Restrictions		
E-14			Geographic Preferences		
E-15			Contact Period of Performance Limitation		
E-16			Written Procurement Selection Procedures		
E-17			Solicitation Prequalification Criteria		
E-19			Sound and Complete Agreement		
E-35			Rejecting Bids		
E-42			Written Record or Procurement History		
E-45			Advance Payments		
E-46			Progress Payments		
E-47			Time and Materials Contracts		
E-48			Cost Plus Percentage of Cost		
E-49			Liquidated Damages Provisions		
E-25			Adequate Competition - Two or More Competitors		

Signature: _____ Date: _____
Buyer

Signature: _____ Date: _____
Director of Procurement

*Note- All tabs labelled as N/A are purposefully left without documentation

5.2- Formal Procurement General Contract Clauses

PROVISIONS OF LAW DEEMED INSERTED: Each and every provision of law or clause required to be set forth or included in this Invitation for Bids and any resulting contract award shall be deemed inserted herein, such that a contract resulting herefrom shall be read and enforced as though each and every required provision or clause were so set forth. If through mistake or otherwise, any such provision or clause is not included as required, or is not correctly included, and upon the written notice of either party, the contract shall be forthwith physically amended by the CNYRTA to insert, modify or correct such provision or clause.

1. **New York State Clauses:** Any contract award made under this IFB shall include the Standard Clauses for all New York State Contracts (attached hereto as **Appendix V**), the provisions of which are hereby incorporated as if fully set forth herein, and which shall take precedence over any conflicting provision in this IFB or any Bid.
2. **Equal Employment and Affirmative Action Clauses:** Any contract award made under this IFB shall include the Equal Employment Opportunity and Affirmative Action Clauses (attached hereto as **Appendix VI**), the provisions of which are hereby incorporated as if fully set forth herein, and which shall take precedence over any conflicting provision in this IFB or any Bid.
3. **Free and Open Competition:** Except in the case of certain governmentally mandated set-asides, the CNYRTA supports free and open competition. Whenever possible, terms, specifications and conditions are designed to accomplish such free and open competition to the extent possible while also satisfying the CNYRTA's procurement needs.
4. **Governing Law, Jurisdiction and Venue:** This IFB, Bid, and any subsequent contract award shall be construed and enforced in accordance with the laws of the State of New York and shall not be construed against the CNYRTA as drafter of the Bid Package. Jurisdiction of any litigation respecting this IFB, Bid or subsequent contract award shall be in New York, with venue in a court of competent jurisdiction located in Onondaga County.

The Bidder agrees that service of process on the Bidder in relation to such jurisdiction may be made as provided in Section I by registered or certified mail, return receipt requested, addressed to any office actually maintained by the Bidder or by actual personal delivery to the Bidder if the Bidder be an individual; to any partner if the Bidder be a partnership; or to an officer, director or managing or general agent if the Bidder be a corporation. Such service shall be deemed sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in different manner.

5. **Conflict of Terms and Conditions:** Any conflict of terms among the Bid Documents or contained in the Bid Package shall be resolved in the following order of precedence: (i) New York Contract Clauses and other required clauses, annexed hereto as **Appendix V and VI**; (ii) the terms set forth in this Bid Package; and (iii) the Bid.
6. **Procurement Lobbying:** State Finance Law, sections 139-j and 139-k impose restrictions on communications between the CNYRTA and Bidders during the procurement process. Particularly, Bidders may not have any communications with the CNYRTA intended to influence this procurement from the earliest notice of intent to solicit Bids until a contract is awarded (the "Restricted Period") other than to/with the Designated Contact identified on the cover page. Any CNYRTA employee contacted by a Bidder or prospective Bidder is required to obtain, report and retain information concerning the contact. Such information may be used in Bid evaluation respecting the responsibility of the Bidder making contact.

Certain findings of non-responsibility may result in disqualification or Bid rejection. In the event two such findings are made within a four-year period, the Bidder will be debarred from obtaining governmental procurement contracts. Additional information concerning communications during the Restricted Period is available at the New York State Office of General Services website.

7. Permitted Communications with the Designated Contact During the Restricted Period: In the event a Bidder has a question or requires clarification regarding any part of this IFB, such questions or requests for clarification must be made to the Designated Contact in writing. The CNYRTA will not respond to any verbal inquiries. The CNYRTA's response to properly submitted questions or requests for clarification will be in writing. Such responses, if they change or clarify the IFB in a substantial or material manner, will be forwarded by addenda to all individuals or companies to whom a Bid Package was sent prior to Bid Opening.

8. Recycled Products and Sustainability: The Successful Bidder shall comply with, when applicable, the policy of New York State and the CNYRTA that all purchases shall incorporate sustainable procurement policies and practices.

In accordance with the provisions of section 165(3) of the State Finance Law, the CNYRTA is required to purchase recycled products, if available, made with recycled content in accordance with rules and regulations established by the State Department of Environmental Conservation. If the cost of a recycled product does not exceed the cost of a product without recycled content by 10 percent (or 15 percent if over 50 percent of the recycled materials are generated from the New York State waste system), the recycled product must be purchased.

9. Ethics Compliance: All Bidders and their employees must comply with the requirements of sections 73 and 74 of the Public Officers Law, other New York State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. By signing this IFB, each Bidder certifies full compliance with all applicable laws, codes, rules, regulations and executive orders for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State. Failure to comply with those provisions may result in disqualification from the bidding process, termination of a contract award and/or other civil or criminal proceedings as required by law.

10. Independent Contractor: The Successful Bidder and its shareholders, directors, officers, agents, employees or any other person or entity engaged in the Performance shall at all times be independent contractors and not agents, employees, joint ventures or any other similar relation to the CNYRTA. The Successful Bidder bears full and exclusive responsibility for any and all liability, loss, damages and/or expenses which may be suffered as a result of any claim, demand, suit or cause of action which may be made or held against them by reason of breach of contract, negligence, malpractice or any other cause of action on the part of the Successful Bidder, its shareholders, directors, officers, agents, employees or any other person or entity acting on its behalf.

11. Bidder's Standard Terms: A Bidder's standard terms and conditions will not be considered relevant to a Bid or any contract award made under this IFB and therefore should not be included as part of any Bid. Any additional terms or conditions attached to or referenced in any Bid shall not be considered part of the Bid; but rather, shall be deemed included for informational purposes only. No extraneous terms will be incorporated into a contract awarded under this IFB unless approved in writing by the CNYRTA. Receipt of any notice indicating a particular Bidder is the Successful Bidder shall not constitute acceptance of any extraneous terms contained in such Successful Bid.

12. The CNYRTA is a Tax Exempt Entity: The CNYRTA is exempt from Federal, State and local taxes, thus such taxes should not be included in Bid price calculations; however, the Successful Bidder must pay all salaries and expenses of its employees, as well as all Federal Social Security taxes, Federal and State unemployment taxes, and any similar taxes when assessed or charged. The CNYRTA will furnish necessary exemption documentation to the Successful Bidder.

13. Notification of Errors, Inquiries and Interpretation: It is the Bidders' responsibility to bring any technical errors or deficiencies in the Scope of Performance and Specifications to the CNYRTA's attention and to make recommendations for additional requirements deemed necessary, as standard, to complete Performance. If the CNYRTA finds an error or deficiency is significant or necessitates a material modification in the Scope of Performance and Specifications, all individuals or companies to whom/which a Bid Package was sent will be notified in writing of such change by addendum to this IFB.

14. Interested Parties: For the purposes of this IFB and any resulting contract award, a person shall be deemed "interested" if s/he holds any position with or employment by a Bidder and performs any functions or exercises any authority in such position or employment respecting the Performance contemplated herein.

No member of the governing body of the CNYRTA, including its subsidiaries, nor any of its directors, officers, employees, agents or servants may be interested, directly or indirectly, in completing the Performance during his/her tenure in such position, and for two years thereafter. Further, no member of the governing body of the locality in which the performance is to be rendered or provided, or any other public official in such locality who exercises any authority or performs any function associated with reviewing or approving the Performance shall have any interest in a contract award made under this IFB. No member of the United States Congress and no resident Commissioner shall have any interest in a contract award made under this IFB.

15. Indemnification: The Successful Bidder shall indemnify and hold harmless the CNYRTA, its directors, officers, employees, agents, servants, guests, invitees or any other person or entity acting for or on behalf of the CNYRTA against all risk of loss of whatever nature, including but not limited to any and all losses, expenses, damages, and liabilities, including reasonable attorney's fees, the costs of consultants and/or experts and court fees arising out of the intentional or negligent acts or omissions of the Successful Bidder or any person or entity acting on its behalf for any and all damage or liability causing bodily injury, wrongful death or property damage and arising out of or in connection with the Performance described herein whether sustained before, during or after the completion thereof. **This provision shall survive completion, expiration, cancelation or termination of any contract resulting from this IFB.**

16. Iran Divestment Act: By submitting a Bid, the Bidder certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List"), or the most current version thereof, posted at the New York Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>; and further certifies that it will not utilize any subcontractor identified on the Prohibited Entities List during the course of its Performance. Such certification is provided herewith as an Exhibit.

If the CNYRTA receive information that a person (as defined in State Finance Law section 165-a) is in violation of the above-referenced Certifications during the Contract Period, it will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity in violation of the Act within 90 days of a violation determination, then the CNYRTA shall take such action as may be appropriate and provided for by law, rule, or contract, including but not limited to, seeking compliance, recovering damages or declaring the Successful Bidder in default.

The CNYRTA reserves the right to reject a Bid from an entity that appears on the Prohibited Entities List prior to a contract award, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after a contract award.

17. Bidder Protests and Debriefing: (i) Bidder Protests. A Bidder has the right to protest any aspect of this procurement at the pre- or post-bid stage. If Bidder seeks to protest, additional information about the procedure therefore may be obtained from CNYRTA's Chief Administration Officer. (ii) Bidder Debriefings. Upon notification of a contract awarded

under this IFB, unsuccessful Bidders are entitled to, and shall receive, upon request, a debriefing concerning evaluation of their Bid and the reasons why it was not selected for a contract award. Such debriefings are typically conducted in person, but may also be conducted by video conference, telephone conference or through written summaries if agreed to by the unsuccessful Bidder. During a debriefing, the CNYRTA reserves the right to limit the discussion to the reasons the Bid was unsuccessful, the reasons the winning Bid was selected and offer advice or guidance to the unsuccessful Bidder to improve future Bids.

18. Dispute Resolution: The Successful Bidder must agree to engage in a dispute resolution process with a designated officer of the CNYRTA to address issues or disputes respecting Performance. If a satisfactory resolution cannot be found, the CNYRTA reserves the right to terminate the contract. The Designated Contact identified on the front page of this IFB shall provide additional information concerning dispute resolution upon written request.

19. No Arbitration: Disputes involving this IFB, any Bid or contract award, including breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without CNYRTA's written consent.

20. Termination: The CNYRTA shall reserve the right to terminate any contract whether or not awarded under this IFB upon prior written notice to the Successful Bidder in the event of any of, but not limited to, the following: (i) if through any cause or for any reason the Successful Bidder fails to timely and properly satisfy any obligation herein or violates any applicable law, rule, regulation, ordinance, covenant, agreement or stipulation; (ii) the Successful Bidder makes an assignment for the benefit of creditors, a petition in bankruptcy or any insolvency proceeding is filed by or against the Successful Bidder and is not dismissed within thirty (30) calendar days from the filing date, or all or substantially all of the Successful Bidder's property is levied upon or sold in any judicial proceeding; (iii) if funds become unavailable; (iv) in the event the State Finance Law sections 139-j and 139-k certifications are found to be false or incomplete; or (v) if applicable, the Department of Taxation and Finance Contractor Certification form, ST 220-CA statements are found to be false or incomplete.

In the event of termination, all finished and unfinished Performance by the Successful Bidder hereunder shall, at the option of the CNYRTA, become the CNYRTA's property and the Successful Bidder shall be entitled to receive reasonable compensation for any satisfactory Performance through the date of termination. Notwithstanding the above, termination shall not relieve the Successful Bidder of liability to the CNYRTA, which shall be held harmless and indemnified for any damages sustained by it or any of its employees, board members, officers, employees, agents or other representatives by virtue of the termination. Upon termination, the CNYRTA may withhold any full or partial payments for the purposes of set-off until the exact amount of damages due the CNYRTA can be determined.

21. Freedom of Information Law: Bidders acknowledge that the CNYRTA is a public entity and the Bidder's proprietary information, which may include trade secrets owned by the Bidder, may be subject to disclosure pursuant to New York State Public Officers Law or similar applicable laws.

As a New York State Public Authority, any and all agreements to which the CNYRTA is a party are considered public records and are subject to disclosure under the New York State Freedom of Information Law ("FOIL"). During the Bid evaluation process, the content of each Bid will be held in confidence and no details contained in any Bid will be revealed (except as may be required by law). Trade secrets or information, the disclosure of which would cause injury to the competitive position of commercial enterprises, may be protected from disclosure under FOIL during and after Bid evaluation. However, it is the Bidder's obligation to bring the existence of such Trade Secret or other proprietary information to the CNYRTA's attention.

SHOULD YOU FEEL YOUR BID CONTAINS TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, YOU MUST SUBMIT A REQUEST TO EXCLUDE SUCH INFORMATION FROM DISCLOSURE IN RESPONSE TO A FOIL REQUEST. REQUESTS MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE PROTECTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME A BID IS SUBMITTED. REQUESTS FOR

EXCLUSION OF THE ENTIRE CONTENTS OF A BID IN RESPONSE TO A FOIL REQUEST HAVE GENERALLY NOT BEEN FOUND MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXCLUSION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR COMPANY.

22. Save Harmless; Intellectual Property Infringement: By submitting a Bid, the Bidder agrees to save, keep, hold harmless and fully indemnify the CNYRTA and its board members, officers, agents, employees or any other person or entity acting for or on its behalf from and against any and all claims based on purported infringement of the patent, trademark, copyright or trade secret rights of any entity, person or persons in consequences of the use by CNYRTA, or by any person or entity acting for or on its behalf during the course of Performance and of which the Bidder is not lawfully entitled to sell or use, provided that the CNYRTA gives the Bidder prompt notice in writing of any demand, claim or suit together with all information necessary to defend the same.

23. Release of Liens: The Successful Bidder shall, at the time it certifies final payment from CNYRTA, also certify to the CNYRTA in writing that all consultants, material suppliers, subcontractors, agents and employees have been paid and that the Successful Bidder has in its possession and will provide to CNYRTA upon request and in form satisfactory to the CNYRTA, releases or waivers of liens from all consultants, material suppliers, subcontractors, employees or persons contracting with the Successful Bidder in connection with the Performance.

24. Ownership of Documents, Records and Other Information: All notes, estimates, designs, drawings, plans, specifications, technical data, memoranda and any other information, instrument or document produced or purchased by the Successful Bidder and paid for by CNYRTA in connection with the Performance shall be the sole property of the CNYRTA, and the CNYRTA is vested with all rights therein of whatever kind and however created, whether by common law, statutory law or by equity. The Successful Bidder agrees that the CNYRTA shall have access, at all reasonable times, to inspect and make copies of all notes, estimates, designs, drawings, plans, specifications, technical data, memoranda and any other information, instrument or document produced or purchased in connection with the Performance. The CNYRTA agrees that it will not sell, assign or modify documents, nor will it permit any other governmental or private entity to use any notes, estimates, designs, drawings, plans, specifications, technical data, memoranda and any other information, instrument or document produced or purchased in connection with the Performance, but will retain such documents for a period of not less than six (6) years.

25. Rights and Remedies of the CNYRTA: The CNYRTA shall have the following rights in the event it deems the Successful Bidder in breach of any term whatsoever set forth herein: (i) the right to take over and complete Performance, or any part thereof, as agent for and at the expense of the Successful Bidder, either directly or through another individual or entity; (ii) the right to cancel a contract awarded under this IFB as to any or all of the Performance not completed at such time; (iii) the right to specific performance, an injunction or any other remedy; and (iv) the right to money damages. For the purpose of this IFB and any contract awarded hereunder, breach shall include the following, whether before, during or after the time for performance of an obligation set forth herein: (i) a statement by the Successful Bidder to any representative of the CNYRTA indicating that it cannot or will not perform any one or more of its obligations; (ii) any act or omission of the Successful Bidder or any other occurrence which makes it improbable that he/she/it will be able to perform any one or more obligations contained herein; and (iii) any suspension of performance of, or absence of progress on, any part of the obligations set forth herein which makes it improbable that he/she/it will be able to perform any one or more of its obligation(s). The enumeration in this numbered clause or elsewhere in this Bid Package of specific rights and remedies of the CNYRTA shall not be deemed to limit any other rights or remedies which the CNYRTA would have in the absence of such enumeration. No exercise by the CNYRTA of any right or remedy shall operate as a waiver of any other rights or remedies or stop the CNYRTA from exercising any and all other rights or remedies available to it.

26. Successors and Assigns: The terms and conditions contained herein shall be binding upon the parties thereto and on their heirs, executors, administrators, successors and assigns; provided however, that no part of the Performance nor any moneys due or to become due the Successful Bidder may be assigned without the written consent of the CNYRTA.

27. **No Third-Party Rights:** Nothing contained in this IFB is intended for benefit of third persons, except to the extent specifically provided by use of the word “benefit” or “direct right of action,” and no provision herein shall be construed as creating any third party rights.

28. **Terms:** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the person as required by context.

29. **Section and Subsection Titles:** The section and subsection titles are inserted for convenience only, are not part of the IFB and do not in any way limit or amplify the terms and provisions herein.

30. **Counterparts:** Any document contained in this Bid Package may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

31. **Severability:** The provisions herein shall be deemed severable, and if any provision or part thereof is held to be illegal, void, voidable, invalid, non-binding or unenforceable in its entirety, partially or as to any party for any reason, such provision may be changed, consistent with the intent of the parties as expressed herein, to the extent reasonably necessary to make the provision legal, valid, binding and enforceable. If any provision or part thereof is held to be illegal, void, voidable, invalid, non-binding or unenforceable in its entirety, partially or as to any party for any reason and if such provision cannot be changed to be consistent with the intent of the parties as expressed herein in a manner which makes it fully legal, valid, binding and enforceable, then such provisions shall be stricken and the remaining provisions shall not be affected or impaired in any way, but shall remain in full force and effect.

5.3- Formal Procurement NYS Standard Contract Clauses

https://ogs.ny.gov/system/files/documents/2019/10/AppendixA_0.pdf

5.4- FTA Circular 4220 (Most Current Version)

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

5.5- FTA Best Practices Manual

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf>