

REGIONAL TRANSPORTATION AUTHORITY'S PROCUREMENT RULES AND REGULATIONS

Adopted August 19, 2021
Effective September 1, 2021



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ARTICLE 1: Preamble

By the authority granted under Section 4.06 of the Regional Transportation Authority Act (“RTA Act”), 70 ILCS 3615/1 *et. seq.*, the RTA Board of Directors (the “Board”) has adopted these Procurement Rules and Regulations (“Regulations”), subject to all applicable State and Federal laws, regulations, and policies. These Regulations and Regulations supersede and amend or repeal any prior rules, regulations, by-laws, or ordinances approved by the Board that are in conflict. These Regulations apply to all RTA procurements and contracts solicited immediately after the Board approves said Regulations.

The Regulations shall be interpreted subject to the RTA Act. In an instance where either the RTA Act or the Regulations contains a stricter provision, the stricter provision shall apply; and in any instance in which a direct conflict arises between the RTA Act or these Regulations, the RTA Act shall apply.

The Regulations have been adopted to ensure that goods, equipment, material, supplies, and services are obtained in a timely, efficient, and economical manner consistent with sound business judgment and administrative policy.

The standards and procedures prescribed in the Regulations apply to all members of the Board and all persons employed by the RTA, who are required to comply with the provisions.

ARTICLE 2: Authorizing Ordinance

A copy of Ordinance No. 2021-, which gives full force and effect to these Procurement Regulations, is attached.

ORDINANCE NO. 2021-48

WHEREAS, the Regional Transportation Authority (the “Authority”) has previously adopted Procurement Rules and Regulations which have been amended from time-to-time;

WHEREAS, Section 3.05 of the Regional Transportation Authority Act, 70 ILCS 3615, *et seq.* (the “RTA Act”) provides that the Board of Directors of the Authority (the “Board”) may adopt rules or regulations with the affirmative votes of at least 9 Directors;

WHEREAS, Section 4.06 of the RTA Act provides that the Board is required to adopt regulations governing the acquisition by the Authority of goods or services involving a cost in excess of the statutory threshold;

WHEREAS, Section 4.06 of the RTA Act provides that such regulations adopted thereunder may provide for certain enumerated exceptions to those requirements;

WHEREAS, Section 4.06 of the RTA was amended by the legislature of the State of Illinois on September 22, 2017 to align the threshold for public bidding with the Federal Transit Administration’s small purchase threshold for certain categories of procurements,

WHEREAS, certain federal regulations have changed the period allotted to bidders and proposers to provide required information regarding DBE participation; and

WHEREAS, the Authority desires to avail itself of the provisions of Sections 3.05 and 4.06 of the RTA Act and repeal its existing Procurement Rules and Regulations in their entirety and replace them with the attached Procurement Rules and Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE REGIONAL TRANSPORTATION AUTHORITY THAT:

- 1) The Authority’s existing Procurement Rules and Regulations are hereby repealed in their entirety and are replaced by the attached amended Procurement Rules and Regulations, the form, but not the substance, of which may be edited from time to time, without additional approval of the Board, to correct typographical errors and the like as necessary.
- 2) The Executive Director is hereby authorized and directed to republish the Procurement Rules and Regulations enacted by this ordinance and to take such other actions as she deems necessary to implement, administer, and enforce this ordinance.

ADOPTED AUGUST 19, 2021

ARTICLE 3: General

3.1 References

Wherever appropriate in these Regulations, the singular includes the plural, and the masculine includes the feminine.

3.2 Severability

If any provision of these Regulations or application thereof is held unconstitutional or otherwise invalid, the remaining Rules and Regulations or parts thereof will remain in full force and effect. If any provisions of these Regulations or application thereof conflicts with any federal or State of Illinois law, said law will control.

3.3 Amendment

These Regulations may be amended or modified by the affirmative vote of at least nine (9) Directors voting at any regular meeting of the Board or at any special meeting of the Board for that purpose.

ARTICLE 4: Definitions

Addendum: A written change or clarification to a solicitation issued prior to the due date for offers. An addendum may include a time extension of the stated due date for the solicitation.

Bid: A document conveying an offer submitted in response to an Invitation for Bids.

Bidder: An entity that submits a bid. An individual, firm, partnership, corporation, joint venture, or combination thereof, submitting a bid for the work solicited in an Invitation for Bids (“IFB”). Bidder may be used interchangeably with Proposer/Respondent.

Board: The Board of Directors of the RTA.

Bond: A written instrument executed by a Bidder or Contractor (the “Principal”) and a second party (the “Surety” or “Sureties”) to assure fulfilment of the principal’s obligations to the obligee identified in the bond. If the Principal’s obligations are not met, the bond assures payment to the extent stipulated for any loss sustained by the obligee.

Cancellation of a Procurement: The termination of a solicitation process, and/or rejection of Quotes, all Bids, Proposals or Qualifications submitted pursuant to a solicitation by the RTA.

Cardinal Change: A major deviation from the original purpose of the work, or its intended method of achievement, or a revision of contract work so extensive, significant, or cumulative in effect that the Contractor is required to perform very different work from that described in the original contract.

Chaining (or Stringing): The intentional practice of initiating, processing, or approving multiple purchases under \$100,000 (or under \$10,000 for Micro-Purchases) to circumvent either applicable public bidding requirements or the RTA's established contract approval limits (see Article 10). The terms Chaining and Stringing may be used interchangeably.

Competitive Procurement: A solicitation issued by the RTA, using either an Invitation for Bids, Request for Proposals, or Request for Qualifications process, under which individuals or firms are afforded an equal opportunity to compete for award of a contract(s).

Contract: A mutually binding legal relationship obligating the vendor to furnish goods or services, and the RTA to pay for them.

Contract Amendment: A change to the scope, value, term, or duration of an existing Contract. Amendments are subject to the approval and execution requirements in Article 10. Amendments that constitute a Cardinal Change, either individually or in aggregate, are not allowed.

Contractor: Any person, entity, or authorized representative identified as such in a Contract. The term Contractor may be used interchangeably with Vendor, Seller and Consultant.

Debarment: An action taken by the RTA to deny participation in RTA contracts, or an action taken by another government entity to deny a person or entity participation in contracts.

Disadvantaged Business Enterprise: A firm that is certified as a Disadvantaged Business Enterprise ("DBE") pursuant to 49 C.F.R Part 26.

DBE Goal: A portion of a contract that is intended to be performed by a certified DBE.

Emergency: An impairment of the RTA’s ability to function or to provide essential services related to public transportation, of a nature and severity that requires immediate action, that precludes the RTA from engaging in a Competitive Procurement or delaying action until the Board can be convened.

Federal Requirements: The provisions of Federal Circular 4220.1, as amended from time to time, any successor circular issued by the Federal Transit Administration (“FTA”), and any other rules or regulations issued by the FTA or any other federal agency relating to procurement and applicable to the RTA.

Good Faith Efforts: Efforts exercised by a Contractor which are sanctioned by 49 C.F.R. Part 26 and are an acceptable basis for exception to meeting a set DBE Goal.

Invitation for Bid (IFB): A procurement process used to request that interested parties submit offers to provide specified goods or services. IFBs are not negotiated procurements. An IFB is awarded to the lowest responsive, responsible Bidder.

Joint Procurement: A single procurement action undertaken by multiple government agencies, most often used to obtain strong competition and favorable pricing.

Micro-Purchase: Purchases of \$10,000 or less.

Minority Business Enterprise: A for-profit enterprise in the United States certified as owned, capitalized, operated and controlled by a member of an identified minority group.

Notice of Intent: Written notice from the RTA to a Contractor that authorizes work to be performed, and expenses to be incurred, by the Contractor, in anticipation of the execution of a Contract. A Notice of Intent may not exceed \$40,000.

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 the RTA; potentially unable to objectively perform the work in the Contract; or in a position to have an Unfair Competitive Advantage.

Payment Bond: A bond that ensures payment, as required by law, to all persons supplying labor or material in performance of the work defined in a Contract.

Performance Bond: A bond that secures the performance and fulfillment of a Contractor’s obligations under a Contract.

Piggybacking (or Piggyback Contract): A Contract awarded to a Contractor that has an existing, publicly solicited Contract with another government agency, if that Contract permits the RTA's participation.

Proceed Order: Authority granted to a Contractor regarding changes to the work required under a Contract. Proceed Orders are typically used when the RTA is negotiating an Amendment with a Contractor, but the Amendment has not been finalized yet the work must begin.

Professional Services: Services the quality and reliability of which depend in substantial part upon the individual skills, training, experience or ability of the person rendering such services.

Proposal: A document conveying an offer from a party in response to a Request for Proposals or Request for Qualifications.

Proposer/Respondent: An entity that submits a Proposal or Qualifications. Any individual, firm, corporation, or combination thereof, submitting a proposal or qualifications for the work contemplated, acting directly or through a duly authorized representative. For the purpose of these Rules and Regulations, the terms Proposer/Respondent may be used interchangeably with Bidder.

Public Notice: The RTA's notice to the general public of purchase or sale solicitations, which must be published at least once in an English language daily newspaper of general circulation in the Chicago metropolitan area for at least ten (10) business days of the Authority, in advance of the date announced for the receiving and opening of Bids or Proposals, and will simultaneously be advertised by other media, including posting on RTA's Supplier Portal (or other procurement portal), as appropriate.

Purchase Order: A document that sets forth the terms at which the RTA will acquire goods and/or services and which follows an informal competitive process. Emergencies and exigent circumstances purchases may also be documented with purchase orders.

Quote: A response to a solicitation for a Small Purchase.

Request for Information ("RFI"): A means by which to poll the market or ask a series of questions regarding a potential procurement that is of interest to the RTA and may result in the issuance of a solicitation.

Request for Proposals ("RFP"): A document that requests that interested parties submit Proposals to perform a specific project or service or to provide goods. Criteria,

including price, dictate how Proposals will be evaluated. RFPs are negotiated procurements.

Request for Qualifications (“RFQ”): A one-step or two-step qualification-based process where price is not an initial evaluation factor. RFQs may be used for architectural, engineering, and land-surveying services and may be used for other procurements, unless prohibited by applicable laws and regulations. RFQs are negotiated procurements.

Requisition: An internal document requesting goods or services which is approved and filed with the Procurement and Contracting Department. The Requisition initiates the procurement process and includes a description of the goods or services desired as well as an authorization from the requesting party. A Requisition is required for any expenditure of RTA funds covered by these Regulations and must be approved before procurement action can be taken.

Responsible: The Contractor’s ability to perform successfully under the terms and conditions of a proposed procurement.

Responsive: The determination of whether a response to a solicitation complies in all material respects with the solicitation. Compliance with the contract specific Disadvantaged Business Enterprise goal or evidence of Good Faith Efforts to meet that goal are two factors for consideration in determining responsiveness.

RTA: The Regional Transportation Authority, a unit of local government, body politic, political subdivision and municipal corporation established and operating under the Regional Transportation Authority Act, 70 ILCS 3615, et seq. (the “Act”) The RTA may be used interchangeably with the Authority.

Small Business Enterprise: A minority or non-minority owned for-profit enterprise certified to meet the Small Business Administration’s (“SBA”) size standard, and/or the State of Illinois’s small business certification requirements, and/or those standards set forth by other certifying entities listed herein.

Small Purchases: Purchases not greater than \$100,000 that are generally awarded to the lowest responsive, responsible Vendor using an informal bidding process.

Solicitation: A general term for the RTA’s request for offers from Bidders or Proposers. A solicitation package generally contains the proposed contract, instructions to potential Bidders or Proposers regarding the submission of a Bid or Proposal, and any other information needed to prepare a Bid or Proposal.

Unfair Competitive Advantage: A situation that occurs when one bidder has proprietary, confidential, source selection, or other information not available to other bidders, and that information is deemed by the Manager, Procurement & Contracting to be unfair. Contracts may not be awarded to Bidders or Proposers with an Unfair Competitive Advantage.

Vendor: See Contractor.

Veteran Owned Business Enterprise: A for-profit business in the United States owned, capitalized, and operated by one or more veterans and qualifies as “small” for federal business size standard purposes. All service-disabled veteran-owned small businesses (“SDVOSB”) are also, by definition, veteran-owned businesses.

Women Owned Business Enterprise: A for-profit business in the United States certified as at least 51% directly owned, capitalized, operated and controlled by one or more women.

ARTICLE 5: Competitive Procurements

5.1 General

All Contracts shall be let by free and open competition, except as otherwise provided in these Regulations. The RTA may split a contract award, or award multiple contracts resulting from one solicitation, as stated in the solicitation documents. Please refer to Section 7.2 herein for applicable public notice requirements.

5.2 Small Purchases (greater than \$10,000 to \$100,000)

Contracts with a value of \$100,000 or less may be let using a Small Purchase bidding process. Competitive quotes should be solicited from at least three (3) sources; one of which should be a DBE. Quotes may be obtained via electronic mail or written document, and all Vendors must be provided the same amount of time to prepare quotes.

5.3 Invitations for Bids (greater than \$100,000)

IFBs are used when the Contract value is expected to be greater than \$100,000, and price is the sole factor in determining which responsive and responsible Bidder is awarded the Contract. If an Addendum to the IFB is issued, interested parties must have at least five (5) business days to review the information contained in the Addendum. Bids are publicly opened and read aloud at the time and place specified in the IFB.

5.4 Requests for Proposals (greater than \$100,000)

RFPs are used when the Contract value is expected to be greater than \$100,000, and factors other than price must be taken into consideration before a Contract is awarded. If an Addendum to the RFP is issued, interested parties must have at least five (5) business days to review the information contained in the Addendum. Proposals are not publicly opened. The Proposals will be kept confidential until contract execution in a manner that will preserve competition among Proposers by not disclosing the content of any Proposal during the competitive process. All responsive and responsible Proposals must be evaluated using the criteria stated in the RFP. Only employees of the RTA, Service Boards, RTA consultants or other local units of government may be evaluators. RFPs may be negotiated. All Contracts resulting from the RFP process must be awarded to the responsive, responsible Proposer(s) that provides the most advantageous Proposal to the RTA.

5.5 Requests for Qualifications (greater than \$100,000)

RFQs are used when the Contract value is expected to be greater than \$100,000, and qualifications of the Respondent must be considered before a Contract is awarded. Price may not be an evaluation criterion used in an RFQ. If an Addendum to the RFQ is issued, interested parties must have at least five (5) business days to review the information contained in the Addendum. Qualifications are not publicly opened. The Qualifications will be kept confidential in a manner that will preserve competition among Respondents by not disclosing the content of any Proposal during the process. All responsive Qualifications must be evaluated using the criteria stated in the RFQ. Only employees of the RTA, Service Boards, or other local units of government may be evaluators. RFQs, including the Respondent's level of effort, may be negotiated. Negotiations will commence with the most qualified Respondent. If the Respondent and the RTA cannot agree on a fair and reasonable price, then the RTA may begin negotiations with the next most qualified Respondent. This process will continue until the RTA is able to come to an agreement with a Respondent. Design-Build contracts may be solicited using this method, in accordance with applicable laws and regulations.

5.6 Joint Procurements

A Joint Procurement is one that is issued jointly with one or more units of local government or agencies of the State of Illinois. Joint Procurements may take the form of IFBs, RFPs, or RFQs. Each participant in the Joint Procurement may enter into its own Contract with the selected Contractor.

All Joint Procurements must adhere to the applicable provisions of the Governmental Joint Purchasing Act, 30 ILCS 525/1 et seq., as it may hereafter be amended, and other applicable statutes, rules, and regulations. If federal funds are utilized, all applicable Federal Requirements must be followed and included in the solicitation, as appropriate.

5.7 Piggyback Contracts

The RTA may enter into a Contract with a Contactor that has an existing, publicly solicited Contract with another government agency, if that Contract permits the RTA's participation. The RTA will enter into its own contract for the goods and services that it purchases. The RTA may only purchase the goods or services included in the other agency's Contract at the same price afforded the original purchasing agency. The duration of the RTA's Contract may not exceed the duration of the original purchasing agency's Contract.

Federal funds may only be utilized for Piggyback Contracts (as defined by the FTA, or other applicable federal regulations) if the base Contract and the Piggyback Contract comply with all applicable federal rules and regulations.

ARTICLE 6: Procurements Not Requiring Competitive Bidding

6.1 Exceptions

The following types of contracts are hereby exempt from the RTA's competitive bidding requirements:

1. Where the goods or services are economically procurable from only one source.
2. The services of (i) expert witnesses, (ii) law firms, (iii) attorneys, and (iv) other providers of Professional Services whose assistance is, in the opinion of the General Counsel, necessary to resolve a legal matter, subject to approval by the Chairman of the Board.
3. The services of lobbyists and legislative consultants, subject to approval by the Board and the signature of the Chairman of the Board.
4. When federal funds are not utilized, procurements for which the Board determines that Competitive Procurement is disadvantageous.
5. Where the contract is for the acquisition of utility services.
6. For intergovernmental agreements or where the procurement is otherwise for services between the RTA, another transportation agency or unit of local government.
7. After receipt of a single non-responsive Bid to an IFB, the RTA may negotiate with the single bidder to cure any deficiencies in the bid.
8. Where the item is being procured pursuant to Section 4.2 of the Governmental Joint Purchasing Act, which allows a governmental unit to procure personal property, supplies, and services under any contract let by the State of Illinois.

See 30 ILCS 525/4.2.

9. Where the contract is for purchases valued below \$10,000 (see Article 6.2 below).
10. Where the contract is for the purchase of the services of a bond trustee (referring to trustees for the RTA's municipal debt).
11. Where the transaction is for the purchase of training courses or seminars.
12. Where the transaction is for the purchase of radio, television, online, or print advertising.
13. Where the transaction is for the purchase of services of a celebrity spokesperson, musical performer, model or master/mistress of ceremonies.
14. Where the transaction is for the purchase of insurance brokerage services and related policies (with procurement methods used by brokers approved by the Manager of Procurement and Contracting).
15. Where the transaction is for the purchase of subscriptions.
16. Where the transaction is for the payment of industry association membership dues or professional licensing fees.
17. Where the transaction is for the purchase of employee and Board travel expenses.
18. Where the transaction is for the purchase of space leased for RTA hosted events.

6.2 Micro-Purchases

Contracts that do not exceed \$10,000 may be executed after receiving at least one (1) quote. Competitive bidding is not required; however, it is encouraged when practical. In addition, prohibitions against Chaining (see Article 8) are applicable to Micro-Purchases.

6.3 Emergency Contracts

The Executive Director and the Chairman can declare the existence of an Emergency. If an Emergency exists, the Executive Director or the Manager of Procurement and Contracting will issue written authorization for the negotiation and award of an Emergency contract to purchase any goods or services needed only to the extent necessary to limit harm to RTA. A written report of the nature and extend of the Emergency, together with a statement of expenditures, if any, will be reported to the Board within three (3) business days following declaration of an Emergency.

Said Emergency contract will be procured through competition whenever possible, and in any event, in a manner calculated to insure the best interests of the public. Public Notice of the Emergency Contracts is not required. Any contract shall be terminated immediately following the next regularly scheduled meeting of the Board unless ratified by a two-thirds vote of the Board.

ARTICLE 7: General Requirements

7.1 Federally Funded Procurements

Notwithstanding anything to the contrary in these Regulations, any procurement which will be funded in whole or in part with federal funds, must comply with all applicable Federal Requirements.

7.2 Public Notice

All solicitations for Contracts greater than the small purchase threshold set by the FTA (as may be amended; currently \$250,000 as of June 20, 2018) will be published in an English language daily newspaper of general circulation in the RTA's service area the day the solicitation is made available to Bidders or Proposers. Also, Public Notice and public bidding is required for all solicitations for construction, demolition, rehabilitation, renovation, and building maintenance projects for services or public transportation facilities involving a cost of more than \$40,000. The minimum time that a solicitation must be advertised and available to Bidders or Proposers is ten (10) business days. Concurrent with the newspaper advertisement, the RTA will simultaneously advertise the solicitation by other media, as appropriate, and made available on the RTA Supplier Portal (or other procurement portal). The Public Notice will describe the solicitation in sufficient detail to inform potential Bidders or Proposers of their obligations. The Public Notice will state the date, time, and place Bids or Proposals are due, and the time when they will be opened publicly and read aloud. The Public Notice may incorporate information by reference.

Any Addenda to the solicitations must be acknowledged by the Bidders or Proposers in the submitted Bids or Proposals.

No Bids or Proposals will be accepted at any time subsequent to the time indicated in the Solicitation, Public Notice or Addendum. If a Bid or Proposal due date is changed, it must be changed using an Addendum.

7.3 Reporting

All Contracts may be either presented to the Board for consideration or reported to the Board monthly.

7.4 Disclosure of Ownership (Vendor/Contractor Certification)

All corporate Proposers or Bidders not listed on a nationally recognized securities market must provide the RTA with list of all individuals who own at least 7.5% of the corporation's stock.

All partnerships, limited partnerships, limited liability partnerships, and limited liability limited partnerships, or joint ventures, that are Proposers or Bidders, must provide a list of the names of each general or limited or individual partner/joint venture entitled to receive 7.5% or more of the profits derived from the partnership or joint venture activities. If the partners or joint venturers are corporations, the names of the individuals who own at least 7.5% of the corporation's stock must be provided.

A limited liability company must provide a list of the names of each owner entitled to receive 7.5% or more of the profits derives from the company's activities. If the owners are corporations, the names of the individuals who own at least 7.5% of the corporation's stock must be provided.

A sole proprietor must provide a list of the names of each person, other than the owner, who is entitled to receive 7.5% or more of the profits derived from the activities of the business.

7.5 Contract Assignments

No Contracts, or any rights or obligations thereunder, shall be assigned or sublet without the authorization of a party who would have otherwise been able to authorize and execute the Contract (see Article 10).

7.6 Cancellation of Procurements

The Manager, Procurement and Contracting, in consultation with a project manager, has the authority to cancel any procurement or reject any or all Bids or Proposals.

ARTICLE 8: Improper Conduct and Prohibitions

8.1 General

All RTA Board members, employees, contractors and agents must comply with all applicable provisions of the RTA Ethics Policy and Procurement Handbook, each as amended from time to time, and the applicable U.S. Department of Transportation regulations, FTA Circulars, the Illinois Public Officers Prohibited Activities Act, 50 ILCS 105, the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/70, and the Illinois Criminal Code, "Official Misconduct," 720 ILCS 5/33 and "Public Contracts," 720 ILCS 5/33e and any other applicable federal, state or local statute or requirement.

8.2 Prohibition on Chaining

No employee of the RTA shall engage in (1) the intentional practice of initiating, processing or executing multiple under \$100,000 purchase Requisitions or Purchase

Orders for the express purpose of circumventing the requirement to publicly source Bids or Proposals for the same item or services within a short period of time, where those Purchase Orders or Requisitions for the same item or services when totaled, exceed \$100,000, or (2) initiating, processing or signing multiple engagements with the same contractor to perform the same or substantially similar services on a single project, the intent of which is to exceed the approval and contracting authority granted to certain employees of the RTA in Article 10.

8.3 Prohibition Against Unfair Competitive Advantages

Contracts may not be awarded to Bidders or Proposers with an Unfair Competitive Advantage. The RTA will determine whether an Unfair Competitive Advantage exists on a case-by-case basis.

8.4 Corrective Action

Instances of improper conduct will be addressed in accordance with the applicable RTA policies and potentially by outside agencies so authorized by law.

8.5 Prohibition on Bidder or Proposer Collusion (Non-Collusion Affidavit)

Any agreement or collusion amongst Bidders or Proposers or prospective Bidders or Proposers that restrains free and open competition by bidding/proposing a fixed price, or otherwise, will render the Bids or Proposals of such Bidders or Proposers void. Each Bidder or Proposer will accompany its Bid or Proposal with a sworn statement, or otherwise swear or affirm that it has not been a party to any such agreement. The Procurement and Contracting Department will prepare and utilize the appropriate certificate which is in compliance with 720 ILCS 5/33E-11, as amended. No contract shall be executed by the RTA unless said certificate has been executed by the Bidder or Proposer. Notwithstanding any of the above, Bidders or Proposers may enter into a consortium for the purpose of submitting joint Bids or Proposals.

8.6 Prohibition Against Organizational Conflicts of Interest

Contracts may not be awarded to Bidders or Proposers where an Organizational Conflict of Interest exists. The RTA will determine whether an Unfair Competitive Advantage exists on a case-by-case basis.

ARTICLE 9: Business Enterprise Programs

9.1 General Policy

It is RTA's policy to give every vendor equal opportunity to conduct business with the RTA.

9.2 Disadvantaged Business Enterprise (DBE) Program

The DBE Program applies to all procurements utilizing federal funds and state funded procurements as appropriate. The RTA's DBE Liaison/Regulatory Compliance Officer shall set annual goals for the portion of RTA contracting that will be awarded or subcontracted to DBEs and report such goals to the Board. RTA will review contracts in excess of \$40,000 to determine whether the contract has subcontracting opportunities. If such subcontracting opportunities exist, and sufficient certified DBE firms exist in the subcontracting area so as not to impermissibly limit competition, RTA will assign a DBE Goal to the procurement. The DBE Goal, if any, will be included in the solicitation documents.

DBE Goals can be satisfied in one of three ways: (1) by committing to meet the DBE Goal directly (either through subcontracting or self-fulfillment); (2) by demonstrating Good Faith Efforts to meet the DBE Goal; or (3) by a combination of (1) and (2), above.

Compliance with a DBE Goal is a matter of responsiveness. In order for a response to an IFB, RFP or RFQ to be Responsive, the Bid or Proposal must either commit to meeting the DBE Goal, demonstrate Good Faith Efforts to meet the DBE Goal, or meet the DBE Goal in part and demonstrate good faith efforts to meet the remainder of the DBE Goal.

Those who submit bids or proposals shall be given a five-day period after the bid or proposal is submitted to cure deficiencies in the portion of the bid or proposal outlining its use of DBEs unless otherwise mandated by federal law or regulation. For purposes of this section the term "deficiencies" shall include:

- (i) clerical errors, omissions or mistakes; and
- (ii) good faith errors regarding the certification status of a vendor named as a proposed subcontractor in the bid or proposal.

9.3 Minority and Women Owned Business Enterprise (M/WBE) Program

For any non-federally funded contracts, RTA may permit prime contractors to meet diversity contracting (M/WBE) goals by being certified as, or entering into subcontracts with, businesses certified as minority or woman owned by the City of Chicago, the County of Cook, the State of Illinois or any other entity that RTA deems appropriate.

For any non-federally funded contracts, RTA will review contracts to determine whether the contract has subcontracting opportunities. If such subcontracting opportunities exist, and sufficient certified M/WBE firms exist in the subcontracting area so as not to impermissibly limit competition, RTA will assign an M/WBE Goal to the procurement. In some instances, and as appropriate, the RTA will permit that a diversity contracting goal be met by DBE or M/WBE firms. The M/WBE or DBE Goal, if

any, will be included in the solicitation documents.

M/WBE Goals can be satisfied in one of three ways: (1) by committing to meet the M/WBE Goal directly (either through subcontracting or self-fulfillment); (2) by demonstrating Good Faith Efforts to meet the M/WBE Goal; or (3) by a combination of (1) and (2), above.

Compliance with an M/WBE Goal is a matter of Responsiveness. In order for a response to an IFB, RFP or RFQ to be Responsive, the Bid or other response must either commit to meeting the M/WBE Goal, demonstrate Good Faith Efforts to meet the M/WBE Goal, or meet the M/WBE Goal in part and demonstrate good faith efforts to meet the remainder of the M/WBE Goal.

RTA has the authority to enter into agreements with the City of Chicago, County of Cook, the Women's Business Development Center, the State of Illinois and any other entity that RTA deems appropriate to recognize that entity's certifications of firms as a minority or woman owned business enterprise.

9.4 Small Business Set Aside Program

RTA shall establish a race-neutral small business set aside program as follows:

1. The RTA shall set aside procurements, as appropriate, to be fulfilled solely by certified small businesses.
2. The RTA may accept small business certifications by the following entities: the federal Small Business Administration, the City of Chicago, the County of Cook, the State of Illinois and certifications by any other organization or governmental entity that certifies small businesses.

9.5 Veteran Owned Business Enterprise Program

RTA has the authority to enter into agreements with the City of Chicago, County of Cook, the State of Illinois and any other entity the RTA deems appropriate to recognize each entity's certification of firms as veteran owned. In order to provide equal opportunities for veteran or service-disabled veteran owned businesses to participate in RTA procurements, the RTA is further authorized to notify certified veteran or service disabled veteran owned businesses of any and all publicly bid solicitations.

ARTICLE 10: Approval and Execution Requirements

Contracts and Amendments may be executed as follows in 10.1 and 10.2:

10.1 Contracts

1. All Contracts valued greater than \$100,000 require Board approval. Once approval is granted, either (1) the Executive Director, or his/her designee, or (2)

any RTA employee named in the authorizing ordinance as a valid signatory, may then execute the approved Contract.

2. All Emergency Contracts, regardless of value, require Board approval. Once approval is granted, either (1) the Executive Director, or his/her designee, or (2) any RTA employee named in the authorizing ordinance as a valid signatory, may then execute the approved Contract.
3. All Contracts valued at \$100,000 or less do not require Board approval (unless otherwise specified in this Article) before the Contracts are executed.
 - a) The Executive Director, or his/her designee, may execute contracts with a maximum value of up to \$100,000.
 - b) All Deputy Executive Directors and Directors may execute contracts with a maximum value of up to \$75,000.
 - c) The Division Manager, Procurement, Contracting and Facilities (or any successor position) may execute contracts with a maximum value of up to \$50,000.
 - d) The Manager, Procurement and Contracting (or any successor position), may execute contracts with a maximum value of up to \$40,000.

10.2 Contract Amendments

1. All Contract Amendments that cause the original Contract value to exceed \$100,000 require Board approval and shall be executed by the Executive Director or his/her designee or any RTA employee named in the authorizing ordinance as a valid signatory.
2. All Contract Amendments that increase a Contract's previously Board-approved value by 10% or more or by an amount that exceeds \$100,000 require Board approval and shall be executed by the Executive Director or his/her designee or any RTA employee named in the authorizing ordinance as a valid signatory.
3. The Executive Director, or his/her designee, may execute Contract Amendments with a maximum Contract value of up to \$100,000.
4. All Deputy Executive Directors and Directors may execute Contract Amendments with a maximum Contract value of up to \$75,000.
5. The Division Manager, Procurement, Contracting and Facilities (or any successor position) may execute Contract Amendments with a maximum Contract value of up to \$50,000.
6. The Manager, Procurement and Contracting (or any successor position), may execute Contract Amendments with a maximum Contract value of up to \$40,000.

10.3 Lobbying Contracts

Notwithstanding anything else in these Regulations, all Contracts for lobbying services must be approved by the Board and signed by the Chairman of the Authority.

10.4 Legal Contracts

With the approval of the Chairman, the General Counsel is authorized to engage the services of (i) expert witnesses, (ii) law firms, (iii) attorneys, and (iv) other providers of Professional Services whose services are, in the opinion of the General Counsel, necessary to resolve a legal matter, or to give legal advice and counsel on any other matter, regardless of cost.

10.5 Notice of Intent

The Manager of Procurement and Contracting may issue a Notice of Intent, in an amount not-to-exceed \$40,000, to any vendor for whom a Contract has been authorized, but not yet executed, pursuant to Section 10.1. In the absence of a Notice of Intent issued by the Manager, Procurement and Contracting, no vendor may be authorized by any RTA employee to begin providing services to the RTA without a Contract executed by a duly authorized representative of the RTA.

Prior to execution of a Contract by the Contractor and RTA, RTA may use a Notice of Intent to demonstrate its intent to enter into the Contract with the Contractor. Notices of Intent are not binding on the RTA and may not be used to circumvent these Regulations. The Notice of Intent will authorize the Contractor to begin immediately performing services or delivering supplies with the anticipation of an executed Contract.

10.6 Legal Review

All Contracts, Contract Amendments, Purchase Orders or other contract forms exceeding \$10,000 must be reviewed and approved as to form and legality by the General Counsel, Deputy General Counsel or attorney designee prior to being executed by an authorized signatory as set forth in this Article 10.

Article 11: Debarment and Suspension Procedures

11.1 Ineligible List

The Manager, Procurement and Contracting will maintain a list of all debarments and suspensions. The Ineligible List will be a public record. All bidders or proposers on RTA contracts will certify that they and all subcontractors on the contract are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, state, or local department or agency.

11.2 Causes for Debarment and Suspension

The causes for debarment or suspension include the following:

1. Conviction for commission of a criminal offense as related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
3. Conviction under state or federal antitrust statutes arising out of the submission of Bids or Proposals;
4. Serious violation of contract provisions, as set forth below, of a character which is regarded by the Manager, Procurement and Contracting to justify debarment action:
 - a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor will not be considered to be a basis for debarment;
5. Deliberate failure of a surety, without good cause, to fulfill its obligations to the RTA on any performance and/or payment bond or bid bond naming the RTA as obligee;
6. Violation of the RTA Ethics Policy;
7. Making a material misrepresentation in connection with an application for certification or re-certification as a Disadvantaged Business Enterprise, Minority or Women Owned Business Enterprise, Small Business Set Aside, or Veteran Owned Business Enterprise Program; and
8. Any other cause the Manager, Procurement and Contracting determines to affect Responsibility as a contractor, including, but not limited to, debarment by another governmental entity.

11.3 Decision

The Manager, Procurement and Contracting will issue a written decision as to whether the person or entity should be debarred or suspended, subject to review and concurrence by the General Counsel. The decision will state the reasons for the action

taken and (1) if the decision is to debar or suspend, inform the debarred or suspended person or entity involved of his rights for judicial review of the decision as provided in these Procurement Rules and Regulations or (2) if the decision is not to debar or suspend, inform the person or entity involved of that the process has concluded and that there was no decision to debar or suspend.

11.4 Scope of Decision

The decision will apply to the person or entity set forth in the notification of debarment or suspension, and, potentially, the associated organization or business entity in which: (1) a debarred or suspended person or entity is an officer, director or in any other substantial management position, until such time as the individual is severed from such organization; or (2) a debarred or suspended person or entity has controlling legal or beneficial financial interest, until such time as the debarred or suspended person or entity divests from such interest; or (3) a debarred or suspended organization controls or is controlled by such associated business organization or entity which, subsequent to the date administrative action was taken, begins or holds itself out as ready to perform the same work which the debarred or suspended organization was performing or endeavored to perform; or otherwise demonstrates by its action subsequent to the date of debarment or suspension that it is evading the decision. Any issue of fact as to the scope of decision will be subject to the hearing requirements provided hereunder.

Any debarred or suspended person, for the term of such suspension or debarment, will be ineligible to perform work as a contractor or any tier subcontractor on contracts awarded or approved by the RTA.

11.5 State or Federal Debarment or Suspension

In the event that applicable state or federal laws, regulations or rules mandate a greater or lesser period of ineligibility for the award of contracts to a person, such laws, regulations or rules will determine such person's eligibility with respect to the specific causes for debarment and suspension contained in such laws, regulations and rules. In addition, where applicable state or federal laws, regulations or rules provide for debarment or suspension for causes in addition to those specified in this Article, such state or federal laws, regulations or rules will determine eligibility. Furthermore, if a person is debarred or suspended by an agency of the State of Illinois or the Federal government and such debarment or suspension is applicable to contracts awarded by the RTA, such state or federal debarment or suspension will determine eligibility for consideration for award.

11.6 Finality of Decision

A decision under this Article to debar or suspend will be final and conclusive unless the debarred or suspended person, within thirty (30) days after issuance of the decision,

commences a timely action in a court of competent jurisdiction in accordance with applicable law.

Article 12: Bid Protest Procedures

The RTA will entertain protests from interested parties regarding its procurement actions. The RTA will respond to any bona fide protest filed in a timely manner provided that the protest is not of a frivolous or vexatious nature. The RTA will not allow a protest to delay the procurement of needed goods or services unless it is apparent that the RTA participated in a practice that granted an unfair advantage to a participant in the procurement.

Definitions

“Contract” means any contract, agreement, purchase order, or order placed by the RTA to receive goods or services from an external source.

“Day or Days” means a working day or days of the RTA.

“Interested Party” means a participant or prospective participant in an RTA procurement whose direct economic interest is affected by the award of the contract for the procurement.

“Offer” means a response to an RTA procurement solicitation, including but not limited to quotations, bids, proposals and expressions of interest or qualifications.

Submission of Protests

Any interested party may file a bid protest with the RTA on the basis that the RTA failed to comply with a federal or state law or that the RTA failed to follow its own Procurement Regulations. A valid protest must include the following information:

1. Name and address of the protestor;
 2. Identification of the procurement action being protested; and
 3. A statement of the reason for the protest, identifying the federal or state law or the RTA Procurement Regulation that the protestor alleges has been violated by the RTA.
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Types of Protests and Deadline to File

The deadline for a valid protest will be determined by the progress of the procurement. The RTA will recognize three different types of protests:

1. Protest regarding solicitation

Any protest regarding the solicitation must be filed no later than the established due date for the solicitation.

This type of protest includes a claim that the solicitation contained exclusionary or discriminatory specifications, or that the basis for award or any claim that the procurement documents or the procurement process violates a federal or state law or fail to follow its own Procurement Regulations.

2. Protest regarding offer evaluation

Any protest regarding the evaluation of offers must be filed before award of the contract. (The contract award date is determined by the date that the RTA issues letters of award and non-award to all proposers.) Any protest filed after such date which raises such issues will not be considered as a valid protest but may be considered if it is determined to be in the best interests of the RTA.

This type of protest challenges the RTA's determination of responsiveness of offers and responsibility of offerors, errors in calculation, or that the RTA's evaluation of offers violated a federal or state law or its own Procurement Regulations.

3. Protest regarding award of contract

Any protest regarding the award of the contract must be filed no later than ten (10) days after the date of award of the contract. (The contract award date is determined by the date that the RTA issues letters of award and non-award to all proposers.) Any protest filed after such date which raises an issue regarding the award will not be considered as a valid protest but may be considered if it is determined to be in the best interests of the RTA.

This type of protest will only be entertained by the RTA if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that the RTA violated a federal or state law or its own Procurement Regulations in awarding the contract.

The RTA's Response to Protests

The RTA will notify a protestor upon receipt of a timely protest and may, where appropriate, request further information. The RTA may, at its sole discretion, meet with the protestor to review the issues raised in the protest. The RTA's consideration of the protest, except as otherwise provided in the following paragraph "**Decisions by the RTA**" will be in accordance with the following provisions:

1. Protest regarding solicitation

Upon receipt of a valid protest regarding solicitation, the RTA may postpone the deadline for submission of offers until resolution of the protest.

If the protest regarding the solicitation includes a claim of unduly restrictive or exclusionary specifications, the RTA will, in considering the protest, consider both the specific needs of the RTA for the feature or item challenged and any effect on competition of including the specification regarding that feature or item. If the RTA determines that such feature or item was included in the specification in order to meet a legitimate need of the RTA and was not unduly restrictive of competition or designed to exclude a particular competitor, then the RTA will deny the protest.

2. Protest regarding evaluation of offers

Upon receipt of a valid protest regarding the evaluation of offers, the RTA will suspend its evaluation of all offers until resolution of the protest.

3. Protest after award

Upon receipt of a timely protest regarding the award of a contract, the RTA will issue a stop work order, if necessary, until the resolution of the protest.

Decisions by the RTA

As indicated above, in most instances, the RTA will suspend the procurement action upon receipt of a bona fide bid protest. However, the RTA reserves the right, notwithstanding the presence of a protest, to proceed with the appropriate action in the procurement process in the following instances:

- a) when failing to fulfill the need for the items or services would cause irreparable harm to the RTA or its Service Boards;
- b) when the RTA determines that the protest is vexatious or frivolous; or
- c) when delivery or performance will be unduly delayed, or other undue harm would occur by delaying the award of the contract.

After review of a bid protest submitted under these provisions, the RTA will issue a written decision on the basis of the information provided by the protestor, the result of any meetings with the protestor, and the RTA's own investigation of the matter. If the protest is upheld, the RTA will take appropriate action to correct the procurement to protect the rights of the protestor, including, but not limited to, reissuance of the procurement, revised evaluation of the offers or the RTA's conclusion of the evaluation of the offers, or termination of the contract. If the protest is denied, the RTA will terminate the suspension of the procurement that was imposed during the consideration of the protest and will proceed with the procurement.

Appeals Related to Protests for Solicitations Funded with Federal Funds

When the RTA denies a Protest, it will inform the protestor in writing of its right to appeal RTA's decision to the FTA. In accordance with FTA Circular 4220.1, which may be amended from time to time, the FTA's review of protests will be limited to:

- (1) the RTA's failure to have protest procedures
- (2) the RTA's failure to comply with its protest procedures
- (3) failure to review a protest
- (4) violations of federal law or regulations.
- (5) violations of state or local law or regulations (FTA will refer these violations to the state or local authority having proper jurisdiction.)

The protestor must deliver his or her appeal to the FTA Regional Administrator for Region Five within five (5) working days of the date the protestor has received actual or constructive notice of an adverse decision by the RTA or other grounds for appeal to FTA. "Working days" for purposes of appeal to FTA are all days that FTA's Region Five office is open for business.