

RESOLUTION NO. 2008-141

ADOPTING AND APPROVING A REVISED PROCUREMENT POLICY FOR THE GREATER REGIONAL TRANSIT AUTHORITY TO CONFORM TO CHANGES TO OHIO REVISED CODE SECTION 306.43 WHICH GOVERNS PROCUREMENT ACTIVITIES OF THE AUTHORITY

WHEREAS, the Greater Cleveland Regional Transit Authority Board of Trustees was granted the power and authority, pursuant to Chapter 306 of the Ohio Revised Code, to manage and conduct the affairs of the Greater Cleveland Regional Transit Authority; and

WHEREAS, under the authority granted in Section 306.43 of that Chapter, the Board of Trustees approved Procurement Policies for the Authority by Resolution 2002-186 dated November 18, 2002 and that resolution repealed procurement resolutions 1995-61, adopted on April 18, 1995, and 1999-148, adopted on October 26, 1999, which had repealed or rescinded all prior procurement policies of the Authority; and

WHEREAS, Ohio Revised Code Section 306.43 was amended effective September 23, 2008 ("Effective Date"); and

WHEREAS, the Board of Trustees has determined that revision of the 2002 Procurement Policy to conform with the 2008 amendments of Section 306.43 will result in more efficient procurement activities.

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That Resolution 2002-186 dated November 18, 2002 is hereby repealed, effective on the Effective Date.

Section 2. That all other resolutions, including but not limited to Resolution 1988-17, which are in conflict with this Procurement Policy, are hereby repealed.

Section 3. That the Procurement Policy, a copy of which is attached hereto and fully incorporated herein, is hereby adopted and approved by the Board of Trustees of the Greater Cleveland Regional Transit Authority.

Section 4. That the General Manager/Secretary-Treasurer is hereby authorized, in accordance with the authority granted to him by the Greater Cleveland Regional Transit Authority Bylaws, to issue all necessary administrative procedures to implement the policy approved by this resolution without further action by the Board of Trustees.

Section 5. That this resolution shall become effective on the Effective Date.

Attachment: Procurement Policy

Adopted: September 23, 2008



President

Attest: 

CEO, General Manager/Secretary-Treasurer

Greater Cleveland Regional Transit Authority

PROCUREMENT POLICY

1.0 Purpose

References:

Federal: FTA Circular 4220.1E, Chapter 2

Policy:

This Procurement Policy identifies the regulations and processes, which govern all Authority personnel involved in the procurement and contract administration process. The Policy covers the entire range of procurement activities and its requirements are binding on all Authority personnel.

2.0 Effective Date

References: None

Policy:

This policy shall be effective on the effective date of changes to Ohio Revised Code Section 306.43 contained in Ohio House Bill 562 (September 23, 2008) and shall remain in full force and effect until rescinded, replaced or modified by the Board of Trustees. The effective date of any modification of this Policy shall be identified on the pages modified.

3.0 Scope of Policy

References: None

Policy:

Except as otherwise specified herein, all purchases and dispositions of equipment, materials, goods and services to or by the Authority involving either an expenditure of public funds or revenue from Authority assets whether by sale, lease, rental or otherwise shall be governed by this Policy. The general requirements herein shall apply except as altered or excluded for specific types of procurements. To the maximum extent possible, the Authority shall purchase and dispose of equipment, materials, goods and services through competitive processes.

4.0 Exclusions

References:

State: Ohio Revised Code Chapter 135
Ohio Revised Code Sec. 306.43(H)(8)
Local: GCRTA Real Estate Policy
GCRTA Joint Development Policy
GCRTA Travel Policy

Policy: The following activities are excluded from this Policy:

- Acquisition or disposition of any rights in real property, but not consultants or brokers in connection therewith
- The sale of debt securities or sale/leaseback or lease/leaseback transactions, but not the procurement of consultants or brokers for any of them
- Payments for items mandated by law, regulation, or agreements other than procurement contracts entered into by the Authority
- Routine administrative expenses such as postage which are specifically identified in the Authority's budget
- Purchases or reimbursement to employees for travel or similar expenses incurred on behalf of the Authority under the Authority's other policies and procedures
- The designation of eligible depositories for the Authority's active, interim and inactive funds pursuant to Chapter 135 of the Ohio Revised Code
- Action regarding employee-related matters under the Personnel Policy, but not the procurement of consultants pertaining thereto.

5.0 Governance

References:

Federal: 29 CFR Part 3 (Copeland Act)
 29 CFR Sec. 5.5 (Davis-Bacon Act)
 49 U.S.C. Chapter 53 (Mass Transportation)
 49 CFR Part 18 (Common Rule)
 49 CFR Part 21 (Nondiscrimination)
 49 CFR Part 26 (Disadvantaged Businesses)
 49 CFR Parts 27, 37 & 38 (Disabilities)
 49 CFR Part 29 (Debarment and Suspension)
 49 CFR Part 622 (Environmental Impact)
 49 CFR Part 633 (Project Management Oversight)
 49 CFR Part 639 (Capital Leases)
 49 CFR Part 661 (Buy America)
 49 CFR Part 663 (Pre-Award/Post-Delivery Audits of Rolling Stock)
 49 CFR Part 665 (Bus Testing)
 FTA Master Grant Agreement (issued annually)
 FTA Circular 4220.1 E and Change 1 (Procurement)
 FTA Circular 5010.1 C (Grant Management)
 FTA Circular 5620.1 (Environmental Assessments)
 FTA Circular 9300.1 A (Capital Grants)
 FTA Circular 9400.1 A (Arts in Transit)
 OMB Circular A-87 (Cost Principles)
 OMB Circular A-133 (Audits)

State:

Ohio Revised Code Sec. 9.31 (Bid Withdrawal)
 Ohio Revised Code Sec. 9.311 (Bonds)
 Ohio Revised Code Sec. 9.312 (Rejection of Apparent Low Bid)
 Ohio Revised Code Sec. 9.313 (Bond Reduction)
 Ohio Revised Code Sec. 9.32 (Notice to Surety)
 Ohio Revised Code Secs. 9.33-9.333 (Construction Management)
 Ohio Revised Code Chapter 102 (Ethics)
 Ohio Revised Code Chapter 149 (Public Records)
 Ohio Revised Code Sec. 153.12 (Construction Contract Award)
 Ohio Revised Code Sec. 153.13 (Construction Estimates; Escrow Accounts)
 Ohio Revised Code Sec. 153.14 (Construction Payments)
 Ohio Revised Code Sec. 153.54 (Construction Bonds)
 Ohio Revised Code Sec. 306.34 (Board of Trustees)
 Ohio Revised Code Sec. 306.35 (Powers)
 Ohio Revised Code Sec. 306.43 (Procurement)
 Ohio Revised Code Chapter 1306 (E-Commerce)
 Ohio Revised Code Sec. 1311.25-1311.32 (Public Liens)
 Ohio Revised Code Secs. 1333.61-1333.69 (Trade Secrets)
 Ohio Revised Code Sec. 2305.31 (Indemnification)
 Ohio Revised Code Sec. 2921.43 (Ethics)
 Ohio Revised Code Sec. 4113.61 (Prompt Payment)
 Ohio Revised Code Sec. 4113.62 (Waiver of Claims)
 Ohio Revised Code Chapter 4115 (Prevailing Wage)

Policy:

As a political subdivision of the State of Ohio, the Authority is governed by the applicable portions of the Ohio Revised Code. The primary governance for procurement actions is Sec. 306.43. As a third-party grantee of the Federal government, the Authority is governed by applicable federal laws and regulations. The primary federal governance for procurement activities is FTA Circular 4220.1 E as it may be amended or replaced.

The documents listed above are those, which directly regulate aspects of the procurement function. Additional documents, including the FTA Best Practices Manual, Federal Acquisition Regulations and other sections of the Ohio Revised Code, while they may or may not be binding on the Authority, shall be used for guidance to the extent matters covered are not addressed by governing laws or regulations.

6.0 Structure of Procurement Department**References:**

Federal: 49 CFR Sec. 18.36(b) and (c)
 FTA Circular 4220.1 E Sec. 5(a)
 FTA Best Practices Procurement Manual Sec. 2.1

Policy: The Procurement Department shall have a sufficient degree of autonomy within the organization to function effectively as part of a check and balance system governing Authority acquisitions and dispositions.

7.0 Ethics

References:

Federal: 49 CFR Sec. 18.36(b) and (c)
FTA Grant Agreement, Sec. 3
FTA Circular 4220.1 E Sec. 7(c)

State: Ohio Revised Code Chapters 102 and 2921

Local: GCRTA Personnel Policy and Code of Ethics

Policy: Except as expressly permitted under other Authority policies, no Authority officer or employee shall accept any gift of value from a vendor or potential vendor, except for items which are offered on a general basis to potential customers of a vendor or group of vendors, or as sponsorship of an activity not specific to this Authority. No Authority employee shall participate in a procurement action involving a vendor or potential vendor, in which the employee or member of the employee's immediate family has an economic interest, except with the approval of the Director of Procurement, upon disclosure of all information concerning the potential conflict.

8.0 Organizational Conflicts of Interest

References:

Federal: FTA Grant Agreement, Sec. 3(a)(2)
FTA Circular 4220.1 E Sec. 8(a)(5)
FTA Best Practices Manual Sec. 2.4.2

State: Ohio Revised Code Chapters 102 and 2921

Policy: Procurements hereunder shall be conducted with full and open competition to the greatest extent possible. No undue geographical, economic or technical restrictions shall be imposed on vendors. A vendor deemed to possess an unfair competitive advantage or to possess a bias preventing it from rendering impartial advice or assistance to the Authority shall be precluded from award of contracts within the scope of the advantage or bias.

9.0 Delegations of Authority

References:

State: Ohio Revised Code Sec. 306.34; 306.35; 306.43

Local: Board Resolution 2004-43

Policy: Responsibility for procurement actions lies with the Board of Trustees. The Board hereby delegates to the General Manager/Secretary-Treasurer of the Authority or, in his or her absence, the Acting General Manager, the following responsibilities:

- Authorize and approve all purchases, sales and other procurement actions not exceeding \$100,000, which by federal or state requirements do not require formal solicitation or approval by the Board of Trustees.
- Advertise for all formal procurements, which are those exceeding the General Manager/Secretary-Treasurer's \$100,000 authority.
- Cancel procurements.
- Enter into agreements for legal services, pursuant to Board Resolution No. 2004-043 as amended.
- Approve all funding encumbrances and authorizations to proceed with solicitation for acquisitions and dispositions of goods, equipment, and services for or by the Authority.
- Execute all contract documents.
- Settle all claims and disputes.
- Approve all change orders on contracts not exceeding \$100,000, in a net amount that does not cause the total amount of any such contract to exceed \$100,000, and approve change orders on other contracts in a net amount not to exceed the following limits: \$100,000.00 for contracts up to \$1,000,000.00; the lesser of 10% or \$250,000.00 for all contracts between \$1,000,000.00 and \$5,000,000.00; in an amount not to exceed \$500,000.00 for all contracts over \$5,000,000.00. Trustees may, by resolution, vary these limits for particular contracts or projects. The General Manager/Secretary-Treasurer shall report, as required by the Board, all changes made under this delegated authority.
- Approve all change orders not involving an additional expenditure of Authority funds, except for cardinal changes to the scope of the contract.

The General Manager/Secretary-Treasurer is also empowered to:

- Determine the lowest responsive and responsible bidder.
- Determine when acceptance of an offer resulting from a negotiated proposal is in the best interest of the Authority.
- Reject all bids or proposals when it is determined to be in the best interest of the Authority.
- Determine whether only one source of supply is readily available for the purchase of goods and services.
- Terminate any contract if deemed to be in the best interest of the Authority.

The Board hereby delegates to the Director of Procurement or, in his or her absence, the Acting Director of Procurement, the following responsibilities:

- Authorize and approve all purchases, sales, and other procurement actions which by federal or state requirements do not require formal solicitation or approval by the Board of Trustees and which do not exceed \$100,000.
- Advertise for all formal procurements, which are those exceeding \$100,000.
- Cancel procurements.
- Reject all bids or proposals when it is determined to be in the best interest of the Authority.
- Determine whether only one source of supply is readily available for the purchase of goods and services.

10.0 Change Orders

References:

Federal: FTA Circular 4220.1 E Sec. 9(f); FTA Best Practices Procurement Manual Sec. 9.2

State: Ohio Revised Code Sec. 153.62

Policy: Change Orders are contract amendments altering the scope, price or schedule of the original contract. Approval of change orders shall be in accordance with the provisions of Sec. 9.0 of this Policy. The Board of Trustees may, for any specific contract or project, delegate its change order authority to specific officers or employees, at specified dollar levels. No work under a change order may be authorized prior to such approval, except upon the written direction of the General Manager/Secretary-Treasurer. Cardinal changes are changes which alter the essential nature, quantity or scope beyond the reasonable contemplation of the parties at the time of contract execution, or which result in a final product substantially different than that originally contracted for. Cardinal changes are considered new procurements, and are subject to the appropriate provisions of this policy regarding non-competitive procurements.

11.0 Claims and Disputes

References:

Federal: FTA Circular 4220.1E, Sec. 7(k)
FTA Circular 5010.1C, Ch. 11

FTA Best Practices Manual, Ch. 11

Policy: Claims related to procurement actions or contracts shall be submitted in writing to the Director of Procurement. Claims in excess of \$25,000 shall include a certification by the owner or an officer of the vendor that the claim is, to the best of his or her knowledge or belief, accurate as to both the basis and the amount of the claim. As grantee of Federal Funds, GCRTA must notify FTA of any current or prospective litigation or major disputed claim in excess of \$100,000 relating to any third party contract.

The Authority shall establish a procedure by which a vendor may appeal a denial of a claim, in whole or in part. Settlement of any claim shall be by the approval of the General Manager/Secretary-Treasurer, based upon a recommendation by the Director of Procurement that the settlement is fair and reasonable and is in the best interest of the Authority.

Disputes other than formal claims arising during the course of project performance shall, to the extent feasible, be resolved by the Contract Administrator and the Project Manager. Disputes, which are not so resolved, may be brought by the aggrieved party to a court of law, unless an alternative form of dispute resolution is agreed upon by the parties. The Director of Procurement shall promptly notify the General Counsel - Deputy General Manager of Legal Affairs of any such dispute.

12.0 Protests

References:

Federal: FTA Circular 4220.1E, Sec. 7(I)
FTA Best Practices Manual, Sec.11.1

Policy: Protests of procurement actions may be filed before bids or proposals are received, after announcement of a proposed award, and after action by the Board of Trustees. Protests before bids or proposals are received may address the adequacy or fairness of the solicitation documents. If an award of a federally-funded project will be made during the pendency of a protest, the Director of Procurement must notify the FTA of the protest prior to the award. Protests after announcement of a proposed award may address the basis for selection or rejection of a bidder or proposer. Protests following action by the Board of Trustees may address only the procedure by which the Board accepted the bid or proposal. The protestor must have a substantial economic interest in the procurement. Protests shall be in writing, and in sufficient detail to permit an evaluation and response. Protests shall be decided by the Director of Procurement whose decision shall be final.

13.0 Procurement Planning

References:

Federal: FTA Grant Agreement, Sec.15 (d) and (h)
FTA Circular 4220.1E, Sec. 7 and 8, FTA
Best Practices Manual, Sec. 2.3.2

Policy: The initiating department shall be responsible for identifying its needs, justifying them, and defining the needs to the point that a specification or scope of services can be prepared. The initiating department is responsible for preparing an estimate of the cost of the item or service, in the same form that an offeror would develop or propose a price. The initiating department and Procurement Department are jointly responsible for developing a schedule to meet the initiator's needs and identifying potential suppliers. The schedule should be part of a comprehensive plan for annual procurement actions, to ensure that the required resources are available as required.

14.0 Disadvantaged Business Enterprises

References:

Federal: 49 CFR Part 26
FTA Best Practices Manual, Chapter 7

State: Ohio Revised Code Sec. 306.43(M)

Policy: In making procurements hereunder, the Authority shall serve to ensure the participation of Disadvantaged Business Enterprises (DBE), as well as contractor compliance in accordance with all applicable laws and regulations. The Authority shall use its best efforts to encourage fair and representative participation of DBEs on procurements, either as prime contractors or as subcontractors. Moreover, the Authority shall determine the opportunity for DBE participation on all procurements in the amount of \$25,000 or more, and where qualified DBEs are identified, solicitations for such procurements shall include at least one DBE among the contractors solicited.

15.0 Debarment

References:

Federal: Executive Order 12549 and 12689
31 U.S.C. Sec. 6101 note
49 CFR Part 29
FTA Grant Agreement, Sec. 3(b); Excluded Parties List System

Policy: The Authority shall not award contracts to firms that are debarred by the Federal government. Debarment by other government entities may be considered in determining a vendor's responsibility, but shall not necessarily preclude award to the debarred vendor.

16.0 Specifications and Scopes of Services

References:

Federal: FTA Circular 4220.1E, Sec.7 and 8

Policy: Unless otherwise determined by the Director of Procurement, the Procurement Department shall prepare specifications and scopes of services based upon information provided by the initiating department. Specifications or scopes prepared by others shall be reviewed by the Procurement Department for conformity with applicable procurement standards. The document should identify the Authority's minimum needs and avoid restrictive provisions such as identification of name brands to the greatest extent possible. All specifications must be approved by the head of the initiating department, the Safety Department, if applicable, the Director of Procurement, and any others designated by the Director of Procurement, prior to issuance.

17.0 Procurement Types for Formal Contracts

References:

Federal: 49 CFR Sec. 18.36(b)(1 0) and (d)
FTA Circular 4220.1E

State: Ohio Revised Code Sec.9.314 and 306.43(B), (C), and (D)

Policy: For formal contracts (those for which the Board of Trustees has not delegated its purchasing authority and any others so designated by the General Manager/Secretary-Treasurer of the Authority or, in his or her absence, the Acting General Manager or the Director of Procurement or, in his or her absence, the Acting Director of Procurement) the Authority may utilize sealed bids, two-step procurements, and negotiated procurements where at least two qualified sources are identified as reasonably available. The Authority shall use negotiated procurements where a non-competitive procurement is appropriate. To the extent authorized by law, the Authority may purchase services or supplies via reverse auction utilizing the Internet. The Authority may use any type of contract deemed appropriate by the Director of Procurement consistent with applicable laws and regulations.

18.0 Contract Pricing

References:

Federal: FTA Circular 4220.1 E, Sec. 7 (U), 9, 10 and 12
FTA Best Practices Manual Sec. 2.4.3 and 2.4.5
FTA Administrator letter dated May 29, 2002

Policy: The Authority must utilize firm fixed price or fixed unit price not-to-exceed contracts for sealed bid procurements and may use them for negotiated procurements. Such contracts may allow price escalation based on actual costs or a generally recognized index, provided that the escalator has a defined upper limit. The Authority may also use a cost plus fixed fee contract, or any other type of contract permitted by applicable laws or regulations; however, for negotiated procurements it may not use a cost plus percentage fee type of contract. The Authority may use indefinite quantity or indefinite delivery contracts where appropriate, but may not use an indefinite quantity and indefinite delivery contract. The Authority may use a time and materials type of contract only if no other form is suitable and if the contract contains a not-to-exceed ceiling. The Authority may utilize progress payments to the extent consistent with law and regulation, provided that it obtains or secures value consistent with the amount paid. The Authority shall not make advance payments unless specifically authorized by the Director of Procurement or the General Manager/Secretary-Treasurer.

19.0 Sealed Bid Procurements

References:

Federal: FTA Circular 4220.1 E Sec. 9(c) FTA
Best Practices Manual, Sec.4.4

State: Ohio Revised Code Sec. 306.43(B)

Policy: Unless the Director of Procurement determines that the appropriate conditions do not exist, all procurements above the small purchase limit of \$100,000 shall be by sealed bid. If less than two responsive bids are received for a sealed bid solicitation, the Director of Procurement may either (1) negotiate price with the responsive bidder or (2) cancel the solicitation.

20.0 Competitive Negotiated Procurements

References:

Federal: FTA Circular 4220.1 E, Sec.9 (d)
FTA Best Practices Manual, Sec. 4.5

State: Ohio Revised Code Sec. 149.43 and 306.43(D),

Policy: When the conditions for a sealed bid procurement do not exist, the Director of Procurement may direct that competitive negotiated proposals be solicited. Competitive negotiated procurements must be conducted in a manner that preserves the integrity of the procurement process. To the extent permitted by law, regulation or court decision, the evaluation of proposals shall be conducted in a confidential manner, and all confidential or proprietary information shall be held confidential.

21.0 Two-Step Procurements

References:

Federal: FTA Best Practices Manual, Sec. 4.7.1

State: Ohio Revised Code Sec. 306.43(C)

Policy: When the conditions for a competitive sealed bid do not exist, the Director of Procurement may direct that a two-step process be utilized. This process shall consist of a negotiated technical proposal followed by a sealed bid from those firms whose technical proposals are acceptable. To the extent permitted by law, regulation or court decision, the evaluation of proposals shall be conducted in a confidential manner, and all confidential or proprietary information shall be held confidential.

22.0 Small Purchases

References:

Federal: FTA Circular 4220.1E, Sec. 9(a) and (b)
FTA Best Practices Manual, Sec. 4.1 and 4.2

State: Ohio Revised Code Sec. 306.43(A)

Policy: Purchases reasonably estimated not to exceed the small purchase limits of \$100,000 established pursuant to Sec. 9.0 of this Policy may be procured informally, provided that a record is maintained consistent with applicable laws and regulations. Price or rate quotations shall be obtained from an adequate number of qualified sources to permit a reasonable comparison consistent with the nature of competitive negotiation within the given circumstances. This shall generally mean at least three (3) offers/bids on purchases up to \$100,000. Purchases above \$2,500 and up to \$100,000 require a written quotation.

23.0 Sole Source Procurements

References:

Federal: FTA Circular 4220.1 E, Sec 9(f)
FTA Best Practices Manual, Sec. 4.6

State: Ohio Revised Code Sec. 306A3(H)

Policy: A sole source procurement may be used when, after reasonable inquiry, the Director of Procurement determines that only one source for the item or

service is reasonably available. A sole source procurement shall be conducted as a non-competitive negotiated procurement, in accordance with applicable laws, regulations and this Policy.

24.0 Emergency Procurements

References:

Federal: FTA Circular 4220.1 E, Sec 9(f)
FTA Best Practices Manual, Sec. 4.6

State: Ohio Revised Code Sec. 306.43(H)(1)

Policy: Upon authorization by the General Manager/Secretary-Treasurer, the Director of Procurement, may direct that a non-competitive procurement be conducted to the minimum extent needed to meet an emergency situation. The General Manager/Secretary-Treasurer shall contact the President of the Board of Trustees if the estimated cost to abate the emergency is anticipated to exceed the General Manager/Secretary-Treasurer's delegated authority.

25.0 Intergovernmental Agreements

References:

Federal: FTA Circular 4220.1 E, Sec 7(e) and 9(f) and (g)
FTA Best Practices Manual, Sec. 1.3.3.5

State: Ohio Revised Code Sec. 306.43(H)(4) and (J)

Policy: The Authority may, to the extent permitted by law or regulation, purchase or dispose of goods or services by agreement with another governmental agency or through an intergovernmental purchasing group. The Authority may exercise options under contracts entered into by other governmental entities, or offer such options to another governmental agency or intergovernmental purchasing group provided that: (1) the granting agency's contract allows for the assignment of the option and (2) the granting agency's procurement process meets all material and competitive requirements required by the Authority's funding source.

26.0 Non-Profit Agencies

References:

State: Ohio Revised Code Sec. 306.43(H)(8), and (9)

Policy: The Authority may, to the extent permitted by law or regulation, purchase or dispose of goods or services to recognized non-profit organizations. In the case of a disposition of property (excluding real property), assurances shall be obtained that the property shall not be resold or otherwise used for profit.

27.0 Electronic Procurements and Purchasing Cards

References:

Federal: FTA Best Practices Manual, Sec. 4.1.1

State: Ohio Revised Code Sec. 9.314

Policy: The Authority may utilize electronic means, to the extent consistent with legal and regulatory requirements, to conduct any procurement defined herein in whole or in part. Documents requiring an original signature or notarization shall not be in electronic form unless the use of electronic signature is authorized by law and approved by the Director of Procurement. Employees and officers of the Authority designated by the Board of Trustees may use purchasing (credit) cards as authorized by the procedures of the General Manager/Secretary-Treasurer, to acquire items under contracts previously awarded by the Authority in accordance with this Policy. Additionally, the Board of Trustees may authorize the use of purchasing cards for the acquisition of readily available retail items from sources not under such contracts, as long as such purchases do not exceed the Small Purchase limit.

28.0 Incentive Payments and Liquidated Damages

References:

Federal: FTA Circular 4220.1 E, Sec. 13
FTA Best Practices Manual, Sec. 8.2.3

Policy: The Authority may, under appropriate circumstances, utilize incentives to encourage extraordinary vendor performance, or provide for liquidated damages calculated to protect the Authority from losses due to vendor non-performance. It may not impose financial penalties that are punitive in nature. Liquidated damages must be calculated and documented prior to the issuance of the solicitation on the basis of the anticipated actual loss to the Authority resulting from vendor non-performance.

29.0 Contract Contents

References:

State: Ohio Revised Code, Sec. 153.12

Federal: FTA Best Practices Manual, Sec. 1.2

Policy: Contracts for the acquisition of goods and services shall include, at a minimum: the specification or agreed-upon scope of services; the price and term of the contract; payment terms; contractual terms including but not limited to appropriate warranties and indemnities; and all clauses and certifications required by law and regulation.

30.0 Contract Execution

References:

Federal: FTA Best Practices Manual, Sec.1.2.1

State: Ohio Revised Code. Sec. 306.34 and 306.35

Local: Board Bylaws

Policy: When authorized by the Board of Trustees, the General Manager/ Secretary-Treasurer will sign contracts over \$100,000.

Contracts not exceeding \$100,000 may be signed by the General Manager/Secretary-Treasurer or the Director of Procurement without specific Board of Trustee authorization.

The Legal Department shall review contracts above \$25,000 for legal form and correctness before they are executed by the Authority.

31.0 Design Services

References:

Federal: 40 USC Sec. 541
FTA Circular 4220.1 E, Sec 9(e)
FTA Best Practices Manual Sec. 6.5

State: Ohio Revised Code Sec. 306.43(E)(1)

Policy: Architectural and engineering services, value engineering services, and incidental services related thereto, as defined in 40 U.S.C. Sec. 541 et seq. (Brooks Act), shall be conducted as negotiated procurements, except that selection shall be made of the most technically qualified firm without consideration of price. Price shall be negotiated with the selected firm. If agreement cannot be reached with the most qualified firm, the process is repeated with the second most qualified firm, continuing until agreement is reached, or the pool of technically acceptable firms is exhausted, at which point the procurement must be cancelled.

32.0 Design/Build Services

References:

Federal FTA Best Practices Manual, Sec. 6.1.4

Policy: To the extent permitted by law and regulation, the Authority may solicit the services of a single firm or entity to both design a construction project

and construct it. Such solicitations shall be as permitted and in the manner prescribed by the Ohio Revised Code, unless such procedure violates the provisions of federal law or regulation, in projects involving federal funds.

33.0 Construction Management Services

References:

- Federal:** FTA Best Practices Manual Sec. 6.1.2
FTA Project and Construction Management Guidelines, 1996 Update
- State:** Ohio Revised Code Sec. 9.33, 9.331, 9.332, and 9.333; and Sec. 306.43(E)(1)

Policy: The Authority may, as it deems appropriate, employ a firm to perform construction management services, as defined in section 9.33 of the Ohio Revised Code. Solicitation of such services shall be in the same manner as is used for architect/engineering services. Public advertisement of such solicitation shall be made not less than 30 days prior to the receipt of proposals. Unless specifically waived by the Director of Procurement, the Construction Manager shall be required to provide the financial assurances required by Sec. 9.333 of the Ohio Revised Code.

34.0 Construction Services

References:

- Federal:** 40 USC Sec. 276a and 276c
FTA Master Agreement, Sec. 23
FTA Circular 4220.1E
FTA Best Practices Manual, Sec. 6.1.1
- State:** Ohio Revised Code, Sec. 153.1'2-14; 153.50; 153.54; 9.31, 9.311, 9.312, 9.32 and 306.43(E) (3); and Chapter 4115

Policy: Solicitations for construction, improvement or repair of facilities shall be conducted as Sealed Bid Procurements. To the extent required by law or regulation, solicitations shall require that the award shall be made to the lowest responsive bid from a responsible bidder for either (1) the slim of bids for various construction trades, including plumbing and gas fittings; steam and hot water heating, ventilation apparatus and stream-power; and electrical equipment, and general work not falling within such trades; or (2) to a single bid for all work within the scope of the solicitation. The responsibility requirement for such solicitation shall include possession of all individual and corporate licenses required under applicable laws, codes and regulations. The successful bidder or bidders must conform with the prevailing wage requirements defined in Ohio Revised Code Chapter 4115, if no federal funds are involved, or in the Davis-Bacon Act (40 U.S.C. 276a et seq.) and the Copeland Act (40 U.S.C. 276c et seq.), if federal funds are involved. No bid shall be opened unless time frames for addenda to specifications meet the requirements of the Ohio Revised Code. No award shall be made unless it is within the range of the published engineer's estimate as authorized by the Ohio Revised Code. Awards to other than the low bidder, bonding requirements, remedies for mistakes in bids and conditions and penalties for bid withdrawal shall be in compliance with the Ohio Revised Code. In accordance with the Ohio Revised Code, the surety on the contractor's bond shall be notified in writing of any award.

35.0 Rolling Stock

References:

Federal: 49 USC Sec. 5323c and 5323m
 49 CFR Parts 639, 663 and 665
 FTA Circular 4220.1E
 FTA Master Agreement, Sec. 15(1) and 16
 FTA Best Practices Manual, Sec. 6.2.1 and 6.2.2;
 FTA, Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements

APTA: American Public Transportation Association, Bus Procurement Guidelines

State: Ohio Revised Code, Sec. 306.43(G)

Policy: The Authority may procure rolling stock by either negotiated procurement or sealed bid. Rolling stock shall be defined to include transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services. Solicitations for rolling stock shall require compliance with all applicable standards regarding dimensions, weight, accessibility and safety. Unless specifically authorized by the General Manager/Secretary-Treasurer, the Authority shall not procure rolling stock, which has not been tested in accordance with Code of Federal Regulations, if applicable. The Authority shall conduct the pre-award and post-delivery audits as required by the Code of Federal Regulations. The Authority shall not, except with the prior approval of the General Manager/Secretary-Treasurer, dispose of rolling stock before the end of its useful life as defined by the Federal Transit Administration.

36.0 Pilot Programs

References:

Local: Board Resolution No. 2001-110

Policy: The Authority may use pilot programs of limited time and scope to test new products or systems. Acquisition of products for such tests may be on a sole source basis. Such programs shall last no more than six (6) months, unless the General Manager/Secretary-Treasurer determines that a longer duration is required, due to the nature of the item being tested. Before the end of the test period, a report shall be prepared determining the utility of and need for the item tested. Should the item be determined to be both useful and needed, it shall be procured through the appropriate procurement process.

37.0 Disposition of Property

References:

Federal: 49 CFR 18.32 and 18.33
 FTA Master Agreement, Sec. 19(g)

FTA Best Practices Manual, Sec. 1.3.3.10

State: Ohio Revised Code, Sec. 306.43(K) and (L)

Policy: The Authority may sell personal property, including capital equipment and surplus or obsolete parts and supplies, by sealed bid or public auction. The Authority may also dispose of property by donation to non-profit organizations. Trade-in of used equipment towards the purchase of new equipment shall also be permitted. Sale of capital assets whose fair market value is estimated to exceed the small purchase limit shall be authorized by the Board of Trustees. Sale of federally funded capital assets that have not exceeded their useful life as established by the Federal Transit Administration shall be authorized by the Board of Trustees. The Authority may also transfer items to other transit entities.

38.0 Broker Services

References:

Federal: FTA Best Practices Manual, Sec. 2.4.3.5

Policy: The Authority may employ brokers to provide services where the use of such brokers is standard industry practice. Broker services shall be procured by competitive negotiated procurement. Payments to brokers shall not be on a cost plus percentage of cost basis.

39.0 Arts in Transit

References:

Federal: FTA Circular 9400.1 A

Local: Board Resolution 1991-265

Policy: The Authority shall procure public art for major construction projects through a modified competitive negotiated procurement process, provided that the guidelines set forth in FTA Circular 9400.1 A are followed. The policy set forth for negotiated procurements shall be followed to the extent possible within these guidelines. If the Authority chooses, it may procure a consultant to assist in the procurement of public art utilizing standard negotiated procurement policy and procedures. Any resulting contract shall be subject to compliance with federal guidelines.

40.0 Bonds

References:

Federal: FTA Circular 4220.1E, Sec. 11
FTA Master Agreement, Sec. 15(m)
FTA Best Practices Manual, Sec. 8.2.1

State: Ohio Revised Code, Sec.153.54 and 9.313

Policy: Except to the extent mandated by law, the Authority shall utilize performance and payment bonds only where the risk to the Authority of non-performance by a contractor exceeds the anticipated cost of the bond. In determining the applicability of a bonding requirement, consideration should be given to the potential impact on small and disadvantaged businesses.

A bid bond may be required on all competitive bid procurements and shall be required on all formal competitive bid requirements. Additional specialized types of bonds may be required for certain procurements. The use of such bonds shall be as directed by the Director of Procurement, upon the advice of the Risk Management Department. The Director of Procurement may authorize the reduction of any bond supplied for the rendering of services or the supplying of materials to the extent permitted by Ohio Revised Code section 9.313.

41.0 Buy America

References: 49 USC Sec. 5323U); 49 CFR 661; FTA Best Practices Manual, Sec. 4.3.3.2.2 and 8.1.4; Ohio Revised Code Sec. 306.43(G)

Policy: In making procurements hereunder, the Authority shall, to the extent required by law, require bidders and proposers to certify compliance with Buy America standards, or to provide a basis under which the FTA may grant a waiver.

42.0 Acting

References:

Policy: Whenever this Policy gives authority or responsibility to the employee holding a certain position, that authority or responsibility shall be exercised by the employee "acting" in that position in the absence of the employee who normally holds it.

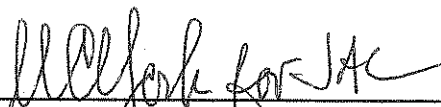


Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: ADOPTING AND APPROVING A REVISED PROCUREMENT POLICY FOR THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO CONFORM TO CHANGES TO OHIO REVISED CODE SECTION 306.43 WHICH GOVERNS PROCUREMENT ACTIVITIES OF THE AUTHORITY	Resolution No.: 2008-141
	Date: September 18, 2008
	Initiator: Procurement Department
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 PURPOSE/SCOPE: This action will adopt and approve a Procurement Policy for the Greater Cleveland Regional Transit Authority to conform with changes to Ohio Revised Code 306.43 which governs procurement activities of the Authority.
- 2.0 DESCRIPTION/JUSTIFICATION: The Ohio General Assembly and Governor have passed legislation that amends Section 306.43 of the Ohio Revised Code which governs the procurement activities of the Authority. The procurement policy of the Authority has been revised to reflect that amendment. The changes being proposed are referenced in Attachment A.
- 3.0 PROCUREMENT BACKGROUND: Does Not Apply.
- 4.0 AFFIRMATIVE ACTION/DBE BACKGROUND: Does Not Apply.
- 5.0 POLICY IMPACT: The subject action has important policy implications; principally in the area of Procurement.
- 6.0 ECONOMIC IMPACT: Does Not Apply.
- 7.0 ALTERNATIVES: Do not approve and adopt the Procurement Policy as proposed and advise staff to seek further changes or revisions.
- 8.0 RECOMMENDATION: This action was reviewed by the Finance Committee at their September 9, 2008 meeting and recommended for approval by the Board of Trustees. It is recommended that the Board of Trustees adopt and approve the Procurement Policy as presented herein.
- 9.0 ATTACHMENTS: Attachment A-"Procurement Policy Proposed Changes"

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.



CEO, General Manager/Secretary-Treasurer

ATTACHMENT A - Procurement Policy Proposed Changes

Section	Current	Proposed
Chapter 9.0 Delegations of Authority	General Manager/Secretary-Treasurer may authorize contracts up to \$25,000 without Board Approval.	General Manager/Secretary-Treasurer may authorize contracts up to \$100,000 without Board approval.
Chapter 9.0 Delegations of Authority	Advertise for all formal procurements.	Advertise for all formal procurements, which are those exceeding \$100,000.
Chapter 9.0 Delegations of Authority	Director of Procurement may authorize contracts up to \$25,000 without Board approval.	Director of Procurement may authorize contracts up to \$100,000 without Board approval.
Chapter 9.0 Delegations of Authority	Advertise for all formal procurements.	Advertise for all formal procurements, which are those exceeding \$100,000.
Chapter 11.0 Claims and Disputes		Added requirement that Procurement notify FTA of any current or prospective litigation or major dispute claim in excess of \$100,000.
Chapter 12.0 Protests		Added requirement that Procurement notify FTA of protest prior to contract award if federally funded project.
Chapter 14.0 Disadvantaged Business Enterprises	Establishes no contract amount for requiring that DBEs be solicited.	Establishes that all procurements in excess of \$25,000, where DBEs are identified must include at least one DBE among contractors solicited.
Chapter 30.0 Contract Execution	Authorizes the General Manager/Secretary-Treasurer to sign Small Purchase contracts (those not exceeding \$25,000) without Board approval.	Authorizes the General Manager/Secretary-Treasurer to sign Small Purchase contracts (those not exceeding \$100,000) without Board approval.
Chapter 30.0 Contract Execution	Authorizes the Director of Procurement to sign Small Purchase contracts (those not exceeding \$25,000) without Board approval.	Authorizes the Director of Procurement to sign Small Purchase contracts (those not exceeding \$100,000) without Board approval.
Chapter 30.0 Contract Execution		Requires Legal Department review of all contracts above \$25,000 prior to being executed by the Authority. (This is the current practice).