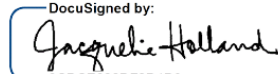
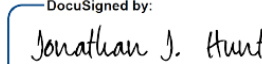


# Amended and Restated Procurement Procedure Manual

**Date: January 22, 2025**

<b>ISSUING DEPARTMENT:</b> Contracts & Procurement and Materials	
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## VERSION HISTORY

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1.0	J. Holland	J. Hunt	01/22/2025	Updates to: Chapter 4.5.F. Chapter 7.16, D.5.h. Chapter 9.1. G.4. Chapter 12.4. C.2&D Chapter 17.1 B. 3. Chapter 23.8.

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## Definitions

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

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

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

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

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

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

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

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

**ARCHITECT-ENGINEER (A/E):** Professional services of a licensed architect or engineer associated with research development, design, construction, alteration, or repair of real property.

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

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

**BEST AND FINAL OFFER (BAFO):** The request for the ultimate offer by Contractor in the negotiation phase of the RFP process.

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

**BID SECURITY:** A firm commitment such as a bid bond, a certified or cashier's check, or Letter of Credit accompanying the bid as assurance that the Contractor will, upon acceptance of their bid/proposal, execute such contractual documents as may be required within the time specified.

**BID SHOPPING:** The practice of coercing subcontractors to submit a lower price after a general contractor's bid has been accepted and the contract has been awarded. It is an unethical practice that undermines the competitive bidding system.

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

**BLANKET PURCHASE ORDER:** An agreement with a Contractor for the delivery of goods or services over a

period of time at a fixed price. It is a simplified method of filling anticipated multiple or repetitive needs for supplies, services, or other items.

**BOARD OF DIRECTORS:** Board of Directors of MARTA consisting of members who exercise the powers and perform the functions set forth in the MARTA Act.

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

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

**CAPITAL IMPROVEMENT PROGRAM (CIP):** The ten year plan adopted by MARTA's Board of Directors as it pertains to state of good repair and expansion projects.

**CARDINAL CHANGE:** A deviation from the original scope of work or quantities included in the original contract that alters the contract.

**CENTRALIZED PROCUREMENT:** The Office of Contracts, Procurement, & Material (CPM) handles all purchasing requirements for the Authority from requisition through contract closeout.

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

**CERTIFIED DISADVANTAGED BUSINESS ENTERPRISE:** A Contractor certified as a disadvantaged business enterprise by the Department of Diversity and Inclusion or the Georgia Department of Transportation.

**CHANGE DIRECTIVE:** An alternate mechanism for directing the Contractor to perform additional work to the contract when time and/or cost of the work is not in agreement between MARTA and the Contractor. This is primarily used in construction contracts and is issued by the Requestor/Project Manager.

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

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

**CLAIM:** A claim is a demand or assertion, made by MARTA or a Contractor, seeking payment of money, adjustment, or interpretation of contract, terms, or other appropriate relief.

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

**COMMERCIALLY USEFUL FUNCTION (CUF):** A DBE that is responsible for executing all or a portion of work under a Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

**CONE OF SILENCE:** Prohibits any communication (emails, phone calls, discussions, etc.) except as specifically allowed in writing by the Office of CPM regarding a particular solicitation after it has been released to the public and before the award. It is designed to protect the integrity of the procurement process by shielding it from undue influences and unfair competition.

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

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

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

**CONSULTANT:** A firm or individual, which is awarded a contract for specialized services and advice in financial, economic, accounting, engineering, legal or administrative matters who are specially trained, experienced, and competent.

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

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

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

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

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

**CONTRACTOR:** Any individual, firm, partnership, corporation, or combination thereof submitting an offer for the work solicited in a solicitation method, acting directly or through a duly authorized representative.

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

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

**COST CONTRACT:** A cost-reimbursement contract under which the Contractor receives no fee. The use of a cost contract is restricted and any use thereof must be in compliance with all federal, state, and local regulations, but specifically Federal Acquisition Regulation.

**COST INCENTIVE CONTRACT:** Provides for the reimbursement of allowable costs up to a ceiling amount incurred by contractor during the project.

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

**COST-REIMBURSEMENT CONTRACT:** A contract, which provides for payment of allowable costs incurred in the performance of a contract to the extent prescribed in the contract. This type of a contract establishes an estimate of total cost for the purpose of obligating funds, and establishes a ceiling which the Contractor may not exceed (except at its own risk) without prior approval. Cost-reimbursement contracts are a restricted type of contract and any use thereof must be in compliance with all applicable federal, state, and local regulations.

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

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

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

**DEFINITE QUANTITY CONTRACT:** A fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specific times or when ordered.

**DELEGATION OF AUTHORITY:** A specific written transfer of authority by the General Manager/CEO delegating contract execution and administration to certain MARTA staff. The current Delegation of Authority can be found at [www.itsmarta.com](http://www.itsmarta.com).

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

**DIRECT PAYMENT:** A payment method used to pay invoices that are not associated with a contract, purchase order or purchase card. These purchases must be in the Requestor's budget. These purchases cannot use capital funds or federal funds. Direct payment items include: advertising, conference/seminar registration fees, subscriptions, books, manuals, publications, training services, and memberships. Please see MARTA's Direct Payment Policy.

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

**DISADVANTAGED BUSINESS ENTERPRISE LIAISON OFFICER (DBELO):** The individual who is responsible for developing, implementing, and monitoring an agency's DBE program.

**ENTERPRISE RESOURCE PLANNING SYSTEM (ERP):** An online system utilized by MARTA to manage and integrate its finances and procurements.

**EQUAL/EQUIVALENT SPECIFICATION:** A substitute for a brand name product identified in the specifications which is offered by a prospective Contractor and accepted by MARTA, in accordance with procedures stipulated in the solicitation package, as equal to or better than a manufacturer's brand-name product, and is needed to meet MARTA's requirements for the project.

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

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

**FIRM-FIXED-PRICE CONTRACT:** A fixed price contract provides a price that is not subject to any adjustment on the basis of the Contractor's cost experience in fulfilling the contract terms. This type of contract places

maximum risk and full responsibility for all costs and resulting profit or loss upon the Contractor, and provides maximum incentive for the Contractor to control costs and perform effectively.

**FIXED PRICE COST INCENTIVE CONTRACT:** This type of contract establishes, at the outset, a target cost; a target profit (e.g., the profit that will be paid if the actual cost of performance equals the target cost); a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost; and a ceiling price.

**FIXED-UNIT PRICE CONTRACT:** This kind of contract is based on estimated quantities of items included in the project and their unit prices. The final price of the project is dependent on the quantities needed to carry out the work.

**FIXED-UNIT PRICE CONTRACT WITH PRICE ADJUSTMENT:** Contract that combines both fixed-price and cost-adjustment contracts where the MARTA agrees to a fixed price for goods or services throughout the contract period but allows for predefined adjustments to the contract price under specific circumstances like inflation or cost fluctuations for specific commodities.

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

**FTA:** Federal Transit Administration.

**FREE ON BOARD DESTINATION (F.O.B.):** When the Contractor retains liability for loss or damage until the goods are delivered to the Authority.

**FULL AND OPEN COMPETITION:** A standard form of public procurement competition where all qualified or responsible offerors are eligible to compete. This is the standard by which MARTA will conduct all of its procurements.

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

**HEAD OF CPM:** The top-ranking official in charge of MARTA's Contract, Procurement, and Materials department.

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

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

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

**INDEFINITE QUANTITY CONTRACT/INDEFINITE QUANTITY CONSTRUCTION CONTRACT (IQCC):** Contracts that require contractor performance but allow MARTA to order only that amount of material or services that it requires. In some cases, MARTA may be free to order some or all of the material or work from another party. Indefinite quantity contracts may have quantity or dollar expenditure requirements or may include committed purchase requirements or minimum order amounts by MARTA. This type of contract is commonly used for the purchase of repair/replacement parts over multiple years where exact quantities to be purchased are unknown. Contracts with option years to be exercised at the sole discretion of MARTA are another form of this type of contract.

**INDEPENDENT COST ESTIMATE (ICE):** An estimate of costs that a contractor may incur in performing services and/or providing supplies to achieve the Authority's objectives. It serves as the basis for reserving funds during acquisition planning; it provides the basis for comparing costs or prices proposed by Contractors; and it

serves as an objective basis for determining price reasonableness of the Quote, Bid or Proposal being evaluated and is required for all procurements regardless of dollar amount. It is required to begin the procurement process.

**INDEPENDENT LABOR HOUR ESTIMATE (ILHE):** As defined in Section 16.2.D.

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

**INDUSTRY DAY:** As defined in Section 4.2.1.

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

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

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

**INTERESTED PARTY:** An actual Contractor whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. Interested Parties do not include subcontractors or contractors of prospective Contractor, or joint ventures, shareholders, partners, or members acting independently of the Contractor with a direct benefit.

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

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

**LEASE:** A lease is a contract for the use of equipment or other property under which title will not pass to MARTA at any time.

**A. LEASE WITH PURCHASE OPTION:** A lease with purchase option is a contract for the use of equipment or other property under which title where title may pass to the Authority.

**LETTER OF AGREEMENT (LOA):** A form of contract used for professional services.

**LETTER OF CREDIT:** A letter issued by a bank or other financial institution on behalf of a Contractor/Proponent/Bidder to MARTA to guarantee a payment obligation under the specified terms of a Contract/RFP/IFB.

**LIMITED NOTICE TO PROCEED (LNTP):** As defined in Section 16.5.

**LIQUIDATED DAMAGES:** Damages paid, usually in the form of a monetary payment, agreed by the parties to a contract, which are due and payable as damages by the party who breaches all or part of the contract. Liquidated Damages may be applied on a unit of time basis for as long as the breach is in effect, but not be imposed as an arbitrary penalty. The key to establishing liquidated damages is reasonableness. Liquidated Damages should reflect MARTA's best estimate of lost revenue, increased costs, or both based on a contractor's failure to complete its work in a timely fashion.

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

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

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

**NEGOTIATION MEMORANDUM:** A memorandum prepared by MARTA at the conclusion of each

negotiation, detailing the elements of negotiation (special clauses, specifications, costs, etc.).

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

**NOTICE OF AWARD (NOA):** Letter issued to the successful Contractor stating that the contract has been awarded to it and stating the effective date of the contract.

**NOTICE OF INTENT TO AWARD (NOIA):** A notification posted on MARTA's website notifying the public of MARTA's intent to award a Contract solicited through an IFB, RFP, or a Request for Qualifications Statements.

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

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

**OFFICE OF DIVERSITY & INCLUSION (D&I):** The department at MARTA charged with the development, implementation, coordination, and monitoring of all equal opportunity, affirmative action, and civil rights programs required by MARTA's Board of Directors' policies and federal regulations.

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

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

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

**PERFORMANCE INCENTIVE CONTRACT:** A contract where MARTA promises additional compensation to the contractor as an incentive for completing specific milestones.

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

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

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

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

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

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

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



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

**PROCUREMENT PROCEDURE MANUAL (PPM)/MANUAL:** The MARTA procurement procedures established herein, as amended from time to time, to accomplish the guiding principles of MARTA's procurement and identify standards for all MARTA staff to follow in the acquisition of goods or services.

**PRODUCT DEMONSTRATION:** A small-scale trial that tests new and innovative commercial products and commercial services, including products, technologies, and services. A Product Demonstration tests the implementation of a new idea to receive feedback from users, customers, and other stakeholders on the product's success in meeting certain preestablished goals and metrics. Innovative means any item that is a new technology, process, or method as of the date of the project or a new application or adaptation of an existing technology, process, or method as of the date of the demonstration.

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

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

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

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

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

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

**PROTEST SECURITY:** As defined in Section 23.3.

**PROTESTOR:** An individual or entity that files a Protest to a MARTA issued solicitation.

**PURCHASE CARD (P-CARD):** A modified credit card assigned to and utilized by selected MARTA employees to purchase authorized commercially available, non-stock items on behalf of the Authority.

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

**PURCHASE REQUISITONS (PR):** A request for goods or services submitted to CPM that begins the procurement process in a form approved by MARTA.

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

**QUOTATION:** A citation of price and delivery terms or a period of performance by a Contractor in response to a CPM Agent's request on procurements that are under the small purchase threshold.

**RATIFICATION:** The act or process of approving an unauthorized commitment made by a MARTA employee by MARTA's General Manager/CEO and/or MARTA's Board of Directors. Please see MARTA's Unauthorized Commitments Policy.

**RECEIVING REPORT:** Written documentation of supplies delivered, or services performed as noted by the CPM

Agent or other authorized MARTA personnel.

**REJECT/REJECTION:** Any IFB with procedural flaws that violates this Manual, state law, or any federal regulation and as a result is not accepted by the MARTA Board of Directors.

**REQUEST FOR PRICE PROPOSALS (RFPP):** The non-competitive procurement process by which a Request for Price Proposal package is prepared with a form of contract, price proposal form, and all MARTA required forms and sent to a Contractor to negotiate for the award of a contract. RFPPs will be used only with a single and/or sole source procurement, or General Services Administration and/or state Contract.

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

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

**REQUEST FOR QUOTATIONS (RFQ):** A competitive method of procurement that solicits from a number of sources to perform a specific service or to provide specific goods under the small purchase threshold.

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

**REQUIREMENTS CONTRACT:** A requirements contract is an indefinite quantity contract for supplies or services that obligates the Authority to order all its actual requirements for such supplies or services during a specified period of time.

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

**RESPONSIVE:** A contractor, business entity, or individual who submitted a bid or proposal that fully conforms in all material respects to the Solicitation Package, including form and substance.

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

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

**SINGLE SOURCE CONTRACT:** The purchase of any supplies, equipment, or material where there are two (2) or more Contractors who can provide the supplies, equipment, or material, but MARTA selects to purchase from a single Contractor. The Department of Legal Services must approve all single source purchases by a Justification Memorandum.

**SITE NOTICE TO PROCEED (SNTF):** Written direction to commence construction work provided for in the Contract.

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

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

**SOLE SOURCE CONTRACT:** A contract for the acquisition of goods or services from the only Contractor capable, authorized, or available to provide the goods or services. A Justification memorandum is required and must be approved by Legal Services.

**SOLICITATION PACKAGE:** A set of documents issued to procure the intended goods and/or services.

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

**SOURCE EVALUATION COMMITTEE (SEC):** A group of diverse stakeholders who evaluate proposals submitted to MARTA for consideration for award.

**SMALL BUSINESS ENTERPRISE (SBE):** As defined by D&I.

**TECHNICAL EVALUATION TEAM (TET):** A group of subject matter experts who charged with reviewing and analyzing the technical aspects of a Proposal.

**THIRD PARTY CONTRACT:** As used in FTA guidelines and grants, any contract or contract modification between MARTA and another person or firm. Use of the term is generally limited to a contract which is to be funded in whole or in part by the FTA. The original grant agreement related to a project or to the work to be performed is entered into between the FTA or other body and its grantee; if the grantee then contracts to have the work performed by another individual or firm, that contract is referred to as a "third party contract".

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

**TRADE SECRET:** The whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information that is for use, or is used, in the operation of a business and that provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof, whether tangible or intangible, and regardless of whether or how it is stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be: secret; of value; for use or in use by the business; and of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it, when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

**TWO-STEP SEALED BIDDING:** A method of contracting designed to obtain the benefits of competitive sealed bidding when adequate specifications are not available.

**UNAUTHORIZED COMMITMENT:** An agreement, commitment or obligation between a MARTA employee and a third party that is not binding on MARTA because the person who made it lacked the authority to make such commitment or obligation on behalf of MARTA. Please see MARTA's Unauthorized Commitment Policy.

**UNSOLICITED PROPOSAL:** A written proposal for a new or innovative idea that is submitted to MARTA for review and evaluation and that is not in response to an Authority-initiated solicitation.

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

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

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

general Scope of Work.

## **Chapter 1**

### **Procurement Procedure Manual**

#### **1.0 General**

- A. MARTA's Procurement Procedure Manual is the framework for MARTA's acquisition and contract administration processes.
- B. The Procurement Procedure Manual sets forth the Authority's procedures for conducting MARTA's acquisition and contract administration activities and provides guidance that will govern the conduct of all MARTA Departments and those personnel engaged in such activities.
- C. Proposed changes, corrections or additions to the Manual shall be sent to the Head of the Office of Contracts, Procurement & Material (Head of CPM) who is responsible for maintaining the Manual.
- D. The following are the guiding principles of MARTA's procurement:
1. The goal of every MARTA acquisition is to procure and receive delivery of goods and services to support the Authority's activities in a fair, open, timely and cost-efficient manner.
  2. MARTA acquisitions are **team efforts**, and the participants in the acquisition process include representatives of Contracts, Procurement, & Materials (CPM) Office, MARTA client departments, all MARTA support departments and functions including, but not limited to, Diversity and Inclusion, Engineering, Quality Assurance, Department of Legal Services, and MARTA Contractors and/or Consultants who provide goods and services.
  3. Each MARTA participant in an acquisition will exercise personal initiative and sound business judgment, in accordance with applicable laws, this Statement, applicable Procurement Procedures and other Board adopted policies.
  4. CPM Agents may use any acquisition strategy practice, policy or procedure that is appropriate to the particular acquisition that is in the best interest in the Authority and is not prohibited by law, regulations or Board adopted policy.
  5. MARTA encourages Supplier Diversity.

#### **1.1 MARTA Procurement Standards**

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

## **1.2 Responsibilities**

All MARTA employees shall support the procurement process. MARTA employees will plan acquisitions in compliance with the requirements of MARTA's Procurement Procedure Manual.

## **1.3 Statutory and Regulatory Requirements and Guidance**

- A. Acquisitions shall be conducted in accordance with the MARTA Act and all applicable Federal and State laws and regulations, as well as the policies of the Board of Directors.
- B. MARTA shall comply with applicable grant requirements when MARTA uses grant funds in an acquisition.

## **1.4 Contracting Authority**

- A. The authority to enter into, administer, modify or terminate contracts and make related findings on behalf of MARTA has been delegated to the General Manager/CEO by the Board of Directors. The General Manager/CEO may re-delegate such authority to qualified employees of MARTA, see Section 1.5 below.
- B. No contract, modification, or other commitment of MARTA resources shall be binding on MARTA until such contract, modification or commitment is set forth in an appropriate legal form and executed by an authorized individual. All contracts, agreements, intergovernmental agreements, and grants shall have a line "Approved as to legal form" for a MARTA attorney to sign. All contract modifications, Change Orders, and Work Orders require MARTA's Department of Legal Services concurrence.

## **1.5 Contract Approval Requirements**

Please refer to the current Delegations of Authority, approved by the General Manager/CEO, located on [www.itsmarta.com](http://www.itsmarta.com).

## **1.6 Unauthorized Commitments**

Unauthorized purchases shall be referred to the Head of CPM for review and recommendation in accordance with MARTA's Unauthorized Commitments Policy.

## **1.7 References**

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

## **Chapter 2**

### **Procurement Integrity and Control**

#### **2.0 Code of Ethics**

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

#### **2.1 Reporting of Suspected Improper or Unlawful Conduct**

- A. A CPM Agent shall report to the Department of Legal Services and Head of CPM any bids which evidence a violation of any laws or this Manual. The Head of CPM shall consult with the Departments of Audit and Legal

Services as soon as practical to ascertain whether a reasonable basis exists for believing that a violation may exist or has occurred.

**B. Practices or events that may evidence violations of laws include the following:**

1. The existence of an "industry price list" or "price agreement" to which a contractor refers in formulating its offer;
2. A sudden change from competitive bidding to identical bidding;
3. Simultaneous price increases or follow-the-leader pricing;
4. Rotation of bids or proposals, so that each competitor takes a turn in sequence as the low Contractor, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;
5. Division of the market, so that certain competitors bid low only for contracts solicited by certain agencies, or for contracts in certain geographical areas or on certain products, and bid high in all other jobs;
6. Establishment by competitors of a collusive cost or price estimating system;
7. The filing of a "joint" bid by two (2) or more competitors when at least one (1) of the competitors has sufficient technical capability and productive capacity for contract performance, unless such joint bid is for the purpose of promoting MARTA's Supplier Diversity and Inclusion Programs or unless such joint bid is specifically requested or allowed by MARTA in the solicitation documents;
8. Incidents suggesting direct collusion among competitors, such as the appearance of identical calculations or spelling errors in two (2) or more competitive offers, or the submission by a single firm of offers for other firms; or
9. Assertions by employees or former employees, or competitors of Contractors, that an agreement to restrain trade exists.

## **2.2 Additional Guidelines**

**A. To avoid misunderstandings with Contractors, the following guidelines shall guide all MARTA staff's contacts with Contractors:**

1. Contacts prior to issuance of a solicitation or the commencement of discussion(s) regarding non-competitive procurements for some specific services or assistance from potential Contractors, which should be avoided (absent a sound rationale) are:
  - a. Testing services
  - b. Custom drawings
  - c. Special investigations
  - d. Product Demonstration
  - e. Furnishing significant samples
  - f. Free trips by MARTA to view products.

**B. If any of the above is required, coordination must be made with the Head of CPM and Department of Legal Services to ensure fairness in the procurement process.**

**C. Contractors' requests for price histories or the opportunity to examine a part should be directed to the Head of CPM.**

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

**A. All contacts with Contractors that relate to a procurement that is in the solicitation, evaluation, negotiation, or award phase must be conducted through CPM.**



- B. Once a solicitation has been released to the public and before an award has been made, any MARTA employee, officers, or Board Members shall not communicate with potential Contractor(s) regarding the solicitation. If a potential Contractor requests to communicate with a MARTA employee, the employee shall refer all requests to CPM. This is referred to as the “cone of silence.”
- C. All requests for procurement history of any type related to an ongoing procurement, including pricing history, will be directed to the Head of CPM.
- D. If any MARTA employee or Contractor violates this Chapter and/or a signed non-disclosure agreement, the Head of CPM may elect to remove all or a portion of the SEC or cancel the procurement in the best interest of the Authority.

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

All requests for procurement related information through a Georgia Open Records request shall be submitted to the Department of Legal Services for appropriate action.

## **Chapter 3**

### **Diversity & Equal Opportunity**

#### **3.0 General**

MARTA encourages the participation of DBEs and SBEs in the continuing business of MARTA; and that the participation of these diverse suppliers in procurements will strengthen the overall economic fabric of our region, contribute to Metro-Atlanta's economy and tax base and provide employment to local residents. MARTA's Board of Directors have made the success of DBEs and local small businesses a goal of MARTA.

#### **3.1 Goals of the Program:**

- A. To eliminate discrimination and create a level playing field on which DBEs and SBEs can compete fairly for contracts.
- B. To help remove barriers to the participation of DBEs/SBEs in contracts.
- C. To increase the number of certified DBEs and SBEs.
- D. To increase local and federal dollar expenditures with certified DBEs and SBEs.
- E. To increase subcontracting opportunities for certified DBE and SBE business enterprises.
- F. To develop the capacity of certified DBE and SBE business enterprises to participate as Prime Contractors in MARTA contracts.

#### **3.2 DBE/SBE Program Policy**

- A. It is the policy of MARTA to promote the utilization of DBEs and SBEs, in accordance with applicable law, to the maximum extent feasible. MARTA's procurement processes seek parity and provide opportunities by applying race neutral and race conscious measures for DBEs and SBEs to compete for and participate in all aspects of MARTA's procurement.
- B. MARTA's Executive Director of D&I is the Authority's DBELO that reports to the FTA for the Authority. Procedures for establishing DBE or SBE goals will be coordinated through the DBELO. Responsibility for ensuring compliance to the MARTA Disadvantaged Business Enterprise Program, all of its content and related policies and procedures is a shared set of responsibilities held by all MARTA employees.
- C. In furtherance of this DBE/SBE policy, MARTA requires that all procurements be forwarded to the DBELO for DBE or SBE goal evaluation prior to advertisement. It is the responsibility of the CPM Agent to coordinate with the DBELO to ensure that the established goal is included in the Solicitation Package.
- D. In instances where MARTA has not established a specific goal for participation by DBEs/SBEs on a contract, if the Contractor subcontracts, the Contractor is still encouraged to create a level playing field for DBE/SBE firms to be utilized as subcontractors for performance of work or procurement of goods for contractors during the performance of the contract.

#### **3.3 Compliance**

- A. Upon receipt of Proposals/Bids, D&I shall evaluate them on a pass/fail basis for compliance with the DBE or SBE program requirements. The Contractor who meets the contract-specific goal or demonstrates good faith efforts shall be deemed to have 'passed' per the review by D&I.
- B. For IFBs, within five (5) days of the bid openings the bidder must provide commitment to the DBE goal including the Schedule of DBEs detailing all businesses from which the bidder solicited bids or quotes. The bidder must also provide the names, locations, percentage/dollar amounts and work to be performed by the DBE subconsultants, or good faith efforts, in order to be considered a Responsible bidder.
- C. D&I will determine whether the goals set forth in this procedure have been achieved or good faith efforts have

been made. The CPM Agent will provide a Responsibility Determination form to be completed by D&I.

- D. The CPM Agent is responsible for ensuring that the level of participation committed in the Bid/Proposal is entered in the contract as the goal of record.

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

- A. A Contractor should either meet the DBE/SBE goals or demonstrate good faith efforts to achieve those goals. In determining whether a Contractor has made good faith efforts, D&I shall consider all relevant factors, which may include, but are not limited to the following:

1. A contact log showing the name, address, and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, the name and title of the person making the effort;
2. The full detailed description of the scope of work for which a quote was requested;
3. The amount of the quoted price, if one was obtained;
4. The list of divisions of work not subcontracted and the corresponding reasons for not including them;
5. Subcontractor information as requested by forms provided by D&I and CPM;
6. For all contracts, a signed letter of intent from all certified DBEs/SBEs describing the work, materials, equipment or services to be performed or provided by the DBE/SBE(s) and the agreed upon dollar value shall be due with the proposal documents, or in the case of bids, within five (5) days of the bid opening.

- B. D&I will also consider, at a minimum, the Contractor's efforts to:

1. Solicit certified subcontractors in the scopes of work of the contract. The Contractor shall provide interested DBE businesses with timely, adequate information about the plans, specifications, and other such requirements of the contract to facilitate their quotation. The Contractor must follow up initial solicitations with interested DBEs, including but not limited to, submitting evidence of contact via telephone, email or facsimile;
2. Identify a portion of the work available to DBEs consistent with their availability;
3. Negotiate in good faith with interested DBEs. The Contractor shall provide evidence as requested and it shall include the names, addresses, and telephone numbers of DBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with them. The ability or desire of a Contractor to perform the work of a contract with its own organization does not relieve it of the responsibility to make good faith efforts on all scopes of work subject to subcontracting; and
4. Where feasible, facilitate the leasing of supplies or equipment when they are of such a specialized nature that the DBE could not readily and economically obtain them in the marketplace.

- C. D&I shall maintain documentation of the good faith efforts performed by Contractor, and a copy of these records shall be kept with the contract file, in compliance with all record retention laws or for three (3) years, whichever is longer.

- D. If D&I determines that a Contractor did not make sufficient good faith efforts, D&I shall report and record this finding in writing, to the Head of CPM, the Requestor, and the General Manager/CEO.

### **3.5 Contract Compliance**

- A. D&I monitors compliance to the goal of record throughout the life of the contract to ensure progressive and successful achievement of the DBE/SBE participation commitment.
- B. D&I monitors that the DBE subcontractors are performing a CUF throughout the life of the contract.

- C. MARTA shall require prompt payment in all contracts for performance of work or procurement of goods.
1. D&I shall ensure that all contracts covered by this procedure contain a provision requiring the Contractor to certify in writing, no later than ten (10) calendar days from prime contractor's receipt of payment from MARTA, that all subcontractors and suppliers have been promptly paid for work and materials.
  2. On a monthly basis and throughout the duration of the contract and upon completion thereof, the Contractor shall provide documentation through the D&I diversity software certifying payments to subcontractors or suppliers.
- D. The Contractor cannot make changes to the schedule of DBE participation or substitute subcontractors named in the schedule of DBE participation without the prior written approval of D&I and the Requestor. Unauthorized changes or substitutions shall be a violation of this Chapter and may constitute grounds for rejection of the bid or proposal or cause termination of the contract for breach. In such instances, MARTA may withhold payment and/or impose penalties or other sanctions, including, but not limited to contract termination or elimination from consideration in a solicitation. Written approval for changes shall not be unreasonably withheld from the Contractor.
- E. All requests for changes or substitutions of the subcontractors named in the schedule of DBE participation shall be made in writing to D&I and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until D&I approves such substitution in writing.
- F. The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the schedule of DBE participation. Bid shopping is prohibited.
- G. The final decision whether to permit or deny the proposed substitution, and the basis therefor, will be communicated to the parties in writing by D&I.

### **3.6 DBE Certification**

- A. See 49 CFRC.F.R. Part 26 and MARTA's DBE Policy Statement. This program is administered through a partnership with MARTA and the Georgia Department of Transportation.
1. MARTA accepts DBE certification applications for businesses located within MARTA's service area. (Fulton, Dekalb and Clayton Counties).
  2. Apply for certification at [marta.diversitysoftware.com](https://marta.diversitysoftware.com).

## **Chapter 4**

### **Procurement Planning and Initiation**

#### **4.0 General**

- A. Prior to initiating a procurement action, the Requestor shall determine that supplies, equipment or services are necessary for MARTA functions, operations or activities and are not unnecessarily duplicative of other items or services acquired by MARTA. The Requestor shall, when appropriate, make an analysis of lease and purchase alternatives and any other appropriate possibility (including the availability of surplus MARTA property or property from other government sources), to determine which would be the most economical and practical means of acquiring supplies or equipment. Such analysis shall be documented as part of the contract file.
- B. In carrying out the requirements prescribed by this Chapter, all aspects of an effective procurement involve the need for good communications between MARTA's Requestor and CPM. These communications must also include an understanding of the respective roles and responsibilities of the many MARTA offices involved in the procurement initiation process.

#### **4.1 Responsibilities**

- A. The Requestor with the procurement requirement is first responsible for determining "what to buy" (e.g., develop contract specifications for CPM review, develop independent cost estimate (ICE), delivery and completion dates). The Requestor may be required to coordinate some procurement requirements with other MARTA offices that have the need to be involved; nevertheless, a lead Requestor must always be identified when procurement actions are initiated.
- B. If the Requestor is requesting the procurement of chemicals or safety equipment, (e.g., solvents, oils, cleaners, epoxies, or welding rods), the Requestor must submit the Scope of Work to the Department of Safety and Quality Assurance for review and comment prior to sending the request to CPM. The Requestor requesting reproduction equipment, computer equipment, software or services must have IT Department approval. All requests for furniture and kitchen equipment must be approved by the Head of Facilities. Training requirements must be authorized by the Head of Training and radio/communications equipment approved by the Head of Communications.
- C. Before initiating any procurement action, the Requestor must submit the Scope of Work to the department with overall responsibility for the goods or services to be procured.
- D. CPM is then responsible for determining the method of solicitation (i.e. "how to buy") and issue the solicitation for the goods/services. The Department of Legal Services will make the final decision on the type of procurement to be used if the Requestor and CPM disagree.
- E. D&I, Police Services, Risk Management, Cyber Security, and Safety and Quality Assurance shall read and provide necessary input on all specifications prior to release of the solicitation. The Office of Information Technology and Cyber Security shall review and provide input on specifications regarding technology related solutions. The Department of Human Resources shall review and provide necessary input regarding MARTA's drug and alcohol policy.

#### **4.2 Publicizing Contract Actions**

##### **4.2.1 Pre-award**

- A. CPM Agents are encouraged to use the most cost-effective means to publicize contract actions to increase competition in accordance with applicable laws.
- B. All publicizing requirements shall be followed as required by the funding source (Federal Transit Administration, Transportation Security Administration, Department of Homeland Security, etc.).
- C. Notices and Industry Day conferences may be used as preliminary steps in order to accomplish any of the following:
  - 1. Develop or identify interested sources;

2. Request preliminary information based on a general description of the supplies or services involved;
  3. Increase interest in and competition for MARTA's procurements;
  4. Explain complicated specifications and requirements to interested sources; or
  5. Aid prospective Contractors in later submitting proposals without undue expenditure of effort, time, and money.
- D. Requestor shall be responsible for providing contacts for any Industry Day.
- E. If Notice to Bidders/Proponents are used, the CPM Agent shall prepare and issue each notice to potential sources and any trade publication if deemed appropriate.
- F. A Notice to Bidders/Proponents shall include the following:
1. A description of the information to be furnished in the response;
  2. An indication when the solicitation will be issued;
  3. A request that parties interested in the contemplated procurement respond by a specified date; and
  4. Pre-Bid/Pre-Proposal/Site Visit information.
- G. Copies of the solicitation shall be made available online unless prohibited by the MARTA Police Department for security purposes.
- H. Notice to Bidders/Proponent shall be published online on MARTA's website in a manner reasonably likely to attract the most prospective Contractors.
- I. The CPM Agent shall release all Notice to Bidders/Proponents published in accordance with the above requirement with appropriate assistance from the Requestor.
- J. Pre-solicitation advertising prescribed in this Section is not required for sole/single source, GSA, State or emergency procurements, processed in accordance with Chapter 12 of this Manual.
- K. The CPM Agent shall conduct a pre-bid/proposal survey and a post-bid/proposal survey for all solicitations. The CPM Agent shall contact all potential bidders/proponents at least five (5) business day prior to the solicitation deadline to survey the number of bidders/proponents that MARTA may receive. The CPM Agent shall conduct a post-bid/proposal survey after a solicitation deadline to determine why MARTA did not receive bids/proposals.

#### **4.2.2 Post-award Announcements**

MARTA shall notify members of the public of contract awards for procurements in accordance with the MARTA Act. Not less than five (5) days prior to the award of a contract that will call for an award above the small purchase threshold, the Authority shall make an accurate and brief summary thereof available to the public in its principal office and shall publish notice of its intention to award in a prominent location on its website. Such advertisement shall state the name of the successful Contractor, the amount of the contract, and its subject matter.

### **4.3 Specifications and Purchase Descriptions**

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

#### 4.4 Types of Solicitation Requirements

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

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

G. Stock Replenishment. Contract specifications and purchase descriptions for spare parts shall comply with MARTA's Standard Operating Procedure.

H. Lease of equipment. In determining whether the lease of equipment is feasible, the following factors among others, should be considered:

1. Estimated length of the period the equipment is required and the amount of time of actual equipment usage;
2. Financial and operating advantages of alternative types and makes of equipment;
3. Total rental cost for the estimated period of use;
4. Net purchase price, if acquired by purchase;
5. Transportation and installation costs;
6. Maintenance and other service costs;
7. Potential use of the equipment by other agencies after its use by MARTA is completed;
8. Trade-in or salvage value;
9. Imputed interest costs; and
10. Availability of a servicing capability especially for highly complex equipment, e.g., can the equipment be serviced by MARTA if it is purchased.

I. Real Estate Leases and Purchases. The CPM Agent shall coordinate any real estate acquisitions or dispositions (including leases and license agreements) with the Department of Real Estate and the Department of Legal Services.

J. Advertising, Promotional, Marketing, or Special Events. The CPM Agent shall coordinate with the Department of Real Estate, Department of Legal Services, and the External Affairs Department for any advertising, promotional, marketing or special events agreements.

#### **4.5 Use of Brand Names in Solicitation**

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



applicable to all spare parts purchases. "Brand name or equal/equivalent" spare parts purchases require salient physical and/or functional characteristics of the brand name product be included in the solicitation. For purposes of administrative efficiency, sole source justifications covering a specified time period may be used, after reviewing approval in accordance with this Manual, for certain spare parts or groups of parts where only one manufacturer is available and that specific manufacturer's part is critical to system safety and performance. Spare parts totaling \$200,000 or more ordered from the same Contractor within a 12-month period must be formally solicited in accordance with Chapters 7 and 9.

G. Examples of circumstances whereby characteristics are not necessary in order to assure adequate competition for items identified as brand name or equal would include:

1. Use of a commercial catalog description, which has proven to be adequate in obtaining competitive bids;
2. Particular features of the specific brand name which are essential to MARTA requirements and for which there are no other known similar products; and
3. Identification of the brand name item that is common within the industry and MARTA has accepted common items from other manufacturers and their dealers; therefore, attempts to provide salient characteristics would serve no useful purpose.

#### **4.6 Advance Procurement Planning**

- A. Requestors initiating procurement requirements will start the procurement planning process by meeting with the Head of CPM to develop draft planning documents. The Department of Legal Services shall be included in the procurement planning process. Requestors must do procurement planning for new and renewable procurements at least twelve to eighteen months ahead of anticipated needs. Procurements in excess of \$200,000 take a substantial amount of time to consummate due to lengthy preparation, review, evaluation and execution processes. PRs should be submitted via the Oracle system, no less than twelve (12) months before the desired contract or purchase order award date.
- B. The planning documents initiated by the Requestor will be based upon the best available information and will include:
1. Individual Procurement Action Plan - prepared for each major action estimated to be in excess of \$200,000 including a projection of major procurement milestones based upon the type and complexity of procurement action identified.
- C. Upon initiation of a procurement request, a CPM Agent and a MARTA attorney will be assigned by the CPM Manager and the Department of Legal Services, respectively.
- D. During the planning process, special attention should be given to scheduling and identifying known recurring requirements for equipment and service procurements. This should include procurement history profiles to assist in properly planning and processing follow-on contracts.
- E. Routine stock replenishment procurement actions generated through the Oracle System will not be included in the advance procurement planning process described in this Section.

#### **4.7 Purchase Requisitions**

- A. All procurements require a properly, fully funded, formal PR. The Requestor must complete the PR in Oracle. PRs received via another method (i.e., verbal, email, etc.) will not be accepted by CPM.
- B. The origination of a PR is based on a specific need for materials or services for a project or stock replenishment. Each PR must identify the specific project and task line item for which the procurement is to be used. Therefore, the following information must be included on the PR:
1. Item(s) and quantity being ordered (a description of the item with part/model numbers)
  2. Fund Code
  3. Delivery Date

C. All PRs should contain detailed technical specifications (if applicable), purchase description or scope of work (as applicable), reliability and warranty requirements (if applicable), single/sole source justification memo (if applicable), drawings (if applicable), list of at least three (3) potential Contractors (if possible), and an ICE must accompany all PRs.

D. A PR is automatically generated at established reorder points for inventory (stock) replenishment.

E. PRs may be cancelled by CPM if the necessary documentation is missing or incorrect (see 4.7B). When all deficiencies are addressed, the PR may then be resubmitted. CPM will work with the Requestor as a team to assist in developing adequate PR packages.

F. PRs must be submitted enough time in advance to have a purchase order or contract prepared, reviewed, and issued for the material or services to be obtained when required. Lack of planning does not constitute a reason for circumventing the procurement process.

G. All CIP procurements must be approved by the designated Finance/Budget representative in the ERP system. Grant funded procurements must be approved by the designated Grant representative in the ERP system.

H. Any adjustments to a PR are the responsibility of the Requestor. If a PR is in process, the Requestor can modify the PR. In addition, an approver can choose to reject the PR and return it to the Requestor for modification(s). If the PR is rejected, the Requestor may make the required changes and re-submit the PR for approval.

I. All PRs may be viewed online within the ERP system to determine the status (e.g., approved, rejected, or a purchase order has been created).

#### **4.8 Delivery and Performance**

A. The time of delivery or performance is an essential contract element and shall be clearly stated in each solicitation. The Requestor shall exercise sound business judgment when establishing a delivery or performance schedule and terms should be adequate to accomplish the purpose of the contract. A solicitation shall inform Contractors of the basis on which their Bids or Proposals will be evaluated with respect to time of delivery or performance.

B. When establishing a contract delivery or performance schedule for supplies or services, the Requestor shall consider applicable factors, including the following:

1. Urgency of need;
2. Production of item;
3. Market conditions;
4. Transportation time;
5. Industry practices;
6. Time for obtaining and evaluating bids or offers and awarding contracts; and
7. Time for Contractors to comply with any condition precedent to contract performance; and time for MARTA to perform its obligations under contract, such as furnishing MARTA property to the Contractor.

C. When scheduling the time for completion of a construction contract, the Requestor shall consider applicable factors, including the following:

1. The nature and complexity of the project;
2. The construction season involved;
3. The required completion date;
4. The availability of materials and equipment;
5. The use of multiple completion dates.

D. In any Contract, different completion dates may be established for separable items of work, when multiple completion dates are used, the Requestor shall evaluate requests for extension of time with respect to each item, and shall modify the affected completion dates through change process via CPM, when appropriate.

E. The Requestor may establish contract delivery or performance schedules on the basis of any of the following:

1. A specific calendar date or dates;
  2. A specific period or periods from the date of the contract;
  3. A specific period or periods from the date agreed upon by the parties and set forth in the contract for actual commencement of performance on the contract; or
  4. In contracts containing indefinite delivery provisions (such as term contracts), a specific time for delivery after receipt by the Contractor of each individual order issued under the contract.
- F. When establishing dates for performance or delivery, the Requestor shall take into account factors pertaining to the ability of the Contractor to actually begin performance, such as time for receipt of notice by the Contractor of the contract award or acceptance.

#### **4.9 Authorized Methods of Procurement**

All MARTA procurement actions above the small purchase threshold (\$200,000 or more) shall employ a competitive solicitation unless exempted by Chapters 8 or 12.

#### **4.10 Stock Replenishment Procurement Guidelines**

- A. MARTA's Stock Replenishment Program shall include requirements for a comprehensive spare parts data package in each new systems production contract for rolling stock or other major systems. MARTA shall also employ a multi-sourcing approach following initial spares provisioning process when it is later determined that multi-sourcing would be cost effective and would stimulate competition.
- B. Formally advertised bids may be required when it is economically feasible to reorder larger quantities or when the accumulated values of the items required exceeds the current small purchase threshold. MARTA may also utilize competitively obtained requirements type contracts for large groups of items from the same or different manufacturers in order to assure timely deliveries and to maximize economies of scale with consolidated requirements techniques.
- C. MARTA will constantly monitor the demand for spare parts and will attempt to develop other manufacturing sources. MARTA will also attempt to preclude the limitation of manufacturing sources for spare parts by obtaining comprehensive data packages including manufacturing source(s), specifications, drawings, manufacturers' descriptive materials, commercial catalog references, or salient characteristics suitable for competitive procurement if only brand names are utilized. This database will also be periodically supplemented by requiring Contractors to also deliver specification information to the Requestor as part of the stock replenishment purchase. CPM in coordination with the operating departments will jointly identify high usage single source items and will pursue multi-sourcing opportunities including the use of qualified parts testing, if appropriate. It should also be recognized that there will be circumstances where it is not economical to expend additional resources to attempt to promote competition for limited market low-use, low-dollar spare parts.
- D. Requestors will include a spare parts data clause in all contracts that require the initial provisioning of spare parts for MARTA's inventory system. This clause will require a comprehensive, separately priced data package as described in this Section.

#### **4.11 Independent Cost Estimates (ICE)**

- A. The Requestor shall prepare an ICE prior to CPM issuing a solicitation, executing a Contract/Work Order, or a modification to a Contract/Work Order.
- B. The ICE is a determination of price reasonableness prepared prior to the procurement being advertised. An updated Independent Cost Estimate is required for all scope changes.
- C. An independent estimate can be obtained from different sources including the following:
  1. Published competitive prices
  2. Results of competitive procurements
  3. Estimates by qualified in-house estimators

4. Qualified outside estimators other than Contractors competing
5. Prior contracts and industry experience.

D. In some circumstances, such as complex projects, the preparation of an ICE may be difficult or may lie outside the expertise of MARTA personnel. Outside firms may be used if the cost can be approved in advance by CPM. Discussions with other agencies are also a potential source of information. Other agencies that have undertaken similar projects are a valuable source of cost estimating information.

E. Independent Cost Estimates for equipment may be prepared from published price lists or from past competitive procurements updated with inflation factors. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one Contractor.

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

## Chapter 5

### Types of Contracts

#### 5.0 General

A wide selection of contract types is available to CPM Agents in order to provide needed flexibility in acquiring goods and services. Contract types vary according to the degree and timing of the responsibility assumed by the Contractor for performance.

##### 5.0.1 Selecting Contract Types

- A. Subject to the following limitations, other limitations contained in this Section, and/or state or federal law, the Authority may use any type of contract that will promote its best interests, except that:
  - 1. The Authority shall not use a cost-plus-a-percentage-of-cost contract; and
  - 2. The Authority may use a cost-reimbursement contract only when the CPM Agent, after seeking the consent of the Department of Legal Services, determines in writing that such contract is likely to be less costly to the Authority than any other type, or determines that it is impracticable to obtain the supplies, services, or construction required except under such a contract.
- B. Contract types differ in the degree of responsibility assumed by the Contractor. The objective when selecting a contract type is to obtain the best value in needed property, services, or construction in the time required and at the lowest cost or price to the Authority. To achieve this objective, the CPM Agent, before choosing a contract type, should review those elements of the procurement which directly affect the cost, time, risk, and profit incentives bearing on the performance. Among the factors to be considered in selecting any type of contract are:
  - 1. the type and complexity of the property, service, or construction item being procured;
  - 2. the difficulty of estimating performance costs, such as the inability of the Authority to develop definitive specifications, to identify the risks to the Contractor inherent in the nature of the work to be performed, or otherwise to clearly establish the requirements of the contract;
  - 3. the administrative costs to both parties;
  - 4. the degree to which the Authority must provide technical coordination during the performance of the contract;
  - 5. the effect of the choice of the type of contract on the amount of competition to be expected;
  - 6. the stability of material or commodity market prices or wage levels;
  - 7. the urgency of the requirement; and
  - 8. the length of contract performance

#### 5.1 Permitted Contract Types

Except for a cost-plus-a-percentage-of-cost contract, which is prohibited by law, the use of any type of contract is permissible depending on circumstances. Permitted contract types include, but are not limited to, the following:

- 1. Firm Fixed-Price Contracts;
- 2. Fixed-Unit Price Contracts
- 3. Fixed Price Contracts with Price Adjustment;
- 4. Cost-Reimbursement Contracts;

5. Allowable Cost Contracts;
6. Cost-Plus-Fixed Fee Contracts;
7. Cost Incentive Contracts;
8. Fixed-Price Cost Incentive Contracts;
9. Cost-Reimbursement Contracts with Cost Incentive Fee;
10. Incentive Contracts;
11. Time and Materials Contracts;
12. Labor Hour Contracts;
13. Definite Quantity Contracts;
14. Indefinite Quantity Contracts;
15. Leases; and
16. Lease with Purchase Option.

## 5.2 Types of Fixed-Price and Fixed Unit Price Contracts

A. A fixed-price contract usually stipulates a firm price; however, under certain stated circumstances, it may provide for an adjustable price, as approved by the CPM Agent and the Department of Legal Services. This contract places responsibility on the Contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms.

1. The fixed-price contract is appropriate and preferred for use when the extent and type of work necessary to meet Authority requirements reasonably can be specified and the cost reasonably can be estimated. This is generally the case for construction or standard commercial products.

2. A fixed-price type of contract is the only type of contract that can be used in competitive sealed bidding.

B. A firm fixed-price contract provides a price that is not subject to adjustment because of variations in the Contractor's cost of performing the work specified in the contract. It should be used whenever prices which are fair and reasonable to the Authority can be established at the outset. Bases upon which firm fixed prices may be established include:

1. adequate price competition for the contract;
2. comparison of prices in similar prior procurements in which prices were fair and reasonable;
3. establishment of realistic costs of performance by utilizing available cost or pricing data and identifying uncertainties in contract performance; or
4. use of other adequate means to establish a firm price.

C. A fixed-price contract with price adjustment (Escalation/De-Escalation) provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only or both upward and downward. The CPM Agent shall avoid using a fixed-unit price contract with economic price adjustment unless it is necessary to protect MARTA against significant fluctuations in labor or material costs to provide for the contract price adjustment in the event of changes in the Contractor's established prices or in the best interest of MARTA to do so. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

1. changes in the Contractor's labor agreement rates as applied to industry or area wide;
2. changes due to rapid and substantial price fluctuation, which can be related to an accepted index (such as contracts for gasoline and oil); and

3.in requirements contracts:

- (i) when a general price change applicable to all customers occurs; or
- (ii) when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

### 5.3 Types of Cost-Reimbursement Contracts

A. Cost-reimbursement contracts provide for payment to the Contractor of allowable costs incurred in the performance of the contract as determined in accordance with general cost principles (i.e., costs that are reasonable, allocable, lawful and not specifically disallowed elsewhere in this manual or under state or federal law) and as provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the Contractor may not exceed (except at its own expense) without prior approval or subsequent ratification by the CPM Agent and, in addition, may provide for payment of a fee. The Contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first. This type of contract is appropriate when the uncertainties involved in contract performance are of such magnitude that the cost of contract performance cannot be estimated with sufficient certainty to realize economy by use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by MARTA personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study type contracts.

B. The CPM Agent shall use a cost-reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. Further, a cost-reimbursement type contract may be used only when the CPM Agent determines in writing that:

- 1. such a contract is likely to be less costly to MARTA than any other type or that it is impracticable to obtain otherwise the property, services, or construction;
- 2. the proposed Contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- 3. the proposed Contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

C. Each cost-reimbursement contract shall contain a clause, approved by the Department of Legal Services, indicating that only those costs determined to be reasonable and allocable will be reimbursable and establishing a stated not to exceed amount.

D. A cost contract provides that the Contractor will be reimbursed for allowable costs incurred in performing the contract but will not receive a fee.

E. A cost-plus-fixed-fee contract is a cost-reimbursement type contract which provides for payment to the Contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary whether or not the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract. The cost-plus-fixed-fee contract can be in either a completion form or term form.

- 1. The completion form is defined as a contract that describes the scope of work to be done as a clearly defined task or job with a definite goal or target expressed, and with a specific end-product required. This form of contract normally requires the Contractor to complete and deliver the specified end-

product (in certain instances, final report of research accomplishing the goal or target) as a condition for payment of the entire fixed-fee established for the work and within the estimated cost if possible; however, in the event the work cannot be completed within the estimated cost, the Authority can elect to require more work and effort from the Contractor without increase in fee, provided it increases the estimated cost.

2. The term form is defined as a contract that describes the scope of work to be done in general terms and which obligates the Contractor to devote a specified level of effort for a stated period of time. Under this form, the fixed fee is payable at the termination of the agreed period of time upon certification that the Contractor has exerted the level of effort specified in the contract in performing the work called for, and that such performance is considered satisfactory by the Authority.

The completion form of contract, because of differences in obligation assumed by the Contractor, is to be preferred over the term form whenever the work itself or specific milestones can be defined with sufficient precision to permit the development of estimates within which prospective Contractors reasonably can be expected to complete the work. A milestone is a definable point in a program when certain objectives can be said to have been accomplished.

In no event should the term form of contract be used unless the Contractor is obligated by the contract to provide a specific level-of-effort within a definite period of time.

## **5.4 Incentive Contracts**

- A. The Authority may use an incentive contract when a firm-fixed-price contract is not appropriate and the required services can be procured at lower costs, by relating the amount of profit or fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific objectives by establishing reasonable and attainable targets that are communicated to the contractor in writing.
- B. When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee shall be provided only for achievement that surpasses the targets, and decreases shall be provided for to the extent that targets are not met.

### **5.4.1 Cost Incentive Contracts**

(1) A cost incentive contract provides for the reimbursement to the Contractor of allowable costs incurred up to the ceiling amount, and it establishes a formula whereby the Contractor is rewarded for performing at less than target cost (e.g., the parties' agreed best estimate of the cost of performing the contract), or it is penalized if it exceeds target cost. The profit or fee under such a contract will vary inversely with the actual, allowable costs of performance and, consequently, is dependent on how effectively the Contractor controls cost in its performance of the contract.

(2) The CPM Agent may use an incentive contract when a firm-fixed-price contract is not appropriate and the required supplies or services can be procured at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the Contractor's performance. The CPM Agent may also use an incentive contract when it is necessary to establish reasonable and attainable targets that are clearly understandable by the Contractor, and to provide appropriate incentive arrangements designed to motivate Contractor efforts and discourage Contractor inefficiency and waste.

(3) In a fixed-price cost incentive contract, the parties establish the following at the outset: a target cost; a target profit (e.g., the profit that will be paid if the actual cost of performance equals the target cost); a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost; and a ceiling price. A fixed-price incentive contract shall be used only when the CPM



Agent determines that this type of contract represents a fair allocation of risk, or that it is impractical to obtain supplies or services of the kind or quality required without the use of this contract type. After performance of the contract, the actual cost of performance is calculated based on the total incurred allowable costs, as determined in accordance with general cost principals and as provided in the contract. Then, the final contract price is established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The Contractor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the Contractor suffers a loss.

(4) In a cost-reimbursement contract with cost incentive fee, the parties establish at the outset: a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost; the maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the Authority is obligated to reimburse the Contractor. The Contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with general cost principles and as provided in the contract are applied to the formula to establish the incentive fee payable to the Contractor.

#### **5.4.2 Performance Incentive Contracts**

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract (i.e., cost reimbursement or fixed price), performance goals, and a formula which varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the Contractor to a bonus while late completion may entitle MARTA to a price decrease.

### **5.5 Cost-Plus-Negotiated-Percentage-Fee Contracts**

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

- (1) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;
- (2) The likelihood of meeting the procurement objective will be enhanced by using a contract that effectively motivates the Contractor toward exceptional performance and provides MARTA with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and
- (3) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

### **5.6 Time and Materials and Labor Hour Contracts**

A. Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior approval by MARTA and shall be entered into only after the CPM Agent determines in writing that:

- (1) Authority representatives have been assigned to closely monitor the performance of the work; and
- (2) in the circumstances, it would not be practicable to use any other type of contract to obtain needed property, services, or construction in the time required and at the lowest cost or price to MARTA.

B. A labor hour contract provides only for the payment of labor performed. It shall contain the same ceiling as provided in Subsection A, above. Prior to the award of such contract, the CPM Agent shall make the determination as required in Subsection A, above.

C. Time and materials and labor hour contracts are not preferred contracting methods. Because this type of contract does not encourage effective cost control and requires almost constant oversight, it should be used only when no other type of contract will suffice. When used, the CPM Agent shall issue a written determination setting forth the reasons why other contracting methods cannot be used.

## **5.7 Definite and Indefinite Quantity Contracts/Indefinite Quantity Construction Contracts (IQCC)**

A. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

B. An indefinite quantity contract/Indefinite Quantity Construction Contract (IQCC) is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally, an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract shall provide a minimum quantity MARTA is obligated to order and may also provide for a maximum quantity provision that limits MARTA's right to order. MARTA may use this type of contract when the exact quantities of supplies or services are not known at the time of contract award.

C. A requirements contract is an indefinite quantity contract for supplies or services that obligates the Authority to order all its actual requirements for such supplies or services during a specified period of time. Like an indefinite quantity contract, MARTA may use this type of contract when the exact quantities of supplies or services are not known at the time of the contract award. For information, a realistic estimated total quantity shall be stated in the solicitation and the resulting contract; however, this estimate is not a representation to an offeror that the total quantity will be required or ordered. For the protection of MARTA and the Contractor, requirements contracts shall include the following:

1. a provision which requires the Authority to order its actual requirements of the supplies or services covered (however, MARTA must reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds the Authority's normal requirements or an amount specified in the contract);
2. two exemptions from ordering under the contract when:
  - (i) the CPM Agent approves a finding that the supplies or service available under the contract will not meet a nonrecurring, special need of MARTA; or
  - (ii) supplies produced or services are performed incidental to MARTA's own programs.

## **5.8 Leases**

B. A lease is a contract for the use of equipment or other property under which title will not pass to MARTA at any time. This applies to a lease with a purchase option where title may pass to the Authority.

C. A lease may be entered into provided:

1. it is in the best interest of MARTA;
2. all conditions for renewal and costs of termination are set forth in the lease; and
3. the lease is not used to circumvent normal procurement procedures.

## **5.9 Multi-Year Contracts**

A. Multi-year contracts have a term of years that exceeds the current funding period. Such contracts must be contain a provision that allows MARTA to suspend/terminate the contract if future funding by the Authority is not available for any budget period beyond the funded period.

B. A multi-year contract is authorized where:

- 1) estimated requirements cover the period of the contract and are reasonably firm and continuing;  
and
- 2) such a contract will serve the best interests of the Authority by encouraging effective competition or otherwise promoting economies in Authority procurement.

C. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Contract shall be cancelled, and the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

## **5.10 Multiple Award**

A. A multiple award is an award to more than one (1) Contractor for either a portion of a Contract or the entire Contract.

B. A multiple award may be made when award to more than one (1) Contractor is necessary for adequate delivery, service, or product compatibility or is in MARTA's best interest.

C. If a multiple award is anticipated prior to issuing a solicitation, MARTA shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

## **Chapter 6**

### **Unsolicited Proposals**

#### **6.0 General**

MARTA welcomes new and innovative ideas through the submittal of unsolicited proposals. Unsolicited proposals are those that are submitted by a Contractor for the purpose of potentially obtaining a Contract with MARTA.

#### **6.1 Procedures**

- A. Criteria for Unsolicited Proposals: A valid unsolicited proposal must:
1. Be independently originated and developed by the Contractor;
  2. Be prepared without any MARTA personnel supervision, endorsement, direction, or guidance; and
  3. Not address a previously published expression of need or Request for Proposals.
- B. Submittal of Unsolicited Proposals
1. Contractors submitting unsolicited proposals to MARTA are required to mail one electronic copy and one (1) hard copy of their Proposal to:  

Head of CPM  
Metropolitan Atlanta Rapid Transit Authority  
2424 Piedmont Road, N.E.  
Atlanta, Georgia 30324
  2. The CPM Agent shall acknowledge receipt of an unsolicited proposal within fifteen (15) business days.
  3. In submitting an unsolicited proposal, Contractors are consenting to allow MARTA to use any proprietary information or intellectual property contained in the unsolicited proposal to develop a solicitation. Under no circumstance will MARTA be liable or reimburse Contractor for the release or use of the information contained in Contractor's unsolicited proposals. All unsolicited proposals submitted to MARTA will be treated as public records in accordance with the Georgia Open Records Act.
- C. Content of Unsolicited Proposals
1. Unsolicited proposals must contain, at a minimum, the following:
    - (a) Basic information including –
      - (i) Firm's name and address and type of organization; e.g., profit, nonprofit, educational, small business;
      - (ii) Names and telephone numbers of technical and business personnel to be contacted for evaluation purposes;
      - (iii) Date of submission;
      - (iv) Signature of an authorized representative; and
      - (v) Proposed Price or total estimated cost.
    - (b) Fee
      - (i) A proposal review fee payable (certified check or money order) to MARTA will be required at the time of submittal to offset the costs of processing, reviewing and evaluating unsolicited proposals and must accompany any unsolicited proposal in accordance with the fee structure, based on contract value, below:

#### **Fee Schedule**

<b>Contract Value</b>	<b>Fee</b>
Less than \$200,000	\$1,000

\$200,000 up to \$1M	\$5,000
\$1M up to \$50M	\$10,000
\$50M and above	\$20,000

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

(iii) All costs incurred by the Contractor in preparing and submitting an unsolicited proposal will be borne solely and completely by the Contractor.

(iv) MARTA may return the fee to the Contractor in its sole discretion.

#### D. Evaluation Process

1. Within sixty (60) days of receipt of an unsolicited proposal, the Head of CPM and appropriate Department, will determine if the proposal is a valid unsolicited proposal meeting the requirements set forth in this Manual.
2. If the unsolicited proposal meets these requirements, MARTA will:
  - a. Notify the Contractor of its intent to conduct a comprehensive evaluation of the proposal;
  - b. Assemble an evaluation team that includes technical and financial representatives related to the unsolicited proposal; and
  - c. Proceed to a comprehensive evaluation.
3. If an unsolicited proposal meets all requirements upon completion of a comprehensive evaluation, MARTA staff will seek the appropriate management or Board approval to proceed to open competition.
4. Should MARTA elect to conduct a competitive selection process, positive consideration will be given to the Proponent that submitted the unsolicited proposal during the evaluation process. Prior to the commencement of the evaluation of Proposals submitted in response to a solicitation that was issued as a direct result of an unsolicited proposal, the Head of CPM and the Department of Legal Services will inform the evaluation committee which Proponent submitted the unsolicited proposal and direct the evaluation committee to take into account the information provided by the Head of CPM and the Department of Legal Services. Please refer to Section 9.1 for the RFP Process.

#### E. Return of Unsolicited Proposal

Nothing in this policy requires MARTA to act or enter into a contract based on an unsolicited proposal or to award a Contract to the firm(s) that submitted the unsolicited proposal. MARTA may return an unsolicited proposal at any time during the process.

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

1. Is available to the Authority without restriction from another source; or
2. Closely resembles a proposed or pending competitive acquisition requirement.

## **Chapter 7**

### **Procurement By Sealed Bidding/Invitation for Bids (IFB)**

#### **7.0 General**

- A. The MARTA Act requires the use of sealed bidding under almost all circumstances for purchasing supplies, materials, equipment, and for construction projects when the cost exceeds the small purchase threshold. Publicizing and public opening of bids is required, and the contract is awarded to the lowest responsive and responsible Contractor. A Pre-Planning Meeting is required to discuss all aspects of the IFB. The meeting will include CPM Agent, Department of Legal Services, D&I, Risk Management, Safety and Quality Assurance, Cyber Security, Office of Grants, and other departments, as appropriate.
- B. Bids shall be solicited from an adequate number of Contractors to assure full and open competition.
- C. Bids shall be evaluated without discussions with Contractors.
- D. Bids shall only be awarded only after the IFB has been advertised in the newspaper of the largest circulation in the metropolitan area once in each of the two (2) weeks prior to the bid deadline.

#### **7.1 Solicitation Requirements**

- A. The CPM Agent shall prepare the IFB after the Requestor submits a PR through Oracle. The CPM Agent shall include in the IFB the appropriate standard forms and provisions with information provided by the Requestor.
- B. The IFB must contain the following at a minimum:
  - 1. The form of contract, including any contract clauses or provisions required by Federal, State, or Local laws or regulations;
  - 2. Date solicitation will be advertised;
  - 3. Date, hour, and place of Pre-Bid Conference and Site Visit (local time shall be used);
  - 4. Date, hour, and place of bid opening (local time shall be used);
  - 5. Instructions to Contractors;
  - 6. A description of the supplies or services required; quantities; bid form;
  - 7. Any descriptions or specifications (including drawings/plans) that are necessary to permit full and open competition based on the complexity of what is being procured;
  - 8. A requirement that all bids must allow a period for acceptance at least one hundred twenty (120) calendar days, from the date of bid opening;
  - 9. A DBE goal requirement, if appropriate;
  - 10. Any applicable, packaging, packing, preservation, and marking requirements;
  - 11. Inspection, acceptance, quality assurance, reliability and warranty requirements;
  - 12. Requirements for time, place, and method of delivery or performance;
  - 13. Requirements for accounting, accounting data, payment terms, invoicing (to include PO number);
  - 14. Appropriate data, information security, and any required contract administration information;
  - 15. Any special contract requirements (e.g., bid guarantee, bonds, insurance, liquidated damages, progress payments) if necessary;
  - 16. Documents, exhibits, and other attachments;
  - 17. Representations, certifications, and other statements required of Contractors;

18. Basis of award, such as lump sum, separately awardable or multiple award;
  19. A notice to Contractors that all bids, materials and correspondence are subject to the Georgia Open Records Act;
  20. Conflict of Interest Statement and form;
  21. Statement of Business and Financial Qualifications;
  22. Work Authorization Form;
  23. The IFB shall require written acknowledgment by each Contractor of the receipt of all addenda issued;
  24. If appropriate, descriptive literature and bid sample requirements;
  25. Identify deadline for questions; and
  26. Reference protest procedures.
- C. IFBs should not be written with unreasonable requirements, or a description of the services that are restrictive of competition. IFBs shall permit full and open competition.

#### D. Construction Contracts

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

1. Contract milestones and schedule information;
  2. State prevailing wage and other funding source requirements; and
  3. S.A.V.E. affidavit;
  4. Inspection, acceptance, quality assurance, reliability and warranty requirements; and
  5. Bonding or surety requirements.
- E. The CPM Agent issues a Notice to Contractors and posts the IFB on-line. Distribution of the IFB to internal customers and planrooms is also handled by the CPM Agent. The Request for Advertisement is forwarded to Contract Control for inclusion in the newspaper of the largest circulation in the metropolitan area and such publications identified by the Requestor.

#### 7.2 Bid Requirements

Each bid shall be signed and submitted based on the instructions in the IFB.

#### 7.3 Time for Submission of Bids

The CPM Agent in consultation with the Requestor shall provide a reasonable time, but in no case less than thirty (30) days, for prospective Contractors to prepare and submit bids. The MARTA Act requires that publication be made at least once a week in the two (2) weeks prior to the bid opening.

#### 7.4 Place and Method of Delivery of Supplies

All materials and supplies are to be solicited F.O.B. unless otherwise determined to be in the best interest of MARTA.

#### 7.5 Cancellation of Invitation for Bids Before Opening

- A. An IFB shall not be canceled before opening unless the Head of CPM determines that cancellation is in the best interest of MARTA.
- B. Reasons for a decision to cancel an IFB prior to opening include:
  1. Inadequate or ambiguous specifications were cited in the IFB;

2. Specifications have been revised;
  3. Supplies or services being contracted for are no longer required;
  4. The IFB did not provide for consideration of all factors of cost to MARTA;
  5. A defect is found in the solicitation documents; or
  6. Specifications are determined by the head of CPM to restrict competition
- C. If an IFB is cancelled before opening, bids that have been received shall be returned unopened to the Contractors.
- D. The CPM Agent shall post a notice of cancellation on MARTA's website.

## **7.6 Pre-Bid Conferences**

- A. The CPM Agent uses pre-bid conferences to explain IFB requirements. The CPM Agent and the Requestor shall determine if a pre-bid conference and/or site visit is needed. All site visits or tours of MARTA property should include a liability waiver as drafted by the Department of Legal Services.
- B. The Pre-Bid conference should be held as least two (2) weeks prior to bid opening.
- C. Any substantive clarification resulting from the Pre-Bid conference should be identified in an addendum. Nothing stated at the Pre-Bid conference shall be authoritative or change the IFB unless a written addendum is issued.
- D. Any Pre-Bid conference or site visit, shall be no sooner than a minimum of five (5) business days of the publication of the initial notice.
- E. The Pre-bid conference shall include the CPM Agent, the Requestor, the Office of Diversity & Inclusion, and Risk Management at a minimum.

## **7.7 Inquiries**

- A. All inquiries must be received by the date specified in the IFB.
- B. The CPM Agent shall forward all inquiries to the appropriate Department for a response.
- C. Each inquiry response should reference the portion of the IFB it addresses.
- D. The CPM Agent shall electronically post each inquiry response with approval by the Head of CPM and the Department of Legal Services to MARTA's website.
- E. The CPM Agent shall post the responses to inquiries no later than five (5) business days before bid opening.
- F. In the case where inquiries have not been answered at least five (5) business days before the bid opening, the CPM Agent shall extend the bid deadline and complete a new ad with the revised bid deadline date and post the addendum to the bid deadline.

## **7.8 Addendum**

- A. If it becomes necessary to make changes in quantity, specifications, scope, delivery schedules, opening dates/deadline or other items, or to correct a defective or ambiguous solicitation, the change shall be accomplished by an addendum.
- B. Each addendum shall reference the portion of the solicitation it amends accompanied by vertical lines on the right-hand side and bold text showing the changes.
- C. The CPM Agent shall post each addendum to MARTA's website, after being reviewed by the Department of Legal Services, except for time only extensions which are determined to be necessary by the CPM Agent and approved by the Head of CPM. If, because of an addendum, the time and date for receipt of bids is not sufficient to permit preparation of the bid, the CPM Agent and Requestor shall consider increasing the time for submission of the bids.
- D. The CPM Agent shall publish each addendum to MARTA's website not less than five (5) business days prior to the deadline to allow all prospective Contractors to consider the information in submitting their bids.

## **7.9 Records of Invitation for Bids and Records of Bids**

- A. CPM must retain a record of every IFB issued and a record of bids, known as the Bid Tabulation Sheet in



accordance with applicable law and MARTA policies.

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

#### **7.10 Time of Bid Receipt**

Bids must be received in the manner designated in the IFB no later than the time identified in the IFB.

#### **7.11 Late Bids**

Bids are considered late based on the time clock in MARTA's mail room if the time is later than that identified in the IFB. Unless a bid is late owing solely to MARTA mishandling, late bids will not be accepted by MARTA. Late bids shall be returned by the CPM Agent to the Bidder(s) unopened.

#### **7.12 Modification or Withdrawal of Bids by Contractor(s)**

- A. A bid may be modified or withdrawn by written request from the Contractor prior to the deadline. The CPM Agent must receive the request from the Contractor's authorized signatory prior to the exact time of bid opening. A Contractor may withdraw its bid after the public opening but must notify MARTA in writing after public opening of the bids.
- B. Modifications received shall be sealed in an envelope and time and date stamped to evidence receipt. No information contained in the envelope shall be disclosed before the time set for the bid opening.
- C. If a bid is withdrawn, any bid guarantee (e.g. bond, etc.) shall be returned to the Contractor.
- D. All documents relating to the modification or withdrawal of bids shall be made a part of CPM's file.
- E. If a Contractor withdraws its bid after the period prescribed in Section 7.12.A above, MARTA may consent to a Contractor being relieved of its bid if all of the following grounds are established:
  - 1. A mistake made the bid materially different than Contractor intended it to be; and
  - 2. A mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the scope of the work.
- F. The Contractor who claims a mistake or who forfeits its bid security shall be prohibited from participating in further bidding as a prime Contractor on the project on which the mistake was claimed or security was forfeited.

#### **7.13 Mistake in Bids After Award**

- A. Bid mistakes are not always discovered prior to Contract award. Post award mistakes are those that arise because:
  - 1. A mistake in bid was not recognized prior to Contract award; or
  - 2. The formal contract document does not reflect the actual agreement of the parties.
- B. The first category covers unilateral mistakes (the Contractor's) and one that MARTA had no actual or constructive knowledge of before contract award. Relief from the mistaken bid is available only before award and on limited grounds.
- C. The second category covers mutual mistakes where the executed agreement does not reflect the actual agreement of the parties, either because MARTA has clearly erred in its specification or in the drafting of the contract.
- D. If a mistake in a bid is not discovered until after award and after execution of the Contract, the mistake may be corrected by contract amendment.
- E. In addition to the cases contemplated in the Section above or as otherwise authorized by law, if a mistake in a bid is not discovered until after award, the appropriate representatives (Department of Legal Services and Requestor) that approved the procurement action are authorized to make one of the following determinations:
  - 1. To rescind the contract;
  - 2. To reform a contract to: (i) delete the items involved in the mistake or (ii) to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original IFB; or
  - 3. That no change shall be made in the contract as awarded.

- F. The contract file shall contain a record of each determination made in accordance with this Section, the facts involved, and the action taken.
- G. When the Contractor requests permission to correct a mistake in its bid, and clear evidence establishes both the existence of a mistake and the bid actually intended, MARTA may permit the Contractor to correct the mistake. In the event that such correction would result in displacing one or more lower bids, the Contractor may not correct its mistake unless the existence of the mistake and the bid intended are readily ascertainable from the face of the submitted bid in MARTA's sole determination. If the evidence is clear only as to the mistake, but not as to the intended bid, the Department of Legal Services may permit the Contractor to withdraw its bid.
- H. When the evidence is not clear (in MARTA's sole determination) that the bid, as submitted, was not the bid intended, the Department of Legal Services may determine whether the bid may be considered for award in the form submitted.

#### **7.14 Apparent Clerical Mistakes**

Any clerical mistake apparent on the face of a bid shall be corrected by the CPM Agent prior to award. Examples of apparent mistakes include, but are not limited to, obvious errors in placing decimal point or obvious errors in designation of units. Correction of the bid will be effectuated by attaching the verification to the original bid. Correction will not be made on the face of the bid; however, it shall be reflected in the award documents.

#### **7.15 Bid Receipt and Opening**

##### **A. Receipt of Bids**

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

##### **B. Opening of Bids**

The CPM Agent shall coordinate and conduct the bid opening. All bids received prior to the bid deadline will be publicly opened, read aloud to the persons present, and recorded. Only the total amount of each bid will be read.

##### **C. Recording of Bids**

The bids shall be recorded on a Bid Tabulation Sheet. Any apparent or potential problem with any bid that is noted at the time of bid opening shall be indicated on the Bid Tabulation Sheet. The CPM Agent will certify the accuracy of the Bid Tabulation Sheet and certify that opportunity was provided for public inspection of all opened bids, by placing their signature thereon. The CPM Agent will then ensure that all bid results are posted on MARTA's website within a reasonable time after bid opening, but no more than two (2) business days after bid opening.

#### **7.16 Evaluation of Bids**

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

1. Evaluation of bids for responsiveness, responsibility and price reasonableness shall be coordinated by the CPM Agent. The results of the evaluation shall be documented to provide clear justification for contract awards.
2. All discounts and transportation costs shall be considered in determining which bid is the lowest.
3. Alternative pricing or multiple pricing submitted by the same Contractors is prohibited and MARTA shall mark those bids non-responsive.
4. The CPM Agent shall include documentation in the file as to whether or not a Contractor is considered responsible and responsive.

## B. Tied Bids

The resolution of an apparent tie is performed as follows:

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

## C. Responsiveness of Bid

1. The responsiveness of the bid itself is determined by its conformance to the technical, legal, and commercial requirements of the bid documents.
2. To be considered for award, a bid must comply in all material respects with the IFB so that all Contractors may stand on equal footing and the integrity of the procurement process may be maintained.
3. Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the IFB. Contractors must use the Bid Form furnished by MARTA to assure uniformity in bid responses.
4. CPM Agent shall determine if the bid(s) are responsive and have complied with all instructions listed in the IFB. A bid is not responsive if it contains a deviation to any material factor, which affects price, delivery, quality or quantity of the articles or services furnished or fails to conform to the material requirements of the IFB. If a bid is not responsive, it may not be considered for award. CPM Agent shall review all bids and forward the same to Department of Legal Services for responsiveness review.
5. When a bid guarantee or bid bond is required and a Contractor fails to furnish the bid guarantee/bid bond in accordance with the requirements of the IFB, the bid shall be deemed non-responsive.
6. The CPM Agent with the concurrence of the Department of Legal Services may waive minor errors, technicalities, or omissions to the requirements of the IFB instructions if the waiver is in the best interest of MARTA.

## D. Responsibility of Bids

1. After the CPM Agent completes the responsiveness review, the CPM Agent shall forward all responsive bids to the Department of Diversity and Inclusion for responsibility review. If the Department of Diversity and Inclusion deems any bid to be non-responsible, those bids may not be considered for award.
2. After the lowest responsive bid is determined by D&I to be responsible, the CPM Agent shall forward that bid to the Requestor for responsibility determination. Only one (1) bid at a time will be forwarded to the Requestor for responsibility determination. Any bid that the Requestor deems non-responsible, must be reviewed by the Department of Legal Services for concurrence prior to the CPM Agent forwarding the next lowest responsive bidder to the Requestor.

3. Awards shall be made only to responsible Contractors possessing the ability to perform successfully under the terms and conditions of the IFB.
4. A responsible Contractor is defined as one who has fitness, capacity, and experience to satisfactorily perform the work.
5. A Requestor may deem a bid non-responsible for any of the following reasons:
  - a) The Contractor imposed conditions, which would modify requirements of the Solicitation Package;
  - b) The bid does not conform to the IFB's specifications;
  - c) The bid submitted alternative supplies or services as substitutes to meet the requirements of the IFB which do not meet the requirements as laid out in the solicitation;
  - d) The bid fails to conform to the delivery schedule or permissible alternates stated in the IFB;
  - e) Financial resources are not adequate to perform the contract, or the ability to obtain them;
  - f) The Requestor, through the CPM Agent, requested additional information from the Contractor to determine responsibility and the Contractor fails to supply the information requested within the timeframe allotted; or
  - g) The Contractor does one of the following:
    - i. Protects against future changes in conditions, such as increased costs, if total possible costs to MARTA cannot be determined;
    - ii. Fails to state a price and indicates that price shall be "price in effect at time of delivery" or words of equivalent meaning;
    - iii. When not authorized by an IFB, the Contractor conditions or qualifies a bid by stipulating that it is to be considered only if, before award date, the Contractor receives (or does not receive) award under a separate solicitation;
    - iv. Requires that MARTA is to determine that the Contractor's product meets applicable MARTA specifications; or
    - v. Limits the rights of MARTA under any contract clause.
  - h) MARTA may deem a bid non-responsible if the Contractor had prior poor work performance on a MARTA contract in MARTA's sole determination.
6. A bid received from any Contractor that is suspended, debarred, or otherwise ineligible to receive a Federal or State contract shall be deemed non-responsible if the period of suspension, debarment, or ineligibility has not expired prior to the bid opening date. See Chapter 18.
7. The CPM Agent shall request a Dun & Bradstreet Business Credit Report from the Finance Department for the winning Bidder. Any interpretation of the Dun & Bradstreet Business Credit Report shall be conducted by the Department of Finance.

### **7.17 Cancellation of Invitation for Bids After Opening**

As a general rule after opening, Invitation for Bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the initial Invitation for Bids and the additional quantity should be treated as a new procurement or an amendment using Chapter 12 procedures for a non-competitive procurement.

An IFB may be cancelled after the bid opening if:

1. All bids were non-responsive;
2. No responsible Contractor;
3. There is evidence of collusion or bad faith; or
4. Prior to award, the goods/services are no longer needed.

### **7.18 Rejection of Bids**

- A. MARTA may Reject any bids whenever in the opinion of the Board of Directors such rejection is necessary for the protection of the interests of MARTA.
- B. Once a decision is made to recommend the rejection of all bids and after the Contractor survey has been performed, the CPM Agent shall:
  - 1. Determine the recommended course of action (e.g., revise and reissue the solicitation, request authority to negotiate a non-competitive contract, cancel the entire procurement action).
  - 2. Prepare a Board Agenda Report and Resolution recommending the rejection of all bids.
  - 3. Upon receiving authorization from the Board of Directors, the CPM Agent shall post on MARTA's website that all bids have been rejected.
  - 4. Documentation must be maintained in the contract file including copies of original bids, written recommendations from the Requestor (and the Legal Department, if appropriate), records of communications with Contractors, and a record of the basis for decisions made pertaining to the contract.

#### **7.19 Single Bid or No Responsive and Responsible Bid**

- A. Single Bid: In the event a single bid is received, the CPM Agent shall canvas Contractors to determine why there were no other bidders and request a price/cost analysis from the Department of Internal Audit to determine that the bid price is fair and reasonable.
- B. No Responsive and Responsible Bid: In the event, a competitive solicitation is conducted and no responsive and responsible bids are received, a non-competitive procurement may be permissible under the non-competitive procedures set forth in Chapter 12.

#### **7.20 Award Process**

- A. Award will be made by written notice, within the time for acceptance specified in the bid. Award will be made to the lowest responsive and responsible Contractor. Award will not be made until all required Board approvals have been obtained.
- B. Once the IFB is approved by the appropriate Board Committee, a NOIA shall be posted on MARTA's website at least five (5) business days prior to the Board of Directors meeting.

#### **7.21 Delay of Award**

Should administrative difficulties after bid opening threaten to delay award beyond Contractors' acceptance periods, the CPM Agent shall ask the Contractors to extend the bid validity period (with consent of sureties, if necessary). Should a Contractor not agree to extend its bid validity period, the CPM Agent shall remove that bidder from consideration.

#### **7.22 Authority to Approve Contracts**

The CPM Agent shall prepare an award letter and Contract (as applicable) and then circulate it to obtain the appropriate approvals as identified in the Delegations of Authority. All contracts must be approved as to legal form by the Department of Legal Services prior to execution.

A contract and NOA shall only be sent to the awarded Contractor after Board approval. The successful Contractor must then submit the required insurance and surety forms, as specified in the Contract. The awarded Contractor must execute the proposed contract, then MARTA will execute the same.

#### **7.23 Two-Step Sealed Bids**

- A. Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding for acquisitions requiring technical proposals, particularly those for complex items.
- B. Two step sealed bidding is conducted as follows:

- 1. Step One: Consists of the request for, submission, evaluation, and (if necessary) discussion of a

technical proposal. No pricing is involved. The objective is to determine the acceptability of the Bidders and their ability to perform the services, etc. requested by MARTA. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, financial capacity/strength, and special testing techniques.

2. Step Two: Involves the submission of sealed priced bids by those firms or individuals who submitted acceptable technical proposals for Step One. Contracts are awarded following the procedures found in this Chapter.

#### C. Conditions for Use

1. Unless other factors require the use of traditional sealed bidding, two-step sealed bidding may be used in preference to competitive negotiation when all the following conditions are present:

- a) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion of the technical aspects of the requirement to ensure mutual understanding between each source and MARTA.
- b) Definite criteria exist for evaluating technical proposals.
- c) More than one technically qualified source is expected to be available.
- d) Sufficient time will be available for use of the Two-Step Method.
- e) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.
- f) It is in the best interests of the Authority.

2. None of the following precludes the use of two-step sealed bidding:

- a) Multi-year contracting.
- b) MARTA-owned facilities or special tooling to be made available to the successful Contractor.
- c) A first or subsequent production quantity is being acquired under a performance specification.

## **Chapter 8**

### **Professional Services Contracts/Letter of Agreement (LOA)**

#### **8.0 General**

A. Section 14 of the MARTA ACT exempts professional services contracts from the structured process of competitive bidding. Professional services procurements permit the negotiation of procurements in accordance with sound business principles. These procedures can be used to contract with professional service providers that include, but are not limited to, the following: architects, engineers, attorneys, accountants, consultants, advisors, and other individuals or firms who are engaged primarily in the rendition of professional services and not the sale of goods or merchandise. Professional services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance such as studies, analyses, and evaluations.

#### **8.1 Letter of Agreement**

A. For professional service procurements, negotiation is permitted. The CPM Agent and Requestor shall conduct negotiation directly with the professional service Contractor after receiving the PR, ICE, and scope of work from the Requestor.

B. This will generally take the form of a Letter of Agreement form of contract; however, this is not a requirement. The CPM Agent working with the Department of Legal Services shall ensure that all Contracts contain the required contract clauses, representations, and certifications, in accordance with this Manual. The CPM Agent shall forward to the Contractor a Form of Contract and all required forms to be filled out for the Contractor's review. The Contractor shall send back its response to the CPM Agent. Negotiations shall be conducted by the CPM Agent, with the Department of Legal Services and the Requestor, until a contract is finalized between the parties.

C. If the procurement is under the small purchase threshold, then the CPM agent shall perform a price/cost analysis. If the procurement is above the small purchase threshold, then the price/cost analysis shall be performed by the Department of Internal Audit.

#### **8.2 Solicitation of Professional Services**

The solicitation for professional services normally takes the form of a RFP, since it affords the flexibility to negotiate not only price, but other factors considered crucial to the successful completion of the contract. See Chapter 9.

## **Chapter 9**

### **Request for Proposals (RFP)**

#### **9.0 General**

RFPs afford the flexibility to negotiate not only price, but other factors considered crucial to the successful completion of the contract. It must be determined prior to solicitation and documented for the file what the appropriate basis of award will be, namely either: (1) the most advantageous offer to the authority, price and other factors considered; or (2) best qualified Proponent.

#### **9.1 RFP Process**

##### **A. Permission to Solicit and Preparation of Draft RFP**

1. Once the CPM Agent receives the PR, the CPM Agent will prepare the Board package and letter from the General Manager/CEO to the Board of Directors, which will certify the reason why it is impracticable to prepare adequate specifications to accept sealed bids for the project and will request permission from the Board of Directors to solicit proposals. Permission to solicit is only required in procurements above the small purchase threshold. Requestors shall not disclose budget information and/or the number of Proponents to be awarded in their presentations to the Board of Directors when requesting permission to solicit.
2. Once permission to solicit is granted by the Board of Directors, the CPM Agent in conjunction with the Requestor will prepare Request for Proposals solicitation, including the instructions, form of contract, evaluation criteria, statement of work, price proposal, and the Evaluation Plan.
3. The Evaluation Plan will detail the evaluation process that MARTA Staff, the SEC, and Technical Evaluation Team (TET) will follow. The SEC shall be comprised of an odd number of members and include a diverse group of MARTA staff. The SEC shall evaluate and score proposals submitted in response to an RFP. On RFPs that require technical expertise, a Technical Evaluation Team (TET) may be utilized to evaluate proposals.

##### **B. Pre-Planning Meeting**

1. The CPM Agent shall conduct a Pre-Planning Meeting to review, finalize, and approve the RFP document and Evaluation Plan.
2. CPM Agent schedules and conducts the Pre-Planning Meeting.
3. The Requestor is consulted as to the necessity of a Pre-Proposal Conference/Site Visit and the date/time of such conference.
4. Comments are addressed and incorporated into the draft document and a solicitation schedule is finalized.
5. A Proposal Deadline is set by the CPM Agent based on at least forty-five (45) days calendar days from the first date of advertising of the RFP. Attendance at the Pre-Planning Meeting shall include the same departments as those with the Pre-Planning Meeting for IFBs, see Section 7.0.A.
6. The CPM Agent shall ensure all members of the SEC/TET have signed a non-disclosure agreement. Only voting members of the SEC are required to sign the Evaluation Plan, TET or non-voting members are not required to sign, other than the Head of CPM, Executive Director of D&I and the Department of Legal Services.

##### **C. Advertising**

1. The RFP and Evaluation Plan are finalized and sent by the CPM Agent to Department of Legal Services for concurrence.



2. The CPM Agent shall post the approved RFP on MARTA's website and search additional locations to advertise the RFP.

**D. Pre-Proposal Conference/Site Visit**

1. The CPM Agent shall coordinate the participation of MARTA Department Representatives for the Pre-Proposal Conference/Site Visit and conduct the Pre-Proposal Conference/Site Visit. The CPM Agent shall follow the same procedure for conducting the Pre-Proposal Conference/Site as laid out in Section 7.6.

**E. Inquiries**

1. The CPM Agent shall follow the same procedure for Inquires with RFP as laid out in Section 7.7.

**F. Addendum**

1. The CPM Agent shall follow the same procedure for Addenda with RFP as laid out in Section 7.8.

**G. Evaluation of Proposals**

1. The CPM Agent obtains proposals received prior to the time of the Proposal Deadline. Late proposals shall not be reviewed or considered by MARTA and the CPM Agent shall return the proposal to the Proponent unopened.

2. The CPM Agent shall conduct a responsiveness review of the proposals received with the Department of Legal Services. Please follow the same procedure as laid out in the IFB Section for RFP Responsiveness Review, see Section 7.16.C.

3. For RFPs, cost/price is scored separately from the technical proposal.

4. The SEC shall review, evaluate, and score each proposal in accordance with the evaluation criteria specified in the solicitation and the Evaluation Plan. Prior work performance with MARTA may be used by the SEC (and/or any technical evaluation teams) in evaluating the proposals.

5. The CPM Agent shall arrange the SEC/TET kickoff meeting to review the evaluation process and distribute the responsive proposals to the SEC/TET members. The CPM Agent shall only distribute the technical proposals to the SEC/TET without including the price proposal.

6. On RFPs with a TET, the TET shall review the technical proposals and present its findings to the SEC. The TET shall not score the technical proposals. The TET shall have a Chairperson who will conducts all meetings of the TET without the involvement of the SEC. The SEC Chairperson will coordinate with the TET Chairperson as to deadlines and issues that may arise in scoring.

7. After the TET presents its findings, the technical proposals are scored by the SEC, and the CPM Agent prepares the summary technical scoring.

8. The SEC meetings shall only be held with a quorum of members and with the Chairperson of the SEC present. If a quorum does not exist or if the Chairperson is not in attendance, the CPM Agent shall reschedule the meeting. Meetings shall also not be held without the attendance of the Department of Legal Services and the D&I representative.

9. The CPM Agent shall forward the financial documents to the Department of Finance for financial review and the Department of Finance shall assign a passing/failing score. The CPM Agent shall invite the Department of Finance to the SEC meeting to explain their score.

10. The CPM Agent shall forward the proposals to D&I for review and D&I shall assign a passing/failing score.
11. The CPM Agent shall reveal the technical scoring to the SEC for the SEC to identify which proposals will be included in the competitive range and thus considered for further evaluation. The SEC shall utilize voice vote or another voting method to determine the competitive range.
12. CPM Agent sends letters to Proponents not within the competitive range informing them that their proposals will not receive further consideration.
13. The SEC may conduct written or oral discussions, including presentations and/or demonstrations, with the Proponents identified within a competitive range.
14. The CPM Agent schedules demonstrations/presentations (if appropriate) with Proponents within the competitive range. The CPM Agent follows-up with confirmation letters to Proponents of the date, time and place for the presentation. Questions developed by the SEC/TET are coordinated by the CPM Agent and sent by the CPM Agent in advance of the scheduled presentations.
15. During the course of the evaluation of the RFP, no MARTA Staff, SEC/TET member, or MARTA consultant shall furnish information to a Proponent which may afford it an advantage over others. Until the MARTA Board of Directors awards a Contract, no information contained in any proposal shall be made available to anyone other than individuals who have signed a Non-Disclosure Agreement. Furthermore, no MARTA Staff, SEC/TET member, or MARTA consultant shall advise Proponents of their price relationship with others.
16. After demonstrations/presentations, the SEC may elect to re-score. If the SEC re-scores, they must remit a new score sheet. If the SEC re-scores, the CPM Agent shall prepare an updated summary technical scoring with the re-scores and schedule a meeting to reveal the updated summary technical scoring.
17. Once the SEC has concluded with the technical evaluation, the CPM Agent shall present the cost/price scoring to the SEC. Cost scoring is performed by the CPM Agent.
18. The SEC may make a decision to award or not award. The SEC may also elect to request BAFOs from Proponents in the competitive range.
19. The CPM Agent schedules the SEC evaluation meeting for final evaluation of Best and Final Offers. The CPM Agent prepares final score sheet and distributes to the SEC. The SEC may make a decision to award or not award. The SEC shall recommend the contract be awarded to the responsive and responsible Proponent with the most advantageous offer to the Authority, price and other factors considered. The SEC Chairperson will provide its recommendation for award to the CPM Agent.
20. If multiple proposals are received, the CPM Agent performs a price analysis to determine whether the price is fair and reasonable.

#### F. Award

1. Upon receipt of the Recommendation Memorandum from the SEC Chairperson, the CPM Agent shall prepare a draft contract with the concurrence of the Department of Legal Services, incorporating any exceptions/deviations submitted by the Proponent. Any negotiations that need to occur between the Department of Legal Services and the Proponent shall be coordinated by the CPM Agent until a final

contract is agreed upon by the parties.

2. The CPM Agent alerts D&I of the recommended awardee and forwards the Contractor's Equal Employment Opportunity information to D&I; notifies the Contractor that it has been recommended for award and that D&I will be in contact, and requests Certificates of Insurance, Drug Alcohol Policy (if applicable) and other required contract items.
3. The CPM Agent prepares a Board package (with the help of the Requestor), and the Requestor shall present the Board package to the appropriate MARTA Board Committee if it is above the small purchase threshold.
4. The CPM Agent shall post a NOIA on MARTA's website at least five (5) days prior to the Board of Directors meeting.
5. Upon approval of the award by the Board of Directors, the CPM Agent prepares letters to unsuccessful Proponents notifying them of the contract award.
6. The CPM Agent routes the Contract with the NOA and obtains the appropriate signatures.
7. The CPM Agent receives the post award insurance and forwards to the Risk Management Department for review and approval. If applicable, payment and performance bonds are also submitted to Risk Management for review.
8. The CPM Agent notifies the Requestor that all contractual documents have been received and approved and that the contract administration function can begin.

## **9.2 Debriefs**

MARTA shall allow Proponents an opportunity to discuss the outcomes of the RFP. The Proponent must make the request to the CPM Agent for a debrief. Typically, the CPM Agent would not schedule a debrief prior to the award of the Contract; however, one may be scheduled if it is in the best interest of MARTA. The CPM Agent shall schedule the debrief with the Proponent and include the SEC Chairperson and the Department of Legal Services. The CPM Agent shall request from the Proponent questions in preparation for the debrief. The SEC Chairperson shall be responsible for responding to any substantive inquiries the Proponent may have at the debrief.

## **9.3 Determining Reasonableness of Price of a Single Proposal**

In the event of a single proposal received in a RFP above the small purchase threshold, a price/cost analysis shall be performed by the Department of Internal Audit. Where no price competition exists, and in all cases where a cost analysis is performed, profit should be negotiated as a separate element of the price. In RFPs under the small purchase threshold, if a single proposal is received, the CPM Agent shall perform a price analysis.

## **9.4 No Proposals or No Responsive Proposals**

In the event the Authority issues a RFP and no proposals were received or proposals were received but all were not Responsive, the solicitation shall be resolicited.

## **9.5 Documentation**

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

The executed Contract is maintained in the procurement file.

The CPM Agent shall retain the administration contract file documentation of Contractor's performance.

## **Chapter 10**

### **Architect-Engineer and Related Services**

#### **10.0 General**

Professional services of a licensed architect or engineer associated with research development, design, construction, alteration, or repair of real property, these types of services include, but are not limited to, program management, construction project management, feasibility studies, preliminary engineering, design, surveying, mapping, private architectural, landscape architectural, environmental, and land surveying. Regardless of funding source, A/E procurements will be conducted as qualifications-based procurements without considering price as an evaluation factor in determining the most qualified Proposer.

#### **10.1 A/E Solicitation**

A. CPM shall use qualifications-based competitive procedures for procurement of A/E related services, Request for Qualifications Statements. This method of procurement follows the Brooks Act, where competitive prices are not obtained and the most qualified Proponent is recommended for award. This method of procurement cannot be used to obtain other types of services.

#### **10.2 Solicitation Process for A/E**

A. The CPM Agent shall follow the same process as with RFPs to conduct qualifications-based procurements. The only difference is that price/cost will not be an evaluation criterion in a Request for Qualification Statement solicitation. Please refer to Chapter 9, specifically, Section 9.1, subsections A, B, C, D, E, and F.

##### **B. Evaluation of Qualification Statements**

1. The CPM Agent obtains qualification statements received prior to the deadline specified in the solicitation. Late qualification statements shall not be considered, and the CPM Agent shall return the qualification statements to the Proponent.
2. The CPM Agent shall conduct a responsiveness review of the qualification statements received with the Department of Legal Services. Please follow the same procedure as laid out in the IFB Section for Qualification Statements Responsiveness Review, see Section 7.16.C.
3. The CPM Agent shall arrange the SEC kickoff meeting to review the evaluation process and distribute the responsive proposals to the SEC members.
4. The SEC shall review, evaluate, and score the Statements of Qualifications in accordance with the evaluation criteria specified in the solicitation and the Evaluation Plan.
6. The CPM Agent shall forward the financial documents to the Department of Finance for financial review and the Department of Finance shall assign a passing/failing score.
7. The CPM Agent shall forward the qualification statements to D&I for review and D&I shall assign a passing/failing score.
8. The CPM Agent prepares the summary technical scoring and schedules a SEC meeting to reveal the scores. SEC meetings shall only be held with a quorum of members and the Chairperson of the SEC present. If a quorum does not exist or if the Chairperson is not present, the CPM Agent shall reschedule the meeting. Meetings shall also not be held without the attendance of the Department of Legal Services and the D&I representative.
9. The CPM Agent shall reveal the technical scoring to the SEC for the SEC to identify which qualification statements will be short listed and thus considered for further consideration. The SEC shall utilize voice vote or another voting method to determine the competitive range.

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

11. During the course of the evaluation of the qualification statements, no MARTA Staff, SEC member, or MARTA consultant shall furnish information to a Proponent which may afford it an advantage. Until the MARTA Board of Directors awards a contract, no information contained in any qualification statement shall be made available to anyone other than individuals who have signed a Non-Disclosure Agreement.

## 12. Negotiation and Approval of Contract

- a. The SEC Chairperson, CPM, Requestor, and the Department of Legal Services shall negotiate with the most qualified firm to establish compensation rates and contract terms that are deemed fair and reasonable by both parties. In negotiating such compensation terms, the estimated value of the services shall be taken into account.
- b. If a satisfactory contract cannot be negotiated with the most qualified firm, negotiations with that firm should be terminated. Negotiations should commence with additional firms on the short list in the order of their competence and qualifications as established by the SEC until an agreement is reached in accordance with this Section.
- c. The CPM Agent shall request audited financials from the selected Proponent and forward to the Department of Internal Audit for review. The Department of Internal Audit shall make a determination and issue a final Audit Report. Firms may utilize MARTA's provisional overhead rate in cases where a FAR Audit is not provided.
- d. The SEC Chairperson will provide its recommendation for award to the CPM Agent.
- e. After the Department of Internal Audit issues the Audit Report, the CPM Agent prepares a Board package and the Requestor shall present to the appropriate MARTA Board Committee if above the small purchase threshold.
- f. The CPM Agent shall post a NOIA on MARTA's website at least five (5) business days prior to the Board of Directors meeting.
- g. Upon approval of the award by the Board of Directors, the CPM Agent prepares letters to unsuccessful Proponents notifying them of the contract award.
- h. The CPM Agent routes the contract with the NOA and obtains the appropriate signatures.
- i. The CPM Agent receives the post award insurance and forwards the same to Risk Management for review and approval.
- j. The CPM Agent notifies the Requestor that all contractual documents have been received and approved and that the contract administration function, including issuance of work orders can begin.
- i. All A/E contracts will be work-order based contracts. Please see Chapter 16 for the procedure.

### 10.3 National Environmental Policy Act (NEPA) Work

A Contractor that performs any NEPA work on a MARTA project is prohibited from any design work related to the same project. Requestors must inform the CPM Agent if a Contractor has performed any NEPA work on projects.

### 10.4 Debriefs

Please refer to Section 9.2 on how to conduct debriefs.

### 10.5 No Qualification Statements or No Responsive Qualification Statements

In the event the Authority issues a Request for Qualifications, and no Qualifications Statements were received or Qualifications Statements were received but all were not Responsive, the solicitation shall be resolicited.

## **Chapter 11**

### **Small Purchases and Micro Purchases**

#### **11.0 General**

- A. The procurement of supplies, materials, and equipment, with the estimated aggregate amount of which does not exceed \$200,000 (small purchase threshold), shall be purchased by utilizing Small Purchases Procedures.
- B. The micro-purchases threshold is established by the funding entity. The micro-purchase threshold for locally funded purchases is \$20,000.00, and the micro-purchase threshold for FTA funded procurements is \$10,000.00. The Department of Homeland Security (DHS) micro-purchases threshold is \$10,000.00

#### **11.1 Micro-Purchase Procedure**

- A. A Requestor shall not split a procurement totaling more than the micro-purchase threshold into several purchases that are less than the limit in order to permit the use of the micro-purchase procedure.
- B. Competition is not required for micro-purchases.
- C. Requestors should work with the CPM Agent to secure one (1) quotation.
- D. The ICE and the Statement of Work are the only file documentation required as a determination that the price is fair and reasonable. Determinations may be based on published catalog prices, pricing available to the general public or other government entities.

#### **11.2 Small Purchase Procedures**

- A. A CPM Agent shall not use small purchase procedures when the requirement can be met by using a requirements contract, an IDIQ contract, or other required source of supply.
- B. A procurement requirement shall not be parceled, split, divided, or purchased over a one (1) year period of time in order to avoid the dollar limitations for use of small purchase procedures. Total purchases for any item exceeding the small purchase threshold in a one (1) year period must be awarded through an IFB, RFP, Request for Qualifications, or through a non-competitive procurement.
- C. A CPM Agent shall not use the small purchase procedure for recurring purchases, such as software licenses that are being procured annually.
- D. All small purchases must be competed, except in situations where the MARTA Act does not require competition. Price quotations shall be solicited from a minimum of three (3) qualified sources. Quotations must be obtained by CPM Agents. Quotes obtained from Requestors will result in disqualification of the quote. The small purchase procurement shall be awarded to the lowest responsive and responsible quoter.
- E. The CPM Agent shall determine, in writing, by performing a price analysis, that the quote is fair and reasonable.
- F. The CPM Agent shall establish and maintain records of price quotations and include the record in the purchase file. The records shall consist of quotations received.

#### **11.3 Purchase Card Program**

CPM will maintain a Purchase Card Program in order to allow MARTA to establish a more efficient, cost-effective method of purchasing and payment for small dollar transactions. Departments are encouraged to participate in this Program to procure and pay for micro-purchases in accordance with MARTA procedures. Please refer to MARTA's Purchase Card Policy.

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

- A. A QPL is a listing of products that have been tested and found to satisfy all of the specified requirements. It may be developed when testing or examination of the supplies or construction prior to issuance of the solicitation is desirable or necessary in order to best satisfy MARTA's requirements. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing or examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even

though not solicited, may offer its products for consideration. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements. Except as otherwise provided by law or regulation, information provided by the supplier will be kept confidential when requested in writing by the supplier. However, test results used in formulating qualified products lists shall be made public but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

#### B. Product Types Eligible for the QPL

1. In order to update and maintain an efficient QPL, the following procedures shall be implemented:
  - a. CPM shall determine specific item(s) that, for reasons of efficiency, economy, compatibility, maintenance reliability or safety, need to be standardized.
  - b. A specific written record for each item stating the necessity for establishing the QPL shall be kept by CPM; and
  - c. A written record shall be kept by CPM, which details the requirements that shall be met for a product to become qualified and the procedures that must be followed.
2. The QPL shall be reviewed no less than two times per year. The purpose of this review is to evaluate additions or deletions from the QPL.
3. A notice prepared by the CPM Agent shall be published by MARTA at least once a year on its website:
  - a. That advertises the existence of, and all additions, to the QPL;
  - b. States that the QPL is available for public inspection;
  - c. Specifies the title and address of MARTA's office which may be contacted in regard to the procedure for compilation of the QPL and for information as to when products may be submitted for pre-qualification;
  - d. Lists all QPL items by generic descriptions; and
  - e. Lists prospective purchase quantities forecast for future requirements for each item.

C. Each Requestor is responsible for submitting to CPM, required information for each item to be placed on the QPL such as stock number description or specification (preferable generic rather than brand name), previously approved products, estimated annual requirements for the item and the reason the addition of the item to the QPL is necessary. Requestors are also responsible for requesting any deletions from the QPL should item(s) no longer be needed, or if Contractor(s) no longer offer a product which has been qualified and for ensuring that listings they have requested are accurate.

D. CPM is responsible for maintaining the QPL, (e.g., adding and deleting items as requested and providing the Requestor with copies of the QPL) on a bi-annual basis. Items will be carried on the QPL for two years after which the items will be deleted unless renewed by the Requestor.

## **Chapter 12**

### **Non-Competitive and Emergency Procurements**

#### **12.0 General**

Procurement of supplies and services, without competition, may be authorized under limited conditions, and subject to written justification documenting the conditions which preclude competition. The need for a non-competitive procurement is recognized when MARTA's interests are best served.

#### **12.1 Exceptions to Competitive Solicitation Requirements**

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

These include:

- I. Emergencies;
- II. Sole/Single Source; and
- III. Purchase made from existing contracts with the Federal or State government.

#### **12.2 Non-Competitive Procurements**

A. Non-competitive procurements are accomplished through acceptance of a price proposal from a Contractor.

B. If after a competitive solicitation, competition is determined inadequate because no responsive or responsible bids/proposals are received by the Authority, the Authority may negotiate with a Contractor. All negotiations must be conducted through the CPM Agent and the Department of Internal Audit must perform a cost/price analysis if the value is over the small purchase threshold. In all other cases, the CPM Agent shall perform the cost/price analysis, see Chapter 17.

C. A contract amendment that is a major deviation from the scope of the original contract is considered a cardinal change and must be justified in writing and conducted as a single source procurement.

#### **12.3 Non-Competitive Procurement Procedure**

A. The CPM Agent shall take reasonable steps to avoid using non-competitive procurements except in circumstances that comply with all appropriate laws, rules and regulations. The CPM Agent shall take action whenever possible, to avoid the need to continue to procure the same supply, service, or construction without competition. The Requestor shall assist by identifying requirements in their annual procurement plan.

B. In the case of an emergency, as defined in this Chapter, a non-competitive procurement may be used if a legitimate emergency exists.

C. Non-competitive procurements shall not be justified on the basis of any of the following circumstances:

- 1. The lack of adequate advance planning for the procurement of the required commodities, services, or other items;
- 2. Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- 3. Pending expiration of budget authority.

D. The CPM Agent shall ensure that each sole/single source procurement is reviewed and approved by the Department of Legal Services.

E. The CPM Agent shall not be required to advertise a solicitation for a procurement made on a non-competitive basis.



F. The CPM Agent shall send a Request for Price Proposal (RFPP) to a Contractor for non-competitive procurements.

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

H. The CPM Agent shall forward to the Contractor a Form of Contract and all required forms to be filled out, including the Price Proposal Form, for Contractor's review. The Contractor shall send back its response to the CPM Agent. Negotiations shall be conducted by the CPM Agent, with the Department of Legal Service, and the Requestor, until a contract is finalized between the parties.

#### **12.4 Sole/Single Source**

A. The Requestor shall make every effort to limit the use of sole/single source procurements.

B. When determining whether there is only one (1) source for the requirement, the Requestor shall consider whether there is a reasonable basis to conclude that MARTA's minimum needs can only be satisfied by the supplies or services proposed to be procured, and whether the proposed sole/single source Contractor is the only source capable of providing the required supplies or services.

C. If the reason for making a procurement on a sole/single source basis is based on the particular source's ownership or control of limited rights in data, patent rights, copyrights, or trade secrets applicable to the required supplies or services, the CPM Agent shall require that the written findings clearly demonstrate the need for the specific supplies or services, and that one (1) of the following applies:

1. The requirements cannot be modified to allow procurement by competitive sealed bids or competitive negotiated proposals; or

2. It is in the best interest of MARTA (determined by the Head of CPM in writing) to meet its requirements through procurement of the specific supplies or services and that the proposed Contractor is the only source for the specific supply or service.

D. Based upon the advice of the Requestor, the Head of CPM may determine that sole/single source negotiations are justified for the procurement of specific makes and models of technical equipment and parts if one or more of the following requirements are met:

1. The specific technical equipment or parts are being procured for standardization purposes, and that standardization of the equipment or parts is in the best interest of MARTA;

2. The equipment or parts will be used to meet MARTA's requirements for replacement parts or additional units that are compatible with existing MARTA equipment;

3. The existing equipment for which the parts or additional units are being procured was obtained by MARTA through the use of competitive procurement procedures, or was obtained through a separately justified and approved sole source procurement;

4. No identical or compatible parts or equipment are available from any other source; and

5. Warranty will be voided, if specified parts are not used.

E. The CPM Agent shall document the selection of a sole/single source procurement and document the negotiations with the Contractor. Each sole/single source contract file shall include the following:

1. Specific identification of the procurement as sole/single source;

2. The nature or description of the proposed procurement;

3. A description of the requirement, including the estimated value or cost;

4. A specific citation to the applicable provision of this Manual that provide legal authority for negotiating the

procurement on a sole source basis;

5. An explanation of the unique nature of the procurement or other factors that qualify the requirement for sole/single source procurement;
6. An explanation of the proposed Contractor's unique qualifications, equipment, or other factors that qualify the proposed Contractor as a sole/single source for the procurement;
7. A description of the market survey conducted and the results, or a statement of the reasons why a market survey was not conducted, and a list of the potential sources contacted by the Requestor;
8. Any other pertinent facts, reasons, or documents supporting the use of a sole/single source procurement; and
9. A sole/single source memorandum signed by the Requestor and the Department of Legal Services.

## **12.5 Emergency Procurements**

- A. Competitive bidding requirements may be waived if it is determined in writing by the General Manager/CEO that an emergency directly and immediately affecting customer service or public health, safety or welfare requires immediate delivery of supplies, materials, equipment or services; provided, however, that a record explaining the emergency shall be submitted to the Board in accordance with the MARTA Act, at its next regular meeting and thereafter kept on file.
- B. For purposes of an emergency procurement, an "emergency condition", is a situation (e.g., flood, epidemic, riot, or catastrophic equipment failure), which creates an immediate threat to the public health, welfare, or safety. The existence of the emergency condition creates an immediate need for supplies, services, equipment or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:
  1. The health or safety of any person;
  2. The preservation or protection of property; or
  3. The continuation of necessary MARTA functions.
- C. The emergency procurement of supplies or services shall be limited to quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.
- D. If a long-term requirement for the supplies, services, or construction is anticipated, the Head of CPM may require the Requestor to initiate a separate non-emergency procurement action at the same time that the emergency procurement is made.
- E. A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless a limited number of additional commodities, services, or other items are needed to fill an ongoing emergency requirement until regular procurement action procedures initiated under other Chapters in this Manual can be completed.
- F. When an emergency procurement is proposed, the Department Head of the Requestor shall prepare and submit a written request for the emergency procurement to the General Manager/CEO stating the basis for, or condition causing the emergency, the items or services or purchases required, and the name of a recommended Contractor.
  1. The General Manager/CEO shall approve or disapprove the procurement request and, if approved, shall notify the Board in writing of the necessity for such action.
  2. The CPM Agent shall determine whether the same type of item or services requested is currently under order through any other procurement method. If such procurement is active, the CPM Agent shall contact the Contractor and ascertain whether or not adjustments in quantities, delivery, or other performance requirements may be made to accommodate the emergency.
- G. The CPM Agent shall ensure that each emergency procurement contract file shall include the following:

1. Specific identification of the document as an emergency procurement finding;
2. The nature or description of the proposed procurement action;
3. The written authorized emergency declaration from the General Manager/CEP that provides legal authority for negotiating the emergency procurement;
4. A description of the emergency, including the nature of the threat to the public health, welfare, or safety, and the nature of the harm that the public might suffer if the requirement were not met by emergency procurement;
5. A description of the requirement, including the estimated value or cost;
6. A description of the efforts made to ensure that proposals or offers are received from as many potential sources as possible under the circumstances, or a sole source justification in accordance with the provisions of this Manual; and
7. Any other pertinent facts or reasons supporting the procurement on an emergency basis.

H. CPM Agent may use a letter to solicit proposals for an emergency procurement. A letter request shall only contain the data and information necessary for providing a proposal.

## **12.6 State/Local Government Purchasing Schedules**

A. The Authority may purchase utilizing a Federal General Services Administration or the State of Georgia contract. The initial contract term cannot exceed the term of the contract in which the Authority is purchasing from.

B. When obtaining property or services in this manner, the Authority must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included. When buying from these schedules, the Authority should obtain Buy America certification from the Contractor before issuing a Purchase Order. The Authority must also determine that the State contracts were awarded with full and open competition and were not subject to geographical preferences (e.g., giving in-state vendors a bidding preference - as some states have such practices that are prohibited by FTA).

C. MARTA staff must inform the Board of Directors of their intention to utilize a Federal General Services Administration or a State of Georgia contract at least one (1) committee cycle prior to the resolution being approved by the full Board of Directors.

## **12.7 Product Demonstrations**

A Requestor must submit a request to the Head of CPM for approval of a product demonstration for new technology in materials, services, and information technology. Such request shall detail the proposed product demonstration as part of the solicitation, the potential use/impact for the Authority, and the anticipated term of the product demonstration.

B. Upon review of the request, the Head of CPM in consultation with the Department of Legal Services may authorize a product demonstration with Contractors or prospective Contractors for the purpose of testing and evaluating new technology provided that such product demonstration is part of an open procurement and meets the following requirements:

1. are for a period not to exceed three (3) months from the initiation of demonstration, unless an initial term or extension beyond initial term is approved by the Head of CPM;
2. do not grant any exclusive rights to the Contractor, nor provide any in-kind, or advertising commitments by MARTA;
3. provide for appropriate indemnification of MARTA;

4. provide MARTA with ownership or joint ownership of any data generated during the testing and observation period;
5. provide for the return of any equipment, hardware, software licenses, or other tangible personal property used for the product demonstration;
6. are terminable at will by MARTA;
7. are free to MARTA;
8. are in adherence with all policies of MARTA;
9. projects that impact enterprise information technology resources must also be approved by the AGM of Information Technology and the AGM of Cyber Security; and
10. the project may not be used as a justification for a single/sole source procurement.

C. Each product demonstration must be established by a Contract that shall be subject to review and approval by the Department of Legal Services.

## **Chapter 13**

### **Surplus Property Sales**

#### **13.0 General**

This Chapter outlines MARTA's procedures for the disposal of surplus and obsolete property. This Chapter shall apply to all surplus property including but not limited to inactive stock and excess, obsolete, worn-out, discarded, scrap, recyclables, construction remnants or otherwise unusable materials, supplies and equipment.

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

An independent estimate or appraisal will be performed.

#### **13.1 Procedure**

A. Upon written determination by any Requestor that such MARTA property is no longer needed, CPM will consider the following avenues of disposition:

1. Alternative use within MARTA;
2. Sale to outside companies;
3. On-line auctioning; or
4. Auctioneer services (vehicles).

B. The CPM Agent shall consult with the Department of Grants concerning the disposition of property which may have any federal interest. Any property that has a federal interest, the FTA rules must be strictly observed.

C. The CPM Agent shall obtain approval from all required and/or appropriate departments prior to final disposition.

#### **13.2 Sales Process/Bidding Requirements**

A. Informal Bid. Formal public bids are not required where the estimated value of an item or aggregate of like items of MARTA property is less than \$200,000. Such sales may be made by informal bid. Informal bids are written quotations which permit prices and other items to be compared. The Head of CPM shall determine if a formal or informal solicitation is used for MARTA property under \$200,000.

B. Formal Bid. A formal bid is one submitted by the Contractor pursuant to the following procedure and shall apply to all property and surplus sales \$200,000 or more.

1. Notice of the sale shall be published in accordance with the MARTA Act.
2. The CPM Agent shall email notice of the sale to all potential buyers who have indicated their interest in purchasing property of the kind being sold.
3. Sale will be made by sealed bids to be opened in public and read aloud. Bids shall be tabulated, and the Requestor shall make a recommendation thereon. These recommendations will be in writing and will include documentation indicating the highest responsible and responsive Contractor. A record of all bids shall be kept on file.
4. Notice of Minimum Bid Requirement

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

##### **5. Employee Sales**

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

##### **6. Active Inventory Items**

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

### **13.3 Donations**

The donation of any bus, rail car, material, equipment, or non-revenue vehicle to a private organization is not permitted. However, MARTA may donate to Georgia public agencies, other transit agencies, or other eligible non-profit organizations (i.e., those described in the Internal Revenue Code § 501(c)(3)).

### **13.4 Sales Transactions**

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

### **13.5 Payment/Pick-up**

Upon receiving payment, the CPM Agent shall forward it to MARTA's Department of Finance. A copy of the check will be maintained in the procurement file. Upon deposit of funds, the CPM Agent shall arrange pick up of the surplus property.

### **13.6 Report of Sales**

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

## **Chapter 14**

### **Construction Contracts**

#### **14.0 General**

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

#### **14.1 Construction or Installation Contracts**

- A. Contracts for the construction, reconstruction, or improvement of any facility when the expenditure is above the small purchase threshold shall follow the IFB process in Chapter 7.
- B. Where applicable, Requestors shall ensure that technical references in specifications conform to widely recognized standards for specifications promulgated by governments and the best industry standards and conform to MARTA's criteria.
- C. Specifications for bids shall not be drafted (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product or service by specific brand or trade name unless the specification lists "or an approved equal" so that Contractors may furnish any equal material, product, or service. In those cases, involving a unique or novel product or when only one brand or trade name is known to MARTA, the specifications may list the name so long as the Department of Legal Services has approved a Sole/Single Source Justification.
- D. When "brand name or an approved equal" descriptions are necessary, specifications shall clearly identify and describe the particular physical, functional, or other characteristics of the brand name items (including available warranties) that are considered essential to satisfying the requirement to allow consideration of alternatives.
- E. Each solicitation shall state the scope of the construction requirement in terms of physical characteristics.
- F. The technical provisions of construction specifications shall be in sufficient detail so that when used with the applicable drawings and the specifications and standards incorporated by reference, bids/proposals can be prepared on a fair and competitive basis. The documents shall include nationally recognized industry standards and MARTA's standards.
- G. The Authority should use firm fixed unit price or guaranteed maximum price contracts to procure construction. A contract may be priced on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit-price basis (when a unit price is paid for a specified quantity of work units), or a combination of both methods.

#### **14.2 Value Engineering**

Value Engineering (VE) is defined as an organized effort to analyze the function of systems, equipment, facilities, procedures and supplies by a multi-disciplined group for the purpose of achieving the required function at the lowest total cost. Considerations are given to effective ownership consistent with requirements for performance, reliability, quality, maintainability and safety.

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

#### **14.3 Design-Build Contracts**

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

MARTA may procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act or as a Request for Proposal.

MARTA may also use Construction Manager/General Contractor (CM/GC) or Construction Manager at Risk (CMAR), Design-Build-Operate and Maintain (DBOM), or Joint Development, descriptions of which can be found in the FTA Best Practices Procurement Manual.

#### **14.4 Resident Engineer's Manual**

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



## **Chapter 15**

### **Contract Management and Administration**

#### **15.0 General**

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

#### **15.1 Contract Execution by MARTA**

After contract execution and approval by the Head of CPM, the CPM Agent will allow time for submission of required Contract Documents before issuing a NTP, ANTP, or SNTF.

#### **15.2 Purchase Orders (PO)**

A. Each PO shall be issued through Oracle by the CPM Agent. The PO will include the terms and conditions associated with the contract. The PO shall state the PO number is to be listed on invoices in order for invoices to be processed. Failure by the Contractor to include the PO number will result in rejection and return of the invoice unpaid. The Contractor shall acknowledge that any goods or services provided outside the request of the PO are at the Contractor's risk solely and will not be paid or returned by MARTA.

B. Each PO shall include any trade and prompt payment discounts that are offered.

C. Each PO shall specify the quantity of supplies or services ordered.

D. When applicable, a PO shall provide that inspection and acceptance will be at destination. When inspection and acceptance are to be performed at destination, advance copies of the PO shall be furnished to the point of receipt. The designated MARTA officials immediately, upon receipt and acceptance of materials, shall complete receiving reports.

E. Each PO shall contain a definite calendar date by which delivery of supplies or performance of services is required.

##### **F. Modification of Purchase Orders**

1. A PO may be modified by the CPM Agent to align with the Contract.

2. The CPM Agent shall obtain a Contractor's written acceptance of a PO modification if the written acceptance is determined by the CPM Agent to be necessary to ensure the Contractor's compliance with the PO as revised.

##### **G. Termination and Cancellation of Purchase Orders**

1. If a contract or order needs to be cancelled, the CPM Agent shall process a termination action and cancel the PO.

2. If a PO has not been issued to a Contractor, the CPM Agent shall notify the Contractor in writing, that the PO has been canceled.

3. If the Contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the PO, no further action shall be required and the PO shall be considered cancelled.

4. If the Contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the PO, the CPM Agent shall treat the action as a termination in accordance with the provisions found in this Chapter.

#### **15.3 CPM Agents' Responsibilities**

The CPM Agent shall conduct all contract administration functions. These functions include Contractor correspondence, issuance of modifications/change order, exercise of options, and maintaining the contract file documentation. A written Record of Procurement History requires the following items shall be documented in each

file:

1. Rationale for the method of procurement,
2. Selection of Contract type,
3. Reasons for Contractor selection or rejection, and
4. The basis for the contract price.

#### **15.4 Requestor's Responsibilities**

The Requestor will perform the functions listed below:

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

#### **15.5 Post-Award Conference (Kick-Off Meeting)**

- A. At the post-award conference, CPM Agent shall be responsible for the following:
  1. Establishing the time and place of the conference;
  2. Preparing the agenda, when necessary;
  3. Notifying appropriate MARTA representatives;
  4. Notifying appropriate Contractor representatives;
  5. Designating or acting as chairperson;
  6. Conducting a preliminary meeting of MARTA personnel, if necessary; and
  7. Preparing a summary report of the conference.
- B. The Post Award Conference meeting provides key members of both organizations an opportunity to establish lines of authority and communication and identify their respective duties and responsibilities. Discussions may also cover specific project plans, specifications, safety requirements, unusual conditions, and schedules of completion. A thorough understanding of all features of the contract will promote better relations and usually improve construction operations.
- C. Any changes to the contract that result from the post-award conference shall be made only by a formal contract modification referencing the applicable terms of the contract. See Section 15.9 below.
- D. The CPM Agent shall prepare a summary report of the post-award conference.
- E. The CPM Agent shall include in the summary report all information and guidance provided to the Contractor.
- F. The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.

## **15.6 Contract Distribution**

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

## **15.7 Contract Files**

- A. The CPM Agent shall establish and maintain a file containing the records of all contractual actions pertinent to the administration of that contract.
- B. The documentation in each contract file shall be sufficient to constitute a complete history of the transaction for the following purposes:
  - 1. Providing a complete background as a basis for informed decisions at each step of the process;
  - 2. Supporting actions taken;
  - 3. Providing information for reviews and investigations; and
  - 4. Furnishing essential facts in the event of litigation.
- C. Document actions substantiating and reflecting contract payments.
- D. The Project Manager/Requestor for each project must ensure that they forward all documents pertaining to a contract action to the CPM Agent for inclusion in the official contract file.
- E. An up-to-date project schedule shall be maintained.
- F. The Project Manager/Requestor will maintain the technical files and forward copies to the CPM Agent.
- G. Safety and Quality Assurance deliverables shall be maintained in the Contract file.
- H. All Contractors performing Safety functions must meet Safety and Quality Assurance minimum requirements throughout the duration of the Contract period.

## **15.8 Records Management and Records Retention**

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

## **15.9 Contract Modifications and Change Orders**

- A. Only the authorized representative acting within the scope of the General Manager/CEO's delegated contract authority is authorized to execute a contract modification or change orders on behalf of MARTA. Other MARTA personnel shall not do any of the following:
  - 1. Execute Contract Modifications or Change Orders;
  - 2. Act in a manner that causes a Contractor to believe that they are authorized to bind MARTA; or
  - 3. Direct or encourage a Contractor to perform work that is not part of the scope under the current contract or Work Order.
- B. No cost time extensions may be approved by the Head of CPM. All other contract modifications or change orders must be reviewed and approved by the Department of Legal Services.
- C. A Contract modification or Change Orders may be either bilateral or unilateral. All changes must be within the scope of the original scope/specifications. Contractors shall not be allowed to make unilateral changes in a Contract.
- D. A Contract Modification or Change Order may not include a larger scope, greater quantities, or options beyond the original contract. A change in contract work (property, services, or quantities) that causes a major deviation from the original purpose of the work or the intended method of achievement or causes a revision to the contract work that the Contractor is required to perform different work from that described in the original contract, is a cardinal change. A change within the scope of the contract (in-scope change) is not a cardinal change.

- E. The CPM Agent may issue unilateral changes, with the approval of the Department of Legal Services to:
1. Make administrative changes, such as correction of typographical errors or funding information; or
  2. Issue contract changes where negotiated settlements are not realized.
- F. A contract modification or change order will not be executed that causes or will cause an increase in the funding level of the contract without the Requestor having first obtained available funding.
- G. A five (5%) percent General Manager/CEO's contingency is available for each Board approved contract. The General Manager/CEO contingency must be approved by the General Manager/CEO.
- H. MARTA shall not be responsible for any costs incurred by a Contractor for any additional work or other actions by a Contractor outside the scope of the written contract and written contract modifications or change orders signed by MARTA.
- I. Negotiation of contract modifications or change orders shall be conducted by Project Managers, Resident Engineers, Requestors, CPM Agents and the Department of Legal Services.
- J. Change Orders
1. The following procedures for change orders shall be used:
    - a. When a change order is proposed, the CPM Agent shall be notified and shall determine whether a change order is required. CPM shall approve the requested change after consulting with the appropriate technical advisers. The CPM Agent shall, if necessary, prepare the proposed contract change order with the concurrence of the Department of Legal Services.
    - b. The CPM Agent shall require the Contractor to submit cost or pricing data for the proposed change, and shall perform a price analysis or request a price/cost analysis from the Department of Internal Audit if the change is \$200,000 or above.
  2. After the change order is fully executed, the Contractor shall continue performance of the contract as changed. In cost-reimbursement contracts, the Contractor shall not be obligated to continue performance or incur costs beyond the limits established in the contract.
  3. If a significant cost increase could result from a contract change, and time does not permit negotiation of a price, a not-to-exceed price shall be negotiated in an attempt to reach a bilateral agreement.
  4. For construction contracts, a written memorandum shall be prepared to record the results of negotiations, if any. The summary record of negotiations shall set forth the understanding between the parties on major issues (e.g., price, delivery, performance time, payment terms) and any special provisions to be included in the contract and shall be used as a guide for the Department of Legal Services and CPM to draft a written amendment to the contract. The memorandum shall explain the differences, if any, between the negotiated price adjustment and the pre-negotiation position. When there are numerous differences involving significant sums, a tabular format should be used to show the price differences and the differences must be explained in the narrative accompanying the tabulation.
  5. A change order, which reflects an equitable adjustment in the contract price, is subject to review in accordance with the dollar value of the adjustment. When the price in the contract modification increases, the level of review required for approval of the modification shall be determined based on the net value.
  6. If a contract change increase exceeds the General Manager's authority/contingency and the change is more than \$200,000 in a single transaction or an audit is required by federal, state or local laws, an audit is to be conducted by the Department of Internal Audit.

7. A change order will be completed for each contract change.

#### **15.10 Authorization for Contract Changes**

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

#### **15.11 Suspension of Work/Stop Order**

A. Situations may occur during Contract performance that causes the Requestor to order a suspension of work, or a work stoppage. Prior notice shall be provided to the CPM Agent and the Department of Legal Services for all work stoppages.

B. The Requestor may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of the Contract for the period of time that the Requestor determines appropriate in accordance with the Contract terms.

C. The Requestor may, at any time, by written order require the Contractor, to stop all, or any part, of the work called for under the Contract. The initial stop work order commences the day it is received by the Contractor and may be unilaterally issued for a time period. The stop work can be renewed by mutual agreement with the Contractor, and the Requestor for additional time. The Requestor shall be responsible for notifying the CPM Agent prior to any changes related to length of the stop work order.

#### **15.12 Options**

A. A Requestor may include an option in a contract when it is in the best interest of MARTA to include in the contract a unilateral right by which MARTA may elect to purchase additional supplies, services or extend the term of the contract.

##### **B. Solicitation of Contracts with Options**

1. If a contract provides for an option, the solicitation shall include appropriate option clauses, approved by the Department of Legal Services.
2. Each contract shall state the period within which an option may be exercised.
3. Exercise of the option is always at the Authority's discretion only, and not subject to agreement or acceptance by the Contractor.
4. In order to meet the requirements of this Manual for full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified from the terms of the base contract. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole/single source procurement and shall comply with the non-competitive procurement procedures in Chapter 12.
5. In soliciting bids/proposals/quotes that contain option pricing, MARTA shall evaluate the bids/proposals/quotes for any option quantities or periods contained in the solicitation as a part of the total award.

##### **C. Exercise of Options**

1. Before exercising an option, the CPM Agent shall make written findings that the exercise will be in accordance with the terms of the option and the conditions of the requirements set forth below. Such documentation shall be made part of the official contract file.
2. A CPM Agent shall exercise an option only after determining the following:
  - a) That sufficient budget authority is available;
  - b) That the requirement covered by the option fulfills an existing MARTA need; and
  - c) That the exercise of the option will be the most advantageous method of fulfilling MARTA's

need, when price and other factors are considered.

3. The CPM Agent and Requestor, after considering price and other factors, shall make the determination in the above Section on the basis of one of the following:
  - a) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option; provided, that if it is anticipated that the best price available is the option price (or that this is the more advantageous offer), the CPM Agent shall not use this method to test the market;
  - b) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the most advantageous offer; or
  - c) The short time between the award of the contract containing the option and the exercise of the option indicates that the option price is the lowest price obtainable or the most advantageous.
4. When determining whether to exercise an option, the CPM Agent shall take into account the need for continuity of operations and the potential cost of disrupting operations.
5. The exercise letter shall cite the option provision as authority for the action and should be issued within the time period specified in the contract.
6. CPM shall make the final determination regarding exercise of an option.

#### D. Exercise of Options Early

If a Requestor elects to exercise a time renewal option before the expiration of the then current term to utilize option year funds, it shall result in the loss of time in the then current term. For example, a contract has three (3) base term years and two (2) one (1) year option term periods. The base term began on July 1, 2024. In September of 2025, the Requestor has run out of funds to cover work in the remaining base term (September 2025 to June 30, 2027) and elects to exercise option year 1 early on September 30, 2025. The expiration of the contract would now be September 29, 2026, with one remaining option year.

#### E. Lease with Purchase Option

A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, or the leased supply facility is the only supply or the facility that can meet MARTA's requirements, as determined in writing by the CPM Agent. Before exercising such an option, the CPM Agent shall:

1. investigate alternative means of procuring comparable supplies or facilities; and
2. compare estimated costs and benefits associated with the alternative means and the exercise of such option, for example, the benefit of buying new state-of-the-art equipment compared to the estimated, initial savings associated with the exercise of a purchase option.

#### F. Five Year Contract Limitation on Rolling Stock

MARTA may enter into a multi-year contract for rolling stock or replacement parts with an option not exceeding a total of five (5) years to buy the additional rolling stock or replacement parts.

### 15.13 Termination

#### A. Terminations for Convenience of MARTA:

1. The Termination for Convenience clause is included in all of MARTA's contracts.
2. MARTA contracts will be terminated for convenience only when this is determined to be in the best interest of MARTA. The Requestor's determination shall be in writing, signed by the Department Head, and approved by the Department of Legal Services.
3. Formal written notice to the Contractor is necessary to terminate a contract for convenience. Such notice

will state that the contract is being terminated pursuant to the Termination for Convenience provision of the contract, the effective date, the extent of termination, and instructions to the Contractor to cease performance under the contract.

**B. Terminations for Default:**

1. The Termination for Default clause is included in all of MARTA's Contracts.
2. If a contract is terminated for default, MARTA may take over and complete the work or cause it to be completed, and the Contractor and its sureties, if any, shall be liable to MARTA for any increased costs caused thereby if in accordance with the contract terms. The Contractor and its sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages, if liquidated damages are provided in the contract, and/or for actual damages per the contract. See Section 15.15.
3. Where the Contractor or surety does not complete performance of the contract, the Authority may complete the performance of work by awarding a new contract based on the same plans and specifications if in accordance with the contract terms. Such award may be the result of competitive bidding or negotiation; whichever procedure is most appropriate and in MARTA's best interests under the circumstances. The CPM Agent must use reasonable diligence to obtain the lowest price available for completion.
4. If the CPM Agent, the Requestor, and Department of Legal Services determine that termination is not in the best interest of MARTA although the Contractor is in default, the CPM Agent may permit the Contractor to continue the work, and the Contractor and its sureties shall be liable to MARTA for damages specified in the contract.

**15.14 Additional Contract Compliance**

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

**15.15 Liquidated Damages**

- A. A liquidated damages clause may be used in a contract.
- B. A liquidated damages clause will not be enforced if it is inconsistent with Georgia law. A liquidated damages clause is enforceable only if it meets each of the following requirements: (1) the injury caused by the breach must be difficult or impossible of accurate estimation; (2) the parties must intend to provide for damages rather than for a penalty; and (3) the sum stipulated must be a reasonable pre-estimate of the probable loss.
- C. For any proposal, the liquidated damages assessment must be at a specific rate per day for each day of overrun and must be specified in the contract. If different completion periods for separate parts or stages of work are

specified in the contract, different liquidated damages can be provided for failure to perform each part or stage of work. Any damages recovered must be credited to the project involved unless the FTA permits otherwise.

D. All liquidated damages require a justification memorandum from the Requestor which must be approved by the Department of Legal Services. The Requestor has the responsibility for providing the amount of liquidated damages and the supporting documentation. The Department of Legal Services shall ensure the proper contract terms are included in the contract.

#### **15.16 Post-Award Responsibilities**

The CPM Agent and Requestor will coordinate with the Contractor on the contract, subsequent to the issuance of the Notice to Proceed.

#### **15.17 Closeout of Contracts**

A. A completed contract is one which is both physically and administratively complete and in which all aspect of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. A contract is physically complete only after all articles and services called for under the contract, including such related items as operating and maintenance manuals, reports, spare parts, and exhibits, have been delivered to and accepted by MARTA, including those articles and services for which no specific compensation may have been stipulated. A contract is administratively complete when all payments have been made and administrative actions accomplished.

B. The CPM Agent is responsible for review of the contract file and obtaining all necessary documentation to ensure that: (1) all deliverables and/or services (including any reports) required under the contract have been received and accepted; (2) the terms and conditions of the contract have been complied with; (3) disposition of accountable property under the contract has been accomplished; (4) a final audit (cost type contracts), when appropriate, has been performed and all questioned costs have been resolved; (5) the final invoice for the contract has been paid; and (6) all necessary actions required to close the contract are completed and documented.

C. Files for all contracts shall be closed within three (3) months after the end of the month in which the CPM Agent receives evidence of physical completion, provided there are no on-going warranty, maintenance or service obligations even if no further payment by MARTA is contemplated.

D. Files for contracts requiring settlement of indirect cost rates shall be closed within six (6) months after the end of the month in which the CPM Agent receives evidence of physical completion or Board approval, if required, provided there are no on-going warranty, maintenance or service obligations even if no further payment by MARTA is contemplated.

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

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

#### **15.18 Performance Evaluation**

Upon completion of the Contractor's effort, a final evaluation report, in a narrative form, prepared by the Requestor, and/or project manager, will be sent to the CPM Agent to be used for future evaluations of the Contractor. The evaluation shall be completed no later than thirty (30) days after contract closeout.



## **Chapter 16**

### **Work Order Procedures**

#### **16.0 General**

This Chapter sets forth the steps required to initiate, review, execute and authorize payment of Work Orders.

#### **16.1 Role and Responsibility**

The Requestor is the subject matter expert for the Work Order, serves as the technical representative that has an identified need for a Work Order and initiates the Work Order. The Requestor prepares the Work Order Package and tracks it through the Approval process through execution.

#### **16.2 Work Order Process**

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

- Scope of work
- Independent Labor Hour Estimate (ILHE)
- Additional Cost Estimates, if any.

B. Each Work Order must include concurrence from the Chief of the Requestor.

C. Scope of Work

1. The scope of work should be as concise, specific, and detailed as appropriate so that the parties understand what is to be accomplished. The Work Order scope of work should clearly state the description of task activities; key milestone dates, deliverables and product acceptance criteria.

2. The basic elements of a Work Order scope of work include, but are not limited to:

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

D. Independent Labor Hour Estimate

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

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

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

## E. Contractor Selection Process

### 1. Selection Process

- a. In contracts made to multiple Contractors, MARTA will request proposals from the pre-qualified contractors based on the scope of work. The proposal shall include detailed description of all labor and expenses requested to complete the scope of work.
- b. The process for selection is based upon:
  - i. The proposal documents developed by the Requestor.
  - ii. Evaluation of submitted proposals.
  - iii. Determination of the best value to the Authority from the responsive Contractors.
  - iv. Negotiations with selected Contractor will be conducted by Requestor.
  - v. The Requestor will document the record of negotiations, and may request a best and final offer.
  - vi. Upon selecting the Contractor, the Work Order will be processed, and the CPM Agent shall route the Work Order for execution.

## F. Work Assignment

1. Approval of a direct unburdened labor rate that was not included in the contract will require a Rate Justification Form approved by Human Resources Compensation Division. The Rate Justification Form shall include, at a minimum, an individual's name, employer, education, years of experience, unique qualifications, and relevant tasks and/or deliverables.

## G. Restrictions

1. Work Order contracts should not include provisions that allow the Contractor(s) to receive the following benefits from MARTA:
  - a. Breeze Card
  - b. Laptop
  - c. iPad
  - d. Cell Phone
  - e. Paid Training or Conferences
  - f. Remote (off-site) Work
  - g. Commuting Costs
  - h. Paid Vacation
2. Any exceptions to the above listed restrictions must be justified and approved by MARTA. When reviewing and approving the Field Overhead Rate MARTA (and Contractor) shall take into consideration other costs and supplies provided by MARTA. MARTA will not reimburse commuting costs. An exception to the commuting reimbursement may be requested by Contractor submitting a justification detailing the unavailability of local resources. A Travel Authorization Form must be approved by the appropriate MARTA staff.
3. Travel on behalf of the Authority will be permitted. For example, only Contractor's employee travels to inspect a bus at a manufacturer's plant. Approved long distance travel costs will be reimbursed in accordance with established MARTA guidelines. Long distance travel costs include, but are not limited to; airfare, hotel, per diem, parking, and rental car.
4. Overtime must be approved by the Requestor prior to incurring any charges. Any approved overtime will be billed at the standard established hourly rate, subject to applicable law, without escalation.

### 16.3 Change Orders

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

B. The Requestor shall notify the Contractor of the request for a change order, provide the scope of work, and request a proposal for the change order. The Contractor's cost will be evaluated by the Requestor and negotiations may be conducted, if necessary. The CPM Agent will process the change order for execution.

### 16.4 Unauthorized Work

A. Any work undertaken without prior written consent is performed at the Contractor's sole risk and subject to non-payment of incurred costs. MARTA's Unauthorized Commitments Policy prohibits work without a fully executed Work Order or under an expired Work Order. Unexecuted Work Orders or permitting work to continue under an expired Work Order also constitutes unauthorized work.

### 16.5 Limited Notice to Proceed (LNTTP)

A. A Limited Notice to Proceed (LNTTP) may be issued should unforeseen circumstances occur involving a need to expedite or continue service. Approval of the LNTTP shall require the General Manager/CEO's approval. **Payment of invoices under a LNTTP shall not exceed the amount approved under the LNTTP. Any work undertaken in excess of an LNTTP without an executed Work Order is unauthorized work and shall be handled in accordance with Section 16.4 of this Chapter.**

### 16.6 Work Order Term

A. The period of performance for each Work Order shall be clearly identified in the Work Order. Funding for a Work Order will not automatically renew and must be in the approved fiscal year (FY) budget.

### 16.7 Fair and Reasonable Pricing

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

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

### 16.8 Invoice Processing

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

B. Contractor Responsibilities:

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

#### d. Expenses

4. Back-up documentation should include:
  - a. Signed timesheets (for prime and subcontractors, if any)
  - b. Subcontractors invoice (if any)
5. If there are any expenses, an expense report form shall be included which identifies the date of the expenditure, the category (reproduction, travel, lodging, etc.), and the amount. Detailed receipts and other supporting documentation for each expense item shall be attached to the expense report. Per diem, if applicable, should also be included on the expense report. Government/MARTA rates and rules shall apply.
6. A monthly Progress Report shall be included with the invoice and it shall detail project activities and percentages completed, as specified in the contract.

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

### 16.9 Invoice Review

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

B. The Requestor's review shall consist of the following:

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

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

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

### 16.10 Rejecting an Invoice

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

## **Chapter 17**

### **Cost and Price Analysis**

#### **17.0 General**

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

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

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

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

#### **17.1 Audit Support**

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

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

B. An audit shall not be required if:

1. A Contractor is acquired or merges with another entity; or
2. In the event of a claim or litigation settlement.
3. In the event that the unit price or hourly rates remain unchanged.

#### **17.2 Price Analysis**

A. Price analysis may be conducted by:

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

4. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements;
5. Comparison of proposed prices with independent MARTA cost estimates;
6. A value analysis; or
7. Any other reasonable basis such as rates found reasonable on recent pricing actions or the price analysis techniques contained in the FTA Best Practices Procurement Manual.

### **17.3 Cost Analysis**

A. Cost analysis is the review and evaluation of the separate cost elements and profit in a Contractor's proposal or bid (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. All cost analysis are performed by the Department of Internal Audit. A cost analysis is required when:

1. Using a cost-reimbursement contract to determine probable cost;
2. In sole/single source contracts, including change orders above the General Manager/CEO's authority;
3. A single bid/proposal is received;
4. The price analysis is insufficient in fixed-price contracts to determine price reasonableness; or
5. The Auditor determines that a cost realism analysis is necessary to avoid unduly low prices.

B. Cost principles for evaluation of proposed costs shall be consistent with Federal cost principles.

## **Chapter 18**

### **Debarment/Suspension**

#### **18.0 General**

- A. Contractors debarred, suspended or proposed for debarment are excluded from receiving contracts, and MARTA shall not solicit offers from, award contracts to, or consent to subcontracts with these Contractors. The CPM Agent shall ensure that no Contractor is on the List of Suspended or Debarred Contractors prior to award. The CPM Agent shall check the federal and state lists.
- B. Contractors included on the Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. MARTA shall not solicit offers from, award contracts to, or consent to subcontracts with these Contractors under those conditions and for that period.
- C. Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.
- D. Solicitation responses received from any Contractor listed in the Parties Excluded from Procurement Programs shall be deemed non-responsible.
- E. Proposals, quotations, or offers received from any listed Contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility. If the period of ineligibility expires or is terminated prior to award, the Requestor may, but is not required to, consider such proposals, quotations or offers.
- F. MARTA shall not review or otherwise extend the duration of current contracts, or consent to subcontracts, with Contractors debarred, suspended, or proposed for debarment. The CPM Agent shall prior to issuing any contract changes, check to verify if a Contractor is on the List of Suspended or Debarred Contractors.
- G. MARTA shall not consent to a Contractor who is debarred, suspended, or proposed for debarment being permitted to function as a joint venture, partner or subcontractor.

#### **18.1 Certification Regarding Debarment or Ineligibility**

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

## **Chapter 19**

### **Bonds, Other Securities, and Insurance**

#### **19.0 General**

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

#### **19.1 Securities**

- A. The Department of Legal Services and Office of Risk Management shall determine whether security of any type would be in the best interest of MARTA in all contracts. Risk Management and/or the Department of Legal Services may decide against requiring a bid security on a case-by-case basis should circumstances indicate that the benefits of not requiring a bid security outweigh the risks.
- B. The Bid Security for a construction contract is typically an amount equal to at least five percent (5%) of the amount of the bid or price proposal; however, the Department of Legal Services shall make the final determination. Bid Security for non-construction contracts is typically not required. For all FTA funded construction contracts, a bid security shall be required.
- C. When a Bid Security is required, the solicitation shall contain the following:
  - 1. A statement that Bid Security is required;
  - 2. Notice that the Bid Security will remain in effect for as long as the bid or proposal is required to remain effective; and
  - 3. Sufficient information to allow Contractors to determine the amount of the required security.
- D. No action shall be taken against the bid security of a Contractor that is permitted to withdraw a bid or proposal prior to award due to a mistake in the bid or proposal, in accordance with the applicable provisions of this Manual.

#### **19.2 Noncompliance with Solicitation Security Requirements**

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

#### **19.3 Performance and Payment Bonds**

- A. Risk Management and/or the Department of Legal Services may require a Contractor to furnish a payment and/or performance bond or other security for any construction or non-construction contract, regardless of amount, when Risk Management and/or the Department of Legal Services determines that the security is necessary or advisable to protect the interests of MARTA.



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

#### **19.4 Surety Bonds and Other Securities**

- A. A new surety bond covering all or part of the obligation on a security previously approved may be substituted for the original security, if approved by Risk Management.
- B. When a new surety bond is approved, Risk Management shall notify the principal and surety on the original bond of the effective date of the new bond.
- C. When a payment security has been provided, the CPM Agent shall, upon request, furnish a copy of the bond to any subcontractor or Contractor who has furnished or been requested to furnish labor or material for a contract. In addition, general information concerning the work progress, payments, and the estimated percentage of completion may be furnished to persons who have provided labor or material and have not been paid.
- D. If after completion of the work of a contract requiring payment and performance security, MARTA receives written notice from the surety regarding the Contractor's failure to meet its obligation to its subcontractors or Contractors, the CPM Agent and the Requestor shall withhold final payment. The CPM Agent and the Requestor shall authorize final payment upon agreement between the Contractor and surety or upon a judicial or other binding determination of the rights of the parties.

#### **19.5 Sureties**

- A. Each surety shall be a company authorized to do business in the State of Georgia.
- B. Risk Management shall determine the acceptability of all sureties.

#### **19.6 Insurance Requirements**

- A. Contractors providing goods and services shall be required to carry sufficient general liability insurance, among others specified by Risk Management, coverage to protect MARTA from claims for bodily injury (including death), personal injury and property damage. Insurance may also be required for damage to MARTA property and for errors and omissions in the provision of professional services and any other types of insurance coverage that may be required to protect the Authority's interests due to the exposure inherent in the goods or services for which a contract is being let.
- B. Risk Management shall have responsibility for reviewing all procurement actions exceeding the micro purchase threshold and other procurements, as requested, and determining the insurance types and limits. The CPM Agent shall receive concurrence from Risk Management on all contracts and procurements that require work on MARTA's property.
- D. Contractors shall comply with all insurance requirements.

## **Chapter 20**

### **Contract Payment and Funding**

#### **20.0 Advance Payments**

MARTA shall not make advance payments on any Contract, except for Contracts for the payment of rents, insurance premiums, and subscriptions to publications. For federally funded Contracts, advance payment is not authorized until such time as the Contractor incurs costs in connection with a project.

#### **20.1 Contract Payments**

MARTA shall compensate its Contractors for their costs incurred to perform work in accordance with the Contract. Except for approved changes to the Contract, the Contractor will not be reimbursed for costs incurred in excess of the Firm-Fixed-Unit Price, Total Estimated Cost and Fee, Time and Material amount, or Contract funding limitations specified. The Contractor shall submit invoices to MARTA and maintain auditable records.

Contract payments made under a requirements Contract, or an indefinite quantity contract shall be administered under each Work Order as if the Work Order constituted a separate contract.

MARTA shall make payments after receipt of an undisputed and properly submitted invoice from a Contractor pursuant to the Contract terms.

#### **20.2 Progress Payments**

Each Contract that contains a progress payment provision, will include a Progress Payment Schedule. The Schedule will list the deliverables agreed to between the Contractor and MARTA that are due at each scheduled contract milestone.

Progress Payments will consist of payment for the percentage of work completed on each deliverable that had not been previously included in a previous invoice. The percentage of work completed will be verified by MARTA.

1. For the purpose of making progress payments and determining the limitations on progress payments, the Requestor may use the following in determining the Contract price:
  - a. Under firm-fixed-unit price contracts, the contract price shall be the current Contract price plus any unpriced modifications for which funds have been obligated; or
  - b. If the contract is subject to economic price adjustment, the contract price shall be the initial price until modified;
2. The Requestor, the CPM Agent, and/or the Department of Finance shall not make progress payments or increase the Contract price beyond the funds obligated under the Contract.
3. The Requestor may provide for customary progress payments. Customary progress payments are based on costs incurred by the Contractor as work progresses under the contract. The Requestor may provide a customary progress payment if: (1) the Contractor will not be able to bill for delivery of products (or other performance milestones) for a substantial time (not less than four (4) months) after work must begin and during the pre-delivery period; and (2) the Contractor will make expenditures for contract performance that have a significant impact on the Contractor's working capital.
4. The Requestor shall not provide for progress payments if the Contract items are quick turnover types for which progress payments are not practical or customary commercial practice.

#### **20.3 Cost Reimbursable Contracts Cost Payments**

- A. MARTA shall make payments to its Contractors when requested as work progresses, but not more often than once per month. MARTA shall make payments in the amounts specified in the Contract.

#### **20.4 Contract Fee Payments**

- A. MARTA shall pay the Contractor a fee as provided in the Contract.

B. In the case of a Fixed Fee under a Cost Plus Fixed Fee contract, the Contractor will earn the fixed fee for the contract by meeting the milestones for deliverables. The Requestor shall review the Contract for the following terms (a) whether there is a prohibition against the Contractor earning a fixed fee for any portion of the work not completed and accepted by MARTA and (b) if there is a reduction in the fixed fee if the Contractor fails to meet the schedule and/or quality standards as required.

C. For Incentive Fee contracts, the Contractor will earn the target incentive fee for the contract by meeting the milestones for deliverables.

## **20.5 Limitation of Cost or Funds**

A. If a CPM Agent learns from the Requestor, Finance and/or the Department of Legal Services that a partially funded contract will receive no further funds, the CPM Agent shall promptly give the Contractor written notice of the decision not to provide funds.

B. The CPM Agent, upon learning that the Contractor is approaching the limit of the budget allocated and encumbered, shall promptly obtain information about funding and programming pertinent to the continuation of the Contract and shall notify the Contractor in writing of one (1) of the following:

1. That additional funding is available in a specified amount;
2. That the contract will not be further funded, and that the Contractor shall submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the Contract;
3. That the Contract will be terminated when funds have been expended fully; or
4. That MARTA is considering whether to allot additional funds or increase the estimated cost, that the Contractor is entitled by the Contract terms to stop work when the funding or cost limit is reached, and that any work beyond the funding or cost limit will be at the Contractor's risk.

## **20.6 Review or Audit of Contract Payments**

A. The CPM Agent shall include provisions, approved by the Department of Legal Services, giving MARTA the right to conduct post-payment reviews or audits at the discretion of the Requestor, including reviews or audits to determine the following:

1. Whether the contract payments are fairly supported by the value of work accomplished;
2. Whether the unpaid balance of the Contract price will be adequate to cover the anticipated cost of completion, or the Contractor has adequate resources to complete the Contract; and
3. Whether there is any reason to doubt the adequacy or reliability of the Contractor's accounting system, controls, or payment certification.

## **20.7 Suspension or Reduction of Progress Payments**

A. In a Contract that provides for progress payments, the CPM Agent shall include provisions, approved by the Department of Legal Services, which assert MARTA's right to reduce or suspend progress payments in the following circumstances:

1. If the Contractor fails to maintain an efficient and reliable accounting system and controls that are adequate for the proper administration of progress payments;
2. If the Requestor determines that Contract performance, including full liquidation of progress payments, is endangered by the Contractor's financial condition or by a failure to make progress on the performance of the Contract;
3. If the inventory allocated to the Contract exceeds reasonable requirements;
4. If the Contractor is delinquent in paying the costs of contract performance in the ordinary course of business;

5. If the un-liquidated progress payments exceed the fair value of undelivered work under the Contract; and
  6. If the sum of the total costs incurred under a contract plus the estimated costs to complete performance are likely to exceed the Contract price.
- B. Actions under this Section shall only be taken in accordance with the Contract terms and only after consultation with the Department of Legal Services of the following:
1. The CPM Agent gives notice to the Contractor of the intended action and provides an opportunity for discussion; and
  2. The Requestor evaluates the effect of the action on the Contractor's operations, based on the Contractor's financial condition, projected case requirement, and the existing or available credit arrangements.
- C. The CPM Agent shall take immediate action only if warranted by circumstances such as overpayments or unsatisfactory Contract performance and consult with the Requestor for remedial action.
- D. In all cases, the CPM Agent shall document the Contract file with evidence supporting the Requestor's decisions.

## **20.8 Liquidated Damages Deductions**

- A. If provided for in the Contract, liquidated damages shall be deducted from Contract payments that would otherwise be due the Contractor for completed contract items.
- B. The Requestor shall apply the liquidation rate identified in the contract.

## **20.9 Title**

- A. The CPM Agent shall include a Contract provision, approved by the Department of Legal Services, which provides that MARTA shall receive title to all of the materials, work-in-process, finished goods, and other items of property under the contract upon formal acceptance regardless of when MARTA takes physical possession or such time as set forth therein. Title to stock items shall pass to MARTA upon receipt at destination and initial inspection for completeness and absence of damages.
- B. The Department of Legal Services shall require additional protective provisions, if deemed necessary, to establish and protect MARTA's title.

## **20.10 Risk of Loss**

- A. The CPM Agent shall include a provision, approved by the Department of Legal Services, which provides that the Contractor shall bear the risk of loss, theft, destruction, or damage to property and shall pass to MARTA upon acceptance by MARTA or delivery of the supplies to MARTA at the destination specified in the contract.
- B. If a loss occurs prior to MARTA assuming the risk, the Contractor shall be obligated to repay MARTA the amount of payments received based on costs allocable to the property.
- C. The Contractor shall not be obligated to pay for the loss of property for which MARTA has assumed the risk of loss.
- D. The risk of loss of or liability for damage to nonconforming items shall remain with the Contractor until cure or acceptance. After cure or acceptance, the provisions of the immediately preceding subsection above shall apply.
- E. The Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of MARTA acting within the scope of their employment.
- F. If any of the items are either excepted from formal acceptance by MARTA due to defects or failure to conform to the requirements and specifications of the Contract, or are subject to contingent acceptance pending cure of defects, the risk of loss or damage shall remain with the Contractor until the defects are cured and the contingency is removed or the construction is formally accepted by MARTA.

#### **20.11 Contract Debt Determination and Collection**

- A. In determining the amount of any Contract debt, the CPM Agent, Requestor, and the Department of Legal Services shall fairly consider both MARTA's claim and any Contract claims by the Contractor against MARTA.
- B. MARTA's Department of Finance shall use all proper means available for collecting debts as rapidly as possible.
- C. Except in cases in which an agreement has been entered into for deferment of collections, or when bankruptcy proceedings against the Contractor have been initiated, the Contractor shall liquidate the debt by either of the following methods:
  - 1. Cash payment in a lump sum, on demand; or
  - 2. Credit against existing payments due the Contractor.

#### **20.12 Demand for Payment of Contract Debt**

- A. The CPM Agent with assistance from the Department of Legal Services shall make a written demand for payment as soon as the amount of Contract debt due has been computed.
- B. The demand shall include the following:
  - 1. A description of the debt, including the debt amount;
  - 2. If applicable, notification that any amount not paid within thirty (30) days from the date of the demand, or from any earlier date specified in the contract, shall bear interest at the rate set forth in the Contract; and
  - 3. A notification that the Contractor may submit a proposal for deferment of collection if immediate payment is not practical or if the amount is disputed.

#### **20.13 Negotiation of Refund to Resolve Contract Debt**

- A. The CPM Agent, Department of Legal Services, and Requestor shall attempt to resolve the amount of the Contract debt and refund through negotiation with the Contractor.
- B. If the CPM Agent, Requestor, Department of Legal Services, and Contractor agree upon a refund to MARTA, the CPM Agent shall promptly write a memorandum (the Department of Legal Services shall approve the memorandum) to document the agreement. The CPM Agent shall ensure the memorandum is signed by both Parties and maintained in the Contract file.
- D. The CPM Agent shall prepare a Contract change to adjust the Contract in accordance with the Contract terms. See Section 15.9.

#### **20.14 Setoff and Withholding of Payments**

- A. If MARTA determines to collect Contractor debt from Contractor invoices on hand for payment, the CPM Agent shall give the Contractor written notice of the setoff including a statement of the reasons for the setoff. The notice shall be delivered as specified in the Contract terms.
- B. To the extent that the setoff reduces the debt, the explanation of the setoff shall indicate the extent to which the demand amount described in this Section is reduced.
- C. During the thirty (30) days following the issuance of a demand, MARTA shall consider the advisability of withholding payments otherwise due the Contractor, based on the circumstances of each individual case.
- D. If, within thirty (30) days of the issuance of the demand made, the Contractor has neither completed payment nor requested deferment, MARTA may immediately withhold any contract payments due up to the amount of the debt plus interest.

#### **20.15 Contract Debt Interest Charges and Credits**

- A. MARTA shall apply interest charges to any Contract debt unpaid after thirty (30) days from the issuance of a

demand, unless either of the following applies:

1. The Contract specifies another due date or procedure for charging or collecting interest; or
  2. It is excluded under the Contract.
- B. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on whichever of the following dates applies:
1. The date on which MARTA received payment from the Contractor;
  2. The date of issuance of MARTA check to the Contractor from which an amount otherwise payable has been withheld as a credit against the Contract debt; or
  3. The date on which an amount withheld and applied to the Contract debt would otherwise have become payable to the Contractor.
- C. An equitable interest credit shall be applied under the following circumstances:
1. When the amount of debt initially determined is subsequently reduced;
  2. When the collection procedures used result in an excess collection of the debt due; or
  3. When the Department of Legal Services determines that MARTA has unduly delayed payments to the Contractor on the same Contract at some time during the period to which the interest charge applied, unless an interest penalty was paid for the late payment.

#### **20.16 Prompt Payment to Subcontractors**

- A. No later than 10 days of receipt of each progress payment, a prime Contractor or subcontractor shall pay to any subcontractor the respective amounts allowed the Contractor on account for the work performed by the subcontractors, to the extent of each subcontractor's interest therein. If there is a good faith dispute over all or any portion of the amount due on a progress payment to a subcontractor, then the prime Contractor or subcontractor may withhold no more than 150 percent of the disputed amount.
- B. The CPM Agent should review the Contract to ensure a provision is in all Contracts above the micro purchase threshold includes a clause to require prime Contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the receipt of each payment MARTA makes to the prime Contractor. The clause will also require the prompt return of retainage payments from the prime Contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed.

#### **20.17 MARTA Payment Process**

- A. MARTA will promptly process all valid Contract payments with necessary controls to assure compliance with all Contract terms and conditions in accordance with internal procedures.
- B. CPM Agents will clearly specify in solicitations and Contracts, the form and content of an acceptable invoice, including a requirement that invoices be sequentially numbered, that they contain a date, Contract number and the services for which they are invoicing, the period of performance being invoiced, and to whom, within MARTA, invoices are to be sent.
- C. CPM Agents will require that final invoices be clearly marked FINAL, and that those invoices cite the amount of the Contract, the amount previously paid and the balance due.

#### **20.18 Retainage**

MARTA shall retain funds in the amount specified in the Contract, if any, until all conditions/approvals are completed pursuant to the terms of the Contract.

Within thirty (30) days after final audit or Board approval, MARTA shall release any retention withheld. In the event of a dispute between MARTA and the Contractor, MARTA may withhold from the final payment an amount not to exceed the lesser of two (2) times the disputed amount or the amount included in the Contract terms.

## **Chapter 21**

### **Patents, Copyright, and Proprietary Information**

#### **21.0 General**

MARTA must comply with all applicable laws and regulations in acquiring or using rights in patents, copyrights, and proprietary information.

A Contractor shall obtain permission from the lawful owner(s) of copyrighted materials before including all or part of any copyrighted work in any item to be delivered under a Contract, unless permission is not required under the fair use or other applicable provisions of Federal copyright statutes or regulations.

#### **21.1 Patent Rights Under Contracts**

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

#### **21.2 Proprietary or Confidential Information in Bids and Proposals**

A Contractor may designate information contained in a response to the Invitation for Bids or Request for Proposals as proprietary or confidential by specifically identifying that information in writing in the bid or proposal in compliance with the Georgia Open Records Act. MARTA's Department of Legal Services will determine if the information identified is exempt from disclosure under the Act. If the Department of Legal Services determines there is not an exemption that would prevent the information from being disclosed MARTA will provide the Contractor with adequate notice so that Contractor may seek an appropriate remedy to prevent the information from being disclosed.

## **Chapter 22**

### **Claims and Litigation Actions**

#### **22.0 General**

This Chapter establishes the Authority procedures for processing and resolving Contractor claims and disputes. The Authority has a vested interest in the settlement of disputes, defaults, or breaches involving any contract. MARTA must comply with all appropriate project management guidelines in processing Contractor claims. It is the intent of MARTA to promptly review and evaluate all Contractor claims. The Department of Legal Services, in conjunction with CPM, is responsible for the review, evaluation, and determining the merit of Contractor claims.

#### **22.1 FTA Requirements**

A. The Federal Transit Administration has a vested interest in the settlement of disputes, Contract claims, and litigation involving any federally assisted Contract. FTA shall be kept advised of all disputes, claims, and litigation involving federally assisted Contracts as required by the FTA Master Agreement and FTA Circular 4220.1 (latest revision).

B. The Authority must comply with the project management guidelines of FTA Circular 5010.1 (latest revision) in processing Contractor claims against federally funded Contracts.

C. For federally assisted Contracts, MARTA will obtain FTA's written concurrence (if required or requested by the FTA) in any proposed or final settlement involving a dispute, claim, or litigation when the settlement amount exceeds \$100,000, or the approved project lacks sufficient funds to cover the settlement costs, or there is an issue of special interest or concern.

#### **22.2 Contract Claims/Disputes**

- A. The claims process begins with the claim submitted to MARTA by the Contractor. The Requestor shall forward the claim to the Department of Legal Services and the CPM Agent and review the claim and make a summary preliminary merit determination to ensure that MARTA is not continuing conduct that may result in additional damages.
- B. The Requestor with support from the Department of Legal Services may resolve Contractor claims.
- C. Meritorious claims (as approved by MARTA's Department of Legal Services) that can be completely settled as to time and money issues should be processed by MARTA as a settlement of dispute(s) and a Contract change.
- D. If MARTA's Department of Legal Services determines that a claim has no merit or that equitable adjustment cannot be negotiated for a claim with merit, a final determination shall be prepared by the Department of Legal Services.
- E. The final decision shall include the following elements: (1) description of claim or dispute, (2) reference to the pertinent Contract terms, and (3) statement of factual areas of agreement and disagreement, statements of the decision, with supporting rationale. The final decision shall be transmitted to the Contractor by the CPM Agent.

#### **22.3 MARTA Claims Against the Contractor**

MARTA may have reason to initiate claims against the Contractor (e.g., back-charges). The CPM Agent, based on direction provided by the Department of Legal Services, may give the Contractor written notice of the complaint and an opportunity to take corrective action, if appropriate. If, after a reasonable time, the Contractor has not taken satisfactory corrective steps, the CPM Agent with approval of the Department of Legal Services will take action to make the required corrections and to assess back-charges to the Contractor. The CPM Agent, in coordination with the Requestor and the Department of Legal Services, shall attempt to settle all claims against the Contractor without the need for litigation.

#### **22.4 Litigation Actions**

The Department of Legal Services shall be responsible for handling all lawsuits or other legal action brought by or against MARTA.



## **Chapter 23**

### **Protest Procedure**

#### **23.0 General**

Any Interested Party shall have the right to Protest a MARTA procurement action and have its complaint considered and resolved administratively by MARTA in accordance with this procedure.

#### **23.1 Requirement for Protester**

In order to file a valid Protest, an individual or entity must be an Interested Party. A Protest filed by anyone who fails to establish standing to Protest shall be rejected by the Authority.

#### **23.2 Filing of Protest**

A. All Protests must be submitted in writing to the Authority within the time prescribed herein. The Protest shall be addressed and delivered to the Head of CPM, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, N.E., Atlanta, Georgia 30324 with a copy to the Department of Legal Services, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, N.E., Atlanta, Georgia 30324.

B. All evidence and relevant information and referenced material supporting the Protest must be attached. Protests should include the following:

1. The solicitation number, name and/or other identifying information. If any addenda issued by the Authority in connection with a solicitation is the basis for a protest, the Protest must also identify the specific addenda. If any other Authority communication is the basis for a Protest, it must also be identified.
2. The name and address of the Protester. If the name or address is different than that shown on any bid, quote or proposal of the Protester, the Protest should include a reference to the original name and/or address of the respondent to the bid, quote or proposal. Any Protest filed under a name other than the original name of the respondent stated on the bid, quote or proposal submitted, then the Protester must indicate the basis supporting standing in Protest.
3. A full and complete statement specifying in detail the grounds for the Protest, including identification of any laws, regulations or procedures violated and providing all pertinent facts in support of the Protest.
4. The specific remedy requested by the Protester.
5. Identification of person(s) and address(es) of those to whom the Authority communications on the matter of the Protest should be directed.
6. Protest Security, see Section 23.3 below.

C. If the Protest (1) is not sufficiently clear, (2) does not contain the supporting evidence or the information provided is insufficient, (2) lacks standing or (4) was not filed timely, the Authority may deny the Protest on this ground or request clarification, or additional information or evidence, as appropriate. If the Protester's response is still unclear as to the action protested or the basis/grounds of the Protest, or if the supporting evidence/information is still missing or insufficient, the Authority may deny the Protest solely on this ground.

#### **23.3 Protest Security**

A. Any Protester must, at the time of filing the Protest, post security in an amount equal to the lesser of (1) one (1) percent of the financial offer made by the protester in its Proposal, Bid or Quote or (2) a one hundred thousand and 00/100 U.S. Dollars (\$100,000.00). In the event the bid, quote or proposal does not involve a financial offer or if it involves negotiated contract rates (e.g., architectural and engineering contracts) then the security to be posted must be equal to one hundred thousand and 00/100 U.S. Dollars (\$100,000.00). The Protester must tender security in the form of a bond, certified check, or bank check in the name and favor of MARTA.

B. If the Authority denies the Protest, it may (in its sole discretion) assess against the Protester and deduct from

the Protest Security reasonable administrative costs incurred by the Authority in reviewing and responding to the Protest (including without limitation attorneys' fees). Within fifteen (15) days of denying the Protest, the Authority will calculate the Authority's cost in reviewing and responding to the Protest and will deduct from the Protest Security such costs. Any remaining Protest Security balance will be returned to the Protester along with a list of the deducted costs.

#### **23.4 Time to File**

All Protests must be filed within the applicable times prescribed below:

1. A Protest to (1) the specifications, requirements, terms or conditions of a Contract; (2) the procedures or conditions for submitting offers, proposal or bids; or (3) to any restrictions on eligibility to do so, must be filed with the Authority no later than fifteen (15) days before the closing date for receiving offers, proposals or bids. In the case of a formally advertised solicitation, a Protest must be filed fifteen (15) days before the opening date listed in the solicitation.
2. A Protest to the acceptance or rejection of any or all offers, proposals or bids for a Contract, or to the award, or to any such action proposed or intended by the Authority, must be filed with the Authority no later than ten (10) days after the Protester first learned, or reasonably should have learned, of the action or the proposed or intended action which is the basis of the Protest. In the case of a formally advertised contract, if the basis or ground of the Protest is apparent on the face of the bid(s) or proposals in question, the ten (10) days shall begin on the bid opening date.

#### **23.5 Notification of Protest**

If the Protest is received before the bid opening date or the proposal deadline, the Authority shall notify all known actual and prospective Contractors that a Protest has been filed. If the Protest is received after the bid opening date/proposal deadline but before award, the Authority shall notify all actual Contractors, whose direct economic interest would be affected by the award or failure to award the contract at issue of the Protest. If the Protest was received after the award of the Contract, the Authority shall only notify the successful Contractor of the Protest. MARTA will only notify the Contractors of the existence of the Protest, but not the specific details or name(s) of the Protestor until the matter is resolved.

#### **23.6 Stay of Procurement**

Upon receipt of a Protest, the Authority may (in its sole discretion) elect to postpone the solicitation and/or award of the Contract until the Protest has been resolved. If the Contract has been awarded, the Authority may, in the Authority's sole discretion, suspend performance of the Contract until the Protest has been resolved.

#### **23.7 Procedures for Evaluating Protest**

The Authority will review, evaluate, resolve, and issue a final administrative decision with respect to the applicable Protest(s) as follows:

1. The Head of CPM shall promptly forward all Protests to the Department of Legal Services, and notify all interested parties as set forth above.
2. The Department of Legal Services and the Requestor and their Department Head for which goods or services are to be purchased under the contract in question shall be responsible for reviewing and evaluating all Protests timely received, and for recommending appropriate action to the General Manager/CEO. They shall carry out this responsibility as expeditiously as practicable. In doing so, they shall consult such other departments, divisions, or offices of the Authority as they deem appropriate for information, advice, or assistance.
3. The Department of Legal Services may notify the Protester that an untimely protest is denied on that ground, but may, if it appears in the Authority's best interest, recommend to the appropriate Department

Head and the General Manager/CEO that such a Protest be considered. If the General Manager/CEO directs that an untimely Protest be considered, it will be reviewed and evaluated as provided above.

4. The General Manager/CEO, after receiving the recommendation of the Department of Legal Services and the appropriate Department Head, shall decide upon the action to be taken with respect to the Protest. This shall be the final administrative decision thereon. The Protester shall be notified promptly of the decision in writing, and advised that it is final.