

The Central New York Regional Transportation Authority

# Procurement Policy Manual

## 2026



*Moving Communities Forward—One Purchase at a Time.*



## The Central New York Regional Transportation Authority

As of June 2026

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## Part I- Overview

### 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.

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 procurement 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.

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

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 CNYRTA are as follows:**

1. FTA Master Agreement
2. 2 CFR Part 200
3. FTA Circular 4220, Third Party Contracting Guideline (most current version)
4. Participation by Disadvantaged Business in Department of Transportation Programs, 49 CFR Part 26
5. FTA Best Practices Manual

**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

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 the New York State Contract Reporter, newspapers in general circulation of the counties served by CNYRTA, minority-focused publications and on the CNYRTA e-procurement website.

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

**BEST VALUE:** A selection process in which proposals contain both price and qualitative components, and the 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 CNYRTA.

**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.

**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 consent 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 the contractor's 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 CNYRTA to pay the Consultant a fixed fee plus all allowable actual costs (as established by predetermined cost principles and rates) provided such costs and fees 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.

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

**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 involves 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.

**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 childcare centers, preserves historic buildings, manages a fine arts program, and develops, advocates, and evaluates government-wide policy.

**INDEPENDENT COST ESTIMATE (ICE)**: 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.

**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.

**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. 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:** An assignment of existing contract rights to purchase supplies, equipment, or services.

**PREFERRED SOURCE:** A vendor or contractor that has been accorded with preferential status by the State of New York, including the Department of Correctional Services, qualified charitable nonprofit-making agencies for the blind, mentally ill, severely disabled or veterans certified as such.

**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"
4. The purchase of advertising space or advertising time in any medium
5. Expenditures associated with internal or public meetings

**PROCUREMENT ANALYST/SENIOR PROCUREMENT ANALYST:** 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.

**PROCUREMENT MANAGER:** Individual who has responsibility for the day-to-day functions of the department. This individual is responsible for ensuring compliance with applicable CNYRTA Guidelines and governmental regulations in the procurements under his/her purview.

**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 project-based specifications for CNYRTA procurement contracts. 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.

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

**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).

**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 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 policy and procedure for the administrative resolution of protests is set forth herein. The Federal Transit Administration (FTA) Third Party Contracting Circular addresses protests where federal funds are involved. FTA will only review protests regarding matters that are primarily of Federal concern. Failure to maintain strict compliance with these procedures as set forth herein will result in automatic disqualification of the protest.

### **Submittal Procedures:**

1. An interested party wishing to file a protest shall send a written submission to CNYRTA's Vice President of Finance (VP) by email at [protest@centro.org](mailto:protest@centro.org). A PDF copy of the protest and supporting documents shall be included in the email.
2. The protest shall include, at a minimum:
  - a. The name and address of the protesting party and its relationship to the procurement sufficient to establish that the protest is being filed by an interested party;
  - b. Identity of the contact person for the protesting party, including name, title, address, telephone, and email address. CNYRTA will send all documents and notices concerning the protest, including the decision on the protest to the email address provided by the protesting party. The protesting party shall be deemed to have received such documents and notices when CNYRTA sends them to the email address provided;

- c. Identification of the Contract title and Contract number in the IFB/RFP Document;
- d. A description of the nature of the protest, referencing the portion(s) of the solicitation involved. The protesting party shall include all supporting facts, documents and data with the protest;
- e. Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based, including specific citations and description of how the law, regulation or governance was violated;
- f. A statement of the specific relief requested; and
- g. A notarized affirmation by the protestor (if an individual) or by an owner or officer of the protestor (if not an individual) as to the truth and accuracy of the statements made in the protest submittal.

#### **Protest of the Solicitation Process:**

1. A protest of the solicitation process is a protest related to the technical scope or specification, terms, conditions, or form of a solicitation or process relating thereto.
2. This type of protest shall be filed no later than five (5) calendar days prior to the submission deadline set in the solicitation document or five (5) calendar days after the interested party receives the solicitation document from the Procurement Officer, whichever occurs first. If an interested party obtains the solicitation document from the Procurement Officer within five (5) days of the submission deadline in the solicitation document, the interested party shall submit a protest of the solicitation process within forty-eight (48) hours of receipt of the solicitation document from the Procurement Officer or forty-eight (48) hours prior to the submission deadline identified in the solicitation document, whichever occurs first. If an interested party obtains the solicitation document from the Procurement Officer less than forty-eight (48) hours prior to the submission deadline identified in the solicitation document, the interested party shall be deemed to have waived their right to file a protest of the solicitation process.
3. For protests of the solicitation process, the VP may choose to extend the solicitation process if such extension is necessary to afford an adequate opportunity to render a full and accurate determination on the protest.
4. A written decision on protests of this type shall be provided to all interested parties prior to the submission deadline set in the solicitation document.
5. Should the protest be upheld in whole or in substantial part, the VP shall issue instructions to remedy issues relating to the protest, which may include:
  - a. Amending the solicitation to correct the document or process accordingly and extend the deadline;
  - b. Cancel the solicitation in its entirety.

#### **Protest of the Evaluation Process:**

1. All interested parties must formally submit a written protest to the VP no later than five (5) business days after notification of non-award.
2. Any proposer may protest the evaluation process on one or more of the following grounds:
  - a. The recommended awardee does not meet the requirements of the solicitation;
  - b. The bid or proposal recommended for acceptance does not meet the criteria of the solicitation or award;
  - c. The interested party objects to CNYRTA declaring their response to the solicitation document non-responsive or CNYRTA declaring them non-responsible;
  - d. The evaluation process conducted by CNYRTA is improper, illegal, or the decision to recommend award is arbitrary and capricious.

#### **Processing of Protests:**

1. The VP shall notify all interested parties of the receipt of a protest, the type of protest, and nature of the protest within a reasonable time of the filing.

2. If the solicitation document contemplates using federal funds to pay for the resulting deliverables, in whole or in part, the appropriate personnel shall notify the regional office of the Federal Transit Administration (FTA) of the filing of a protest and keep them informed of its status.
3. In determining a protest, the VP shall be authorized to take appropriate measure, which in their discretion would ensure compliance with the provisions and purposes of the procurement manual.

**Evaluation of Protests:**

1. The VP may decide a protest solely upon the written submission provided by the protesting party. Additional or supplemental materials may only be submitted at the request of, or with the permission of, the VP. Failure to submit information requested by the VP in the time allotted shall result in a denial of the protest. The VP may offer the protesting party the opportunity to discuss the matter in person or telephonically.
2. The VP shall render a decision of all protests within ten (10) business days after receipt of a protest and shall render one of the following determinations:
  - a. Protest is overruled;
  - b. Protest is substantiated. In such cases, the VP shall issue instructions to remedy issues relating to the protest; or
  - c. Procurement activity is suspended until further written notification by the VP.
3. The decision shall be in writing, shall provide, at a minimum, a general response to each material issue raised in the protest and shall be signed by the VP. The decision shall be sent to the protesting party at the email address provided with the protest.
4. A notice of the decision shall be provided to all interested parties.
5. The VP's decision is the Authority's final determination of the dispute.
6. The protesting party may file an appeal of the VP's decision pursuant to Federal law or FTA rules. In accordance with Federal law, review of protests by the FTA may be requested only after exhaustion of all administrative remedies with CNYRTA and are limited to the following:
  - a. Violations of Federal law or regulation; and/or
  - b. Violations of CNYRTA's protest procedures for failure to review a complaint or protest in accordance therewith.
7. Protesting party shall provide a copy of the protest to CNYRTA simultaneously with its submission to FTA.

**Record of Protest:**

1. The Procurement Officer shall retain all documents pertaining to the protest in the procurement record. The procurement protest file shall include reasonable and adequate documentation of the protest and outcome of the protest.
2. The protest file shall include the following:
  - a. The protest, including supporting documentation; and
  - b. Record of determination of protest timeliness.

## Part II- General Guidelines

### 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 CNYRTA, 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	\$100,000+ or Multiyear Contract
Chief Executive Officer/ Executive Vice President	\$10,000+
VP of Operations	\$10,000
VP of Fleet Maintenance & Facilities	\$10,000
VP of Finance	\$10,000
VP of Public Affairs & Planning	\$10,000
VP of Human Resources	\$10,000
VP of IT	\$10,000
Director of Operations	\$5,000
Director of Facilities	\$5,000
Director of Fleet Maintenance	\$5,000
Director of Human Resources	\$5,000
Director of Marketing & Communications	\$5,000
Director of Subsidiary Operations	\$5,000
Inventory Manager / Assistant Inventory Manager	\$5,000
Facilities Manager	\$2,500
Operations Manager	\$2,500
Manager of Fleet Maintenance	\$2,500
Human Resources Manager	\$2,500
Manager of Specialized Transportation & Systems Analyst	\$2,500

**Approval of Purchase Requisitions:** Purchase Requisitions are a request for material, supplies, equipment, or services that are submitted by a department and approved by the appropriate authorizing personnel. Authority to approve requisitions over \$10,000 may only be approved by the Chief Executive Officer or Executive Vice President. All purchase requisitions must be submitted to the Procurement Department.

## 2.3- General Procurement Guidelines

**CONTRACT ADMINISTRATION PROCESS:** CNYRTA maintains a Contract Administration process (See [Part IV](#)) 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 \$100,000 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, Procurement Manager, Senior Procurement Analyst, or Procurement Analyst 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 NYS OGS 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, Procurement Manager, Senior Procurement Analyst, or Procurement Analyst 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:** 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 [Part III](#) for detailed procedures on contractor selection.

**WRITTEN RECORD OF PROCUREMENT HISTORY:** CNYRTA shall maintain proper records detailing the history of all procurements. 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.

**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 from a firm not interested in the final procurement. In the case of facility design services, industry standards to estimate design as a percentage 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 P1.3 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 or offerors.
3. **Improper Prequalification:** Using prequalification procedures that conflict with the prequalification standards described in Section 2.3.
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:** Non-competitive 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 action 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 a 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.

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 MWBE utilization goal on all State funded procurements.

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 SDVOB utilization goal on all State funded procurements.

The Director of Procurement shall maintain a list of DBE, MWBE, 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, MWBE, and SDVOB entities.

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 or 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) 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.

**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.

**BONDING REQUIREMENTS:** To ensure 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.

**Bid Guarantee:**

1. All construction exceeding the simplified acquisition threshold 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.
2. 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.
3. 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.

**Performance Bond:**

1. All construction contracts exceeding the simplified acquisition threshold 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.
2. Performance security is not mandated for product contracts.

3. 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.

**Letter of Credit:**

1. A letter of credit used as bid or performance security must:
  - a. Be an irrevocable letter of credit issued by a bank or financial institution of B-rating or better,
  - b. Be signed by an authorized representative of the issuing institution,
  - c. Name CNYRTA as beneficiary, and
  - d. 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.

**Labor and Material Payment Bonds:**

1. 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:
  - a. 50% of contract price, for contracts of \$1 million or less;
  - b. 40 % of the contract price if the contract price is more than \$1 million, but less than \$5 million,
  - c. \$2.5 million if the contract price is more than \$5 million.

**Maintenance Bonds:**

1. 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.

**Waiver:**

1. 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.
2. 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 appropriate kinds and limits of insurance as imposed by law or the contract 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.

**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 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/or 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 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 investable 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 \$250,000), so actual applicability for this clause is for contracts greater than \$250,000.

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.

**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, 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 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, 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 \$250,000 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. The Procurement Department must receive a completed Supplemental Funding Request Form (including signatures of the team leader, capital programming and the CEO), along with scope and pricing for the Change Order, which must have an Independent Cost Estimate (ICE) attached.
  - a. ICE must support the price provided.
2. Must have a cost or price analysis performed to determine that the change price is fair and reasonable.
3. 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 \$100,000 must be approved or ratified by the CNYRTA Board of Members.
4. In all cases Federal Transit Administration circular 4220 (most current version) Third Party Contracting Guidelines must be followed. The Best Practices Procurement 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>) 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 prohibited by the FTA.

## Part III- Method of Procurement

### 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 (Informal):** purchases resulting in cost to CNYRTA under \$2,500.

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

**Large Purchases (Formal):** 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

The following are the steps that must be performed to correctly acquire goods and services on behalf of CNYRTA:

1. All documents used in any procurement must be filed in the Procurement file.
2. The CNYRTA Formal Procurement Checklist must be completed for all formal procurements and accurately depict what forms are included in the procurement file.
3. The responsibility for assuring that the file contains the required documents rests with the lead Purchaser/Designated Contact for the particular procurement.
4. 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. The 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 those 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.
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 MWBE, 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 MWBE, 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 ensure 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 MWBEs, SDVOBs, and DBEs, to offer quotes for procurements. Solicitations may be limited to one source only if the Procurement 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 needs and proceed accordingly via communications and discussions before proceeding with such projects.

Note: At the discretion of the Finance Department, federally funded procurements will follow the micro-purchase threshold and simplified acquisition threshold as defined by 48 C.F.R. Subpart 2.1 (Definitions). Such purchases must still comply with the Buy America requirements specified in 49 CFR Part 661.

### **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. 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 \$100,000 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*.

**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.

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 is a summary of CNYRTA Invitation for Bid formal procurement procedures:

#### **Request to Initiate the Procurement**

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 bids/proposals. 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.

#### **Determination of Funding Source**

1. The purchase requisition for any **Grant** purchase is approved to Accounting Grants to document the funding source. The appropriate grant information is documented within the requisition as written confirmation that grant funding is available.
2. The purchase requisition for any **Operating** purchase is approved to Accounting Non-Inventory to confirm availability within the budget and to review account codes listed for accuracy.

#### **Bid Development**

1. The Invitation for Bid (IFB) document 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, utilization goals and reporting requirements, the scope of commodities, services, hardware, or software to be provided, the method of award, and the terms and conditions of the contract.
2. Specifications defining the items or services sought shall be outlined, in detail, by the requesting department, with the advice and assistance of the Procurement Department. These specifications/product descriptions must be complete, adequate and realistic.
3. 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.
4. The Procurement Department shall conduct market research to determine the proper method of procurement and select the contract type, documenting the procurement file appropriately.
5. The Procurement 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 the current bid with regard to all recently promulgated regulations.
6. When applicable, 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 MWBE utilization goal** on all State funded procurements. If the goal cannot be achieved the Waiver Application process will be followed.
7. When applicable, 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 SDVOB utilization goal** on all State funded procurements. If the goal cannot be achieved the Waiver Application process will be followed.

### Distribution

1. Advertisements requesting bids must be placed in the *New York State Contract Reporter* and at least one newspaper of general circulation in Onondaga County. Advertisements may also be placed in additional local newspapers or trade publications as deemed appropriate by the Procurement Department.
2. CNYRTA shall provide all information to all prospective bidders for any procurement which is formally bid. When deemed appropriate, the Procurement 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 in an Amendment to all prospective bidders. Changes in the procurement as a result of the pre-bid conference or that are initiated at the discretion of CNYRTA will be provided to all prospective bidders in an Amendment.

### Conduct Bid Opening

1. The Procurement Department shall conduct a public bid opening and ensure all attendees complete the sign-in sheet as noted in the contract checklist.
  - a. The bid opening shall be open to all bidders, as well as the general public.
  - b. Bids shall be publicly opened and read at the date, time and place specified in the IFB.
  - c. Only bids received up to the time indicated in the IFB shall be opened.
    - i. CNYRTA's bid software does not accept the submission of bids after the bid date/time.
  - d. At least two (2) representatives of CNYRTA or its subsidiary companies shall be present during bid opening.
  - e. 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.
  - f. The Procurement designated contact shall inform all present that any such request must be submitted in writing and will be responded to in writing.
  - g. 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.

### Review of Bids

1. Immediately after the bid opening, the Procurement 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 Bid document.
2. A determination that the price is fair and reasonable and how this determination was derived must be present in the procurement file, completed by the Procurement Department.
3. If a bid is rejected, there must be a sound business decision documented by the Procurement Department, along with the requesting department. Such documentation must be forwarded to the Chief Executive Officer stating the reasons for such rejection and summarizing the bids received.

### Contract Award

1. The Procurement Department will prepare a Board Resolution for any contract above \$100,000 or multi-year and bring to the Board for approval.
2. After all pre-award approvals have been obtained, the Procurement Department shall send a **Notice of Award** to the vendor, requesting the submission of any post-award documentation required by the bidding documents.
3. A **Notice to Proceed** will be sent to the vendor when the appropriate Certificates of Insurance, Bonds and/or any other documents necessary in completing the procurement have been received from the vendor.

**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.

Following is a summary of CNYRTA Request for Proposal formal procurement procedures:

#### **Request to Initiate the Procurement**

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 bids/proposals. The nature and extent of the items and/or services requested should be limited to only those 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.

#### **Determination of Funding Source**

1. The purchase requisition for any **Grant** purchase is approved to Accounting Grants to document the funding source. The appropriate grant information is documented within the requisition as written confirmation that grant funding is available.
2. The purchase requisition for any **Operating** purchase is approved to Accounting Non-Inventory to confirm availability within the budget and to review account codes listed for accuracy.

#### **Proposal Development**

1. The Request for Proposals (RFP) shall provide prospective offerors with all the information necessary to develop a responsive proposal. The RFP shall inform proposers of the specific steps in the proposal process, utilization goals and reporting requirements, the scope of commodities, services, hardware, or software to be provided, the method of award, and the terms and conditions of the contract.
2. Specifications defining the items or services sought shall be outlined, in detail, by the requesting department, with the advice and assistance of the Procurement Department. These specifications/product descriptions must be complete, adequate and realistic.
3. Specifications shall encourage full and open competition and must not rule out one or more vendors or favor a particular vendor. Therefore, the 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.
4. The Procurement Department shall conduct market research to determine the proper method of procurement and select the contract type, documenting the procurement file appropriately.

5. The Procurement 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 proposal documents and specifications used in former proposals for the requested item/service as a starting point for developing the current solicitation.
  - c. Incorporate relevant information from previous proposals or other transit authority proposals to meet the needs of the current proposal.
  - d. Review and update the current proposal with regard to all recently promulgated regulations.
6. In conjunction with the requesting department, the Procurement Department shall identify who will serve on the Evaluation Team, develop the Evaluation Criteria and establish the weighting for each Evaluation Criteria.
7. When applicable, 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 MWBE utilization goal** on all State funded procurements. If the goal cannot be achieved the Waiver Application process will be followed.
8. When applicable, 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 SDVOB utilization goal** on all State funded procurements. If the goal cannot be achieved the Waiver Application process will be followed.

#### **Distribution**

1. Advertisements requesting proposals must be placed in the *New York State Contract Reporter* and at least one newspaper of general circulation in Onondaga County. Advertisements may also be placed in additional local newspapers or trade publications as deemed appropriate by the Procurement Department.
2. CNYRTA shall provide all information to all prospective proposers for any formal procurement. When deemed appropriate, the Procurement Department and technical support staff shall 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 pre-proposal conferences shall be determined on an event-to-event basis. A written record of questions posed and answered at pre-proposal conferences shall be distributed in an Amendment to all prospective proposers. Changes in the procurement as a result of the pre-proposal conference or that are initiated at the discretion of CNYRTA will be provided to all prospective proposers in an Amendment.

#### **Proposal Opening**

1. All proposals received under formal procedures shall remain sealed until the proposal due date and time specified in the RFP and the advertisements.
2. Only proposals received up to the time indicated in the RFP shall be opened.
  - a. CNYRTA's proposal software does not accept the submission of proposals after the bid date/time.
3. The Procurement Department shall then distribute the proposals received to all members of the Evaluation Team.

#### **Evaluation of Proposals**

1. The Procurement Department shall review all submitted proposals to determine which proposals are complete and responsive to the proposal requirements as set forth in the official Request for Proposal document.
2. The Evaluation Team will receive proposal information through CNYRTA's proposal software and individually review all submitted proposals then complete the evaluation scoring.
3. The Procurement Department will schedule a proposal evaluation meeting with the Evaluation Team and review the submitted scoring.
4. In conjunction with the Procurement Department, the Evaluation Team shall identify the competitive range. If more than one firm is in the competitive range, arrangements will be made for further review, including interviews.

5. To close the evaluation process, the Evaluation Team must make its recommendation to the Procurement Department.
6. A determination that the price is fair and reasonable and how this determination was derived must be present in the procurement file, completed by the Procurement Department.
7. If a proposal is rejected, there must be a sound business decision documented by the Procurement Department, along with the requesting department. Such documentation must be forwarded to the Chief Executive Officer stating the reasons for such rejection and summarizing the proposals received.

#### **Contract Award**

4. The Procurement Department will prepare a Board Resolution for any contract above \$100,000 or multi-year and bring to the Board for approval.
5. After all pre-award approvals have been obtained, the Procurement Department shall send a **Notice of Award** to the vendor, requesting the submission of any post-award documentation required by the bidding documents.
6. A **Notice to Proceed** will be sent to the vendor when the appropriate Certificates of Insurance, Bonds and/or any other documents necessary in completing the procurement have been received from the vendor.

### **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 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.

### **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 is considered a Sole Source procurement and therefore, 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 70% 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.

**Transit Vehicle Award Report:** A Transit Vehicle Manufacturer (TVM), as defined by U.S. DOT DBE regulations, is any manufacturer whose primary business purpose is to build vehicles specifically for public mass transit. Only TVMs who have submitted a DBE goal methodology to FTA that has been approved or not disapproved, at the time of the solicitation are eligible to bid (49 CFR 26.49(a)(1)). FTA Grantees are required to submit, within thirty (30) days of award

the name of the successful TVM and the total dollar value of the contract, therefore CNYRTA staff shall complete the report as required. Once the report is complete, CNYRTA will follow up with an email notification of completed award to the FTA.

## 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 Procurement 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 consent 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 the contractor's 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 Procurement 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
3. 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
4. Increased Scope of Work
5. 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 Procurement 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 Procurement 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**

**Appendix A- Formal Procurement Contract File Checklist**

**Contract File Checklist**

Contract ID#	<input type="text"/>	Procurement Type	Select Option ▼
Contract Title	<input type="text"/>	Vendor Name	<input type="text"/>
Contract Period	<input type="text"/>	Vendor Address	<input type="text"/>
Contract Value	<input type="text"/>	Procurement Analyst	<input type="text"/>

		Completed	N/A
<b>Pre-Advertisement</b>			
<b>1</b>	<b>Contract Kickoff Meeting Notes</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>2</b>	<b>Purchase Requisition</b>	<input type="checkbox"/>	<input type="checkbox"/>
	Appropriate Authorization Per Approved Thresholds	<input type="checkbox"/>	<input type="checkbox"/>
	Independent Cost Estimate	<input type="checkbox"/>	<input type="checkbox"/>
<b>3</b>	<b>Procurement Consideration</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4</b>	<b>IFB or RFP Package:</b>	<input type="checkbox"/>	<input type="checkbox"/>
	Sufficient Bid Time (Minimum 3 Weeks)	<input type="checkbox"/>	<input type="checkbox"/>
	Clear, Accurate and Complete Specifications	<input type="checkbox"/>	<input type="checkbox"/>
	Prevailing Wage Schedule Attached (Davis Bacon)	<input type="checkbox"/>	<input type="checkbox"/>
	Evaluation Criteria	<input type="checkbox"/>	<input type="checkbox"/>
	FTA Contract Clauses (Federally Funded Procurements)	<input type="checkbox"/>	<input type="checkbox"/>
	Addendum/Amendments	<input type="checkbox"/>	<input type="checkbox"/>
<b>5</b>	<b>Vendor Listing</b>	<input type="checkbox"/>	<input type="checkbox"/>
	DBE Consideration - ( <a href="https://nysucp.newnycontracts.com/">https://nysucp.newnycontracts.com/</a> )	<input type="checkbox"/>	<input type="checkbox"/>
	M/WBE Consideration-( <a href="https://ny.newnycontracts.com/Default.asp?">https://ny.newnycontracts.com/Default.asp?</a> )	<input type="checkbox"/>	<input type="checkbox"/>
	SDVOB Consideration - ( <a href="https://online.ogs.ny.gov/SDVOB/search">https://online.ogs.ny.gov/SDVOB/search</a> )	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Authorization to Proceed with Public Letting:</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Pre-Award</b>			
<b>6</b>	<b>Proof of Publication: (Suggested vendors as follows)</b>	<input type="checkbox"/>	<input type="checkbox"/>
	Auburn The Citizen - Column Website: <a href="https://www.column.us/notices">https://www.column.us/notices</a>	<input type="checkbox"/>	<input type="checkbox"/>
	Cortland Standard - Column Website: <a href="https://www.column.us/notices">https://www.column.us/notices</a>	<input type="checkbox"/>	<input type="checkbox"/>
	Daily Sentinel - Column Website: <a href="https://www.column.us/notices">https://www.column.us/notices</a>	<input type="checkbox"/>	<input type="checkbox"/>
	Minority Commerce - <a href="mailto:imssjim@aol.com">imssjim@aol.com</a>	<input type="checkbox"/>	<input type="checkbox"/>
	NYS Contract Reporter - <a href="http://www.nyscr.com">www.nyscr.com</a>	<input type="checkbox"/>	<input type="checkbox"/>
	Observer Dispatch - <a href="mailto:legals@uticaod.com">legals@uticaod.com</a>	<input type="checkbox"/>	<input type="checkbox"/>
	Palladium Times - Column Website: <a href="https://www.column.us/notices">https://www.column.us/notices</a>	<input type="checkbox"/>	<input type="checkbox"/>
	Syracuse Post Standard - <a href="mailto:legals@syracuse.com">legals@syracuse.com</a>	<input type="checkbox"/>	<input type="checkbox"/>
<b>7</b>	<b>Bid/Proposal Sent Verification</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>8</b>	<b>Vendor Questions/Correspondence</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>9</b>	<b>PreBid/Proposal Meeting Sign In Sheet &amp; Minutes</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>10</b>	<b>Bid Opening Sign In Sheet</b>	<input type="checkbox"/>	<input type="checkbox"/>

		Completed	N/A
11	<b>Non Bidding/Proposing Notices</b>		
12	<b>Vendor Bid/Proposal Documents</b>		
	Lobbying Certification (FTA contracts over \$100k)		
	Build America Buy America Certification (FTA contracts of Iron, Steel, Manufactured Goods and Infrastructure Projects over \$150k)		
13	<b>Bid/Proposal Tabulation</b>		
14	<b>RFP Evaluation Committee Meeting Notice and Notes</b>		
15	<b>Evaluation of Options</b>		
16	<b>Evaluation of Responsiveness/Responsibility</b>		
17	<b>Debarment &amp; Suspension Consideration</b>		
	<a href="https://www.sam.gov/portal/public/SAM/">https://www.sam.gov/portal/public/SAM/</a>		
	<a href="https://dbr.labor.state.ny.us/EDList/searchPage.do">https://dbr.labor.state.ny.us/EDList/searchPage.do</a>		
18	<b>Cost or Price Analysis</b>		
	<b>Authorization to Proceed with Board Approval:</b>		
<b>Post-Award</b>			
19	<b>Board Resolution</b>		
20	<b>Notice of Award</b>		
21	<b>Certificate of Insurance</b>		
22	<b>Bond Documents</b> (Construction over \$100k)		
23	<b>Purchase Order</b>		
24	<b>Notice to Proceed</b>		
25	<b>Notice to Unsuccessful Bidders/Proposers</b>		
26	<b>New York State Contract Reporter Bid Results Posting</b>		
27	<b>Vendor Contract KickOff Meeting</b>		
28	<b>Contract Modifications/Change Orders</b>		
	Cost or Price Analysis- FTA over \$250,000		
29	<b>Renewal/Exercise Options Letters</b>		
30	<b>Records of Protest</b>		
31	<b>Misc. Information/Correspondence</b>		
32	<b>Contract Closeout Documentation</b>		
<b>Additional Considerations and/or Documentation</b>			
	Qualifications Exclude Price (A&E)		
	Serial Price Negotiations (A&E)		
	A&E Geographic Preference		
	Unreasonable Qualifications Requirements		
	Unnecessary Experience		
	Organizational Conflict of Interest		
	Annual Survey Completed		
	Any Known Conflicts on this Procurement		
	Arbitrary Action		
	Brand Name Restrictions		

	Completed	N/A
Geographic Preferences		
Contact Period of Performance Limitation		
Written Procurement Selection Procedures		
Solicitation Prequalification Criteria		
Sound and Complete Agreement		
Rejecting Bids		
Written Record or Procurement History		
Advance Payments		
Progress Payments		
Time and Materials Contracts		
Cost Plus Percentage of Cost		
Liquidated Damages Provisions		
Adequate Competition - Two or More Competitors		

Procurement File Completion		
Added to 'Procurement Contracts Listing' Spreadsheet- \\Centro-02\Purchasing		
Completed in Bonfire- centro.bonfirehub.com/projects		
Added to Contract Administration Network Folder- \\Centro-02/ContractAdministration		
Added to NYS Contract System- https://ny.newnycontracts.com/Default.asp		
Added to 'Utilization Reports Tracker'- \\CENTRO-02\Purchasing\Operating Procurement Department\MWBE Quarterly Submission Info		

Signature: \_\_\_\_\_  
 Procurement Analyst

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
 Reviewer

Date: \_\_\_\_\_

## Appendix B- 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 I**), 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 III**), 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 I and II**; (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.

**32. Safe Operation of Motor Vehicles:** (i) Seat Belt Use: The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency. (ii) Distracted Driving: The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **Appendix C- Formal Procurement NYS Standard Contract Clauses**

<https://ogs.ny.gov/system/files/documents/2023/06/appendix-a-june-2023.pdf>

## **Appendix D- FTA Circular 4220 (Most Current Version)**

<https://www.transit.dot.gov/sites/fta.dot.gov/files/2025-01/Third-Party-Contracting-Guidance-%28Circular-4220.1G%29.pdf>

## **Appendix E- 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>



## Appendix F- FTA Required Contract Clauses

### APPENDIX II Federal Transit Administration Contract Clauses

For the purposes of this Appendix, the term “Contractor” is used to identify Bidders, including the Successful Bidder, and Proposers, including the Successful Proposer, as the case may be for this particular procurement.

**DISCLAIMER:** The Contractor is hereby placed on notice that CNYRTA receives funding from the Federal Government by way of grants from the Federal Transit Administration (“FTA”). As a condition of receiving such grants, the CNYRTA is obligated to comply various Federal laws and regulations, as well as with all applicable provisions of a Master Agreement between the FTA and its grant recipients. All applicable provisions of the Master Agreement are, where not otherwise provided for, hereby incorporated by reference herein. Contractors may obtain a copy of the Master Agreement, as may be amended from time to time, from the FTA’s website: <http://www.fta.dot.gov/documents/19-Master.pdf>.

#### Applicable to all FTA-Assisted Third Party Contracts

**1. No Federal Government Obligation to Third Parties.** The CNYRTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to the CNYRTA, the Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the Contract. The Contractor further agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**2. Program Fraud and False or Fraudulent Statements and Related Acts.** The following provisions relate to program fraud and false or fraudulent statements or related acts:

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government

reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate;

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.; and

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**3. Access Records and Reports.** (a.) Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records. (b.) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all

such litigation, appeals, claims or exceptions related thereto. (c.) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337. d. Access to the Sites of Performance. The Contractor agrees to permit FTA, and its contractors, access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

#### **4. Changes to Federal Requirements.**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the CNYRTA and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of the Contract. The Master Agreement is available as indicated in the Notice and Disclaimer preceding the clauses herein.

#### **5. Civil Rights Laws and Regulations.**

The following requirements apply to the Contract: The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Action of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act, “49 C.F. R. Part 21 and any implementing requirement FTA may issue. 1 Federal Equal Employment Opportunity (EEO) Requirements. These include but are not limited to: a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and

activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation), disability, or age, and prohibits discrimination in employment or business opportunity. b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21, and 49 U.S.C. § 5332, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. 2 Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex. 3 Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity 9 April 25 Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age. 4 Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. Civil Rights and Equal Opportunity The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from

inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof. 1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. 2. Equal Employment Opportunity. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements, without regard to their race, color, religion, national origin, or sex (including sexual orientation). In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. 3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any 10 April 25 Implementing requirements FTA may issue. 4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et

seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. 5. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## 6. Disadvantaged Business Enterprises.

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The CNYRTA’s goal for participation of Disadvantaged Business Enterprises (DBE) in FTA assisted contracts is an aspirational 1 percent of the overall contract price. A separate contract goal has not been established for this procurement unless so stated in the specifications or scope of performance.

(b) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

(c) If a separate contract goal has been set in the specifications/scope of performance, Contractors are required to document sufficient DBE participation to meet such goals or, alternatively, document adequate good faith efforts to do so as provided for in 49 C.F.R. 26.53.

To the extent DBE requirements apply, award of this contract is conditioned on submission of the following information concurrent with Bid or Proposal Submission:

1. The names and addresses of DBE firms that will participate in the Contract;

2. A description of the work each DBE will perform;

3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the Contractor's commitment to use a DBE subcontractor whose participation it submits to meet the Contract goal;

5. Written confirmation from the DBE that it is participating in the Contract as provided in the Contractor's commitment; and

6. If the Contract goal is not met, evidence of good faith efforts to do so.

Contractors must present the information required above as a matter of responsiveness with Bid or Proposal Submissions (see 49 C.F.R. 26.53(3)).

If no separate contract goal is established, the Contractor is required to report its DBE participation obtained through race-neutral means throughout the period of Performance.

(d) The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory Performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the CNYRTA. In addition, the Contractor may not hold retainage from its subcontractors; is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed; is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the CNYRTA and contractor's receipt of the partial retainage payment related to the subcontractor's work as the case may be based on the scope and nature of the Contract.

(e) The Contractor must promptly notify the CNYRTA whenever a DBE subcontractor participating in Performance is terminated or fails to perform and must make good faith efforts to engage another DBE subcontractor to complete at least the same amount of the work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces, or those of an affiliate, without prior written consent of the CNYRTA.

**7. Incorporation of Federal Transit Administration Terms.** The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative

Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

**8. Energy Conservation.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

**9. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.**

a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: 1) Procure or obtain; 2) Extend or renew a contract to procure or obtain; or 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video

surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. 22 Jun-24 c) See Public Law 115-232, section 889 for additional information. d) See also § 200.471.

**10. Prompt Payment.** The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify CNYRTA, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of CNYRTA.

**Applicable to All Contracts Exceeding \$10,000.00**

**11. Termination.** The following clauses relate to termination of the rights and obligations of the Contract:

(a) **Termination for Convenience.** The CNYRTA may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs,

including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the CNYRTA for payment due the Contractor under the provisions herein. If the Contractor has any property in its possession belonging to the CNYRTA, the Contractor will account for the same and dispose of it in the manner directed by the CNYRTA.

(b) **Termination for Default, Breach or Cause.** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

(c) **Opportunity to Cure.** The CNYRTA, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such 27 April 25 termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) **Waiver of Remedies for any Breach.** In the event the CNYRTA elects to

waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the CNYRTA shall not limit the CNYRTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of the Contract.

**Applicable to All Contracts Exceeding \$25,000.00**

**12. Notification to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters.** If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel, phone: 202-366-4011, and FTA Regional Counsel for Region:

FTA Region 2 Office  
One Bowling Green, Room 4289  
New York, New York 10004-1415  
Telephone: (212) 668-2170

The Contractor must include the notification requirement in all sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel and Regional Counsel for Region II, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted

a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the CNYRTA and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the CNYRTA. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the CNYRTA, including divisions tasked with law enforcement or investigatory functions.

**13. Suspension and Debarment.** This Contract is a covered transaction for purposes of 2 C.F.R. part 1200. As such, the Contractor is required to verify that the Contractor, its principals, or affiliates, are not excluded or disqualified as defined at 2 C.F.R. part 180.110. The Contractor is required to comply with 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 and must include this requirement to comply in any lower tier covered transaction it enters into.

**Applicable to All Contracts Exceeding the Current Simplified Acquisition Threshold (\$250,000.00)**

**14. Violation and Breach of Contract.** The following provisions relate to breached of the Contract and Dispute Resolution procedures:

- (a) **Disputes Arising During Performance.** Disputes arising during Performance that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of CNYRTA's Chief

Executive Officer. This decision shall be final and conclusive, unless within ten (10) days from the date of receipt of the decision, the Contractor mails or otherwise furnishes a written appeal to the Chief Executive Officer. In connection with any appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

(b) Performance During Dispute. Unless otherwise directed by the CNYRTA, the Contractor shall continue Performance while matters in dispute are being resolved.

(c) Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party, or of any of his/her/its employees, agents or those whose acts he/she/it is legally liable for, a claim for damages shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

(d) Remedies. Unless the Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the CNYRTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of New York venued in Onondaga County.

(e) Rights and Remedies. The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CNYRTA or Contractor shall constitute a waiver of any right or duty afforded them under the Contract, nor shall such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**15. Buy America Requirements.** Where the contract value exceeds the Simplified Acquisition Threshold and when performance thereunder involves construction or acquisition of tangible property, the Contractor agrees to comply with 49 U.S.C. 5323(j), 49 C.F.R. Part 661 and 2 CFR § 200.322 Domestic preferences for procurements,

which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

**Applicable to All Contracts Exceeding \$100,000.00 by Statute**

**16. Byrd Anti-Lobbying Amendment.**

Contractors who submit a Proposal or Bid, as the case may be, for an award of \$100,000 or more shall file the certification required by 2 C.F.R. Part 418, "New Restrictions on Lobbying." Each tier of Contractor must certify to the tier above that it will not use and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, member of Congress, officer or employee of Congress or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf using non-federal funds with respect to that federal contract,

grant or award covered by 31 U.S.C. 1352. Such disclosures must be forwarded from tier to tier until they reach the CNYRTA.

**17. Clean Air.** The Contractor agrees to:

(a) comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*;

(b) report every violation thereof to the CNYRTA and understands and agrees that the CNYRTA will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.; and (c) include these requirements in each subcontract exceeding \$150,000.00 funded in whole or in part with federal assistance provided by the FTA.

**18. Clean Water.** The Contractor agrees to:

(a) comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*;

(b) report every violation thereof to the CNYRTA and understands and agrees that the CNYRTA will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.; and (c) include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA.

**Applicable to All Contracts Involving Acquisition of Items Designated by the Environmental Protection Agency Exceeding \$10,000.00**

**19. Recycled Products Requirements.**

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding

fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Applicable to All Contracts Involving Transportation of Persons or Property**

**20. Cargo Preference Requirements; Use of United States-Flag Vessels.** Where the FTA assisted contract involves the transport of property suitable for shipment by ocean vessel, the Contractor agrees to:

(a) use privately owned United States-Flag commercial vessels to ship at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381;

(b) furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

(c) include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

**21. Fly America Requirements.** Where the FTA assisted contract involves international air transportation for persons or property, the Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that

recipients and subrecipients of federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**Applicable to Contracts Involving Construction and Non-Construction Activities**

**22. Contract Work Hours and Safety Standards.** The following provisions apply to work hours and safety standards:

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages which shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required herein.

(c) Withholding Unpaid Wages and Liquidated Damages. The CNYRTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined as necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) Subcontracts. The Contractor or subcontractor shall insert all clauses in this section in any subcontracts, as well as a clause requiring subcontractors to include the same in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

**23. Davis-Bacon and Copeland Anti-Kickback Acts.**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans

or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**24. Veterans Preference.** Construction contracts of Federal Financial Assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**Applicable to Contracts Involving Construction Activities Exceeding \$250,000.00**

**25. Bond Requirements.** The following bonding requirements apply to types of contracts as indicated and as the case may be with respect to the underlying Contract:

(a) Bid Bond Requirements (Construction).

(i) Bid Security. A Bid Bond must be issued by a fully qualified surety company acceptable to the CNYRTA and listed as a company currently authorized under 31 C.F.R., Part 22 as possessing a Certificate of Authority as described thereunder.

(ii) Rights Reserved. In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the CNYRTA to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of the CNYRTA.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of the CNYRTA, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided

above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the CNYRTA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the CNYRTA shall prove inadequate to fully recompense the CNYRTA for the damages occasioned by default, then the undersigned bidder agrees to indemnify the CNYRTA and pay over to the CNYRTA the difference between the bid security and the CNYRTA's total damages, so as to make the CNYRTA whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

(b) The Contractor shall be required to obtain performance bonds as follows:

(i) The penal amount of performance bonds shall be 100 percent of the original contract price, unless the CNYRTA determines that a lesser amount would be adequate for its protection.

(ii) CNYRTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The CNYRTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) The Contractor shall be required to obtain payment bonds as follows:

(i) The penal amount of the payment bonds shall equal: (1) fifty percent of the contract price if the contract price is not more than \$1 million; (2) forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or (3) two and one half million if the contract price is more than \$5 million.

(ii) If the original contract price is \$5 million or less, the CNYRTA may require additional protection as required by subparagraph (b) if the contract price is increased.

(d) Performance and Payment Bonding Requirements (Non-Construction). The Contractor may be required to obtain performance and payment bonds when necessary to protect CNYRTA's interest.

(i) The following situations may warrant a performance bond: (1) the CNYRTA's property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material); (2) a contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable; (3) substantial progress payments are made before delivery of end items starts; (4) contracts are for dismantling, demolition, or removal of improvements.

(ii) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows: (1) the penal amount of performance bonds shall be 100 percent of the original contract price, unless the CNYRTA determines that a lesser amount would be adequate for its protection; (2) the CNYRTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The CNYRTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(iii) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the CNYRTA's interest.

(iv) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows: (1) the penal amount of payment bonds shall equal fifty percent of the contract price if the contract price is not more than \$1 million; forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or two and one half million if the contract price is increased.

(c) Advance Payment Bonding Requirements. The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The CNYRTA shall determine the amount of the

advance payment bond necessary for its protection.

(f) Patent Indemnity. The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. CNYRTA shall determine the amount of the patent indemnity necessary for its protection.

(g) Warranty of the Work and Maintenance Bonds.

(i) The Contractor warrants to the CNYRTA, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by the CNYRTA, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the CNYRTA's designated Project Manager or similar contractor liaison, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(ii) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the CNYRTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the CNYRTA. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the CNYRTA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**Applicable to Contracts Involving Construction and Architectural and Engineering Services**

**26. Seismic Safety Requirements.** The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify compliance to the extent required by such regulations. The Contractor also agrees to ensure that all Performance, including Performance by subcontractors, is in compliance with the Seismic Safety standards and the certification of compliance issued for the project.

**Applicable to Contracts Involving Transit Operations**

**27. Charter Service Operations.** The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter services using federally funded equipment or facilities if at least one private charter operator willing and able to provide such service, except as permitted under: 1. Federal transit laws, specifically 49 U.S.C. § 5323(d); 2. FTA regulations, "Charter Service," 49 C.F.R. part 604; 3. Any other federal Charter Service regulations; or 4. Federal guidance, except as FTA determines otherwise in writing. The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: 1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; 2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or 3. Any other appropriate remedy that may apply. The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

**28. School Bus Operations.** The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under: 1. Federal transit laws, specifically 49 U.S.C. § 5323(f); 2. FTA regulations, "School Bus Operations,"

49 C.F.R. part 605; 3. Any other Federal School Bus regulations; or 4. Federal guidance, except as FTA determines otherwise in writing. If Contractor violates this School Bus Agreement, FTA may: 1. Bar the Contractor from receiving Federal assistance for public transportation; or 2. Require the contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities. The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

**29. Transit Employee Protective Agreements.**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b): 1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract. 2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract. 3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

**Applicable to Contracts Involving Transit Operations and Safety Sensitive Functions**

**30. Drug Use and Testing/Alcohol Misuse and Testing.** The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655,

produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or CNYRTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to CNYRTA.

**31. Federal Privacy Act Requirements.** When files containing drug and alcohol enforcement activities are created and maintained in connection with an FTA assisted contract, the following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the Contract.

(b) The Contractor agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with federal assistance provided by the FTA.

**Applicable to Contracts Involving Intelligent Transportation Systems**

**32. Conformance with ITS National Architecture.**

The following restrictions imposed by federal law may affect a particular procurement:

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted

to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

**Applicable to Contracts Involving Research and Development**

**33. Patent Rights and Rights in Data.**

Intellectual Property Rights This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract. 1. The

Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct. 3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. 4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. 5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government

that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work. 6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**Applicable to Contracts for Rolling Stock, Facilities Construction, Facilities Renovation**

**34. ADA Access.** The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

**FTA Protest Procedures**

*Some CNYRTA procurements are funded, at least in part, by the Federal Transit Administration ("FTA"). Whenever a procurement involves FTA funds, the FTA requires that CNYRTA make available certain protest procedures. Any Proposer seeking to protest this procurement may direct general questions and questions respecting applicability of FTA protest procedures to CNYRTA's Vice President of Finance.*

**Submittal Procedures:**

1. An interested party wishing to file a protest shall send a written submission to CNYRTA's Vice President of Finance (VP) by email at [protest@centro.org](mailto:protest@centro.org). A PDF copy of the protest and supporting documents shall be included in the email.
2. The protest shall include, at a minimum:
  - a. The name and address of the protesting party and its relationship to the procurement sufficient to establish that the protest is being filed by an interested party;
  - b. Identity of the contact person for the protesting party, including name, title, address, telephone, and email address. CNYRTA will send all documents and notices concerning the protest, including the decision on the protest to the email address provided by the protesting party. The protesting party shall be deemed to have received such documents and notices when CNYRTA sends them to the email address provided;
  - c. Identification of the Contract title and Contract number in the IFB/RFP Document;
  - d. A description of the nature of the protest, referencing the portion(s) of the solicitation involved. Protesting party shall include all supporting facts, documents and data with the protest;
  - e. Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based, including specific citations and description of how the law, regulation or governance was violated;
  - f. A statement of the specific relief requested; and
  - g. A notarized affirmation by the protestor (if an individual) or by an owner or officer of the protestor (if not an individual) as to the truth and accuracy of the statements made in the protest submittal.

**Protest of the Solicitation Process:**

1. A protest of the solicitation process is a protest related to the technical scope or specification, terms, conditions, or form of a solicitation or process relating thereto.
2. This type of protest shall be filed no later than five (5) calendar days prior

- to the submission deadline set in the solicitation document or five (5) calendar days after the interested party receives the solicitation document from the Procurement Officer, whichever occurs first. If an interested party obtains the solicitation document from the Procurement Officer within five (5) days of the submission deadline in the solicitation document, the interested party shall submit a protest of the solicitation process within forty-eight (48) hours of receipt of the solicitation document from the Procurement Officer or forty-eight (48) hours prior to the submission deadline identified in the solicitation document, whichever occurs first. If an interested party obtains the solicitation document from the Procurement Officer less than forty-eight (48) hours prior to the submission deadline identified in the solicitation document, the interested party shall be deemed to have waived their right to file a protest of the solicitation process.
3. For protests of the solicitation process, the VP may choose to extend the solicitation process if such extension is necessary to afford an adequate opportunity to render a full and accurate determination on the protest.
  4. A written decision on protests of this type shall be provided to all interested parties prior to the submission deadline set in the solicitation document.
  5. Should the protest be upheld in whole or in substantial part, the VP shall issue instructions to remedy issues relating to the protest, which may include:
    - a. Amending the solicitation to correct the document or process accordingly and extend the deadline;
    - b. Cancel the solicitation in its entirety.

**Protest of the Evaluation Process:**

1. All interested parties must formally submit a written protest to the VP no later than five (5) business days after notification of non-award.
2. Any proposer may protest the evaluation process on one or more of the following grounds:
  - a. The recommended awardee does not meet the requirements of the solicitation;
  - b. The bid or proposal recommended for acceptance

- does not meet the criteria of the solicitation or award;
- c. The interested party objects to CNYRTA declaring their response to the solicitation document non-responsive or CNYRTA declaring them non-responsive;
- d. The evaluation process conducted by CNYRTA is improper, illegal, or the decision to recommend award is arbitrary and capricious.

#### **Processing of Protests:**

1. The VP shall notify all interested parties of the receipt of a protest, the type of protest, and nature of the protest within a reasonable time of the filing.
2. If the solicitation document contemplates using federal funds to pay for the resulting deliverables, in whole or in part, the appropriate personnel shall notify the regional office of the Federal Transit Administration (FTA) of the filing of a protest and keep them informed of its status.
3. In determining a protest, the VP shall be authorized to take appropriate measure, which in their discretion would ensure compliance with the provisions and purposes of the procurement manual.

#### **Evaluation of Protests:**

1. The VP may decide a protest solely upon the written submission provided by the protesting party. Additional or supplemental materials may only be submitted at the request of, or with the permission of, the VP. Failure to submit information requested by the VP in the time allotted shall result in a denial of the protest. The VP may offer the protesting party the opportunity to discuss the matter in person or telephonically.
2. The VP shall render a decision of all protests within ten (10) business days after receipt of a protest and shall render one of the following determinations:
  - a. Protest is overruled;
  - b. Protest is substantiated. In such cases, the VP shall issue instructions to remedy issues relating to the protest; or
  - c. Procurement activity is suspended until further written notification by the VP.
3. The decision shall be in writing, shall provide, at a minimum, a general response to each material issue raised in the protest and shall be signed by

the VP. The decision shall be sent to the protesting party at the email address provided with the protest.

4. A notice of the decision shall be provided to all interested parties.
5. The VP's decision is the Authority's final determination of the dispute.
6. The protesting party may file an appeal of the VP's decision pursuant to Federal law or FTA rules. In accordance with Federal law, review of protests by the FTA may be requested only after exhaustion of all administrative remedies with CNYRTA and are limited to the following:
  - a. Violations of Federal law or regulation; and/or
  - b. Violations of CNYRTA's protest procedures for failure to review a complaint or protest in accordance therewith.
7. Protesting party shall provide a copy of the protest to CNYRTA simultaneously with its submission to FTA.

#### **Record of Protest:**

1. The Procurement Officer shall retain all documents pertaining to the protest in the procurement record. The procurement protest file shall include reasonable and adequate documentation of the protest and outcome of the protest.
2. The protest file shall include the following:
  - a. The protest, including supporting documentation; and
  - b. Record of determination of protest timeliness.