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### Change log

1/2007	Increased board approval threshold to \$100,000
2/2007	Revise delegation of authority on contract mods and incorporate risk-based contingency on new contracts
9/2007	Added contract audit and contract bonding policies
12/2008	Increased micro purchase threshold to \$3000
8/2012	Increased small purchase to \$50,000 and board approval to \$150,000
5/2013	Post-PSR updates
6/2015	Updated investment recovery section and allowed insurance premiums to be paid by check request
12/2016	Authorization of design-build procurement method
5/2017	Modified investment recovery section and made it a standalone chapter
12/2019	Increased micro purchase threshold to \$10,000
3/2025	Increased board approval threshold to \$250,000

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## **CHAPTER I – OVERVIEW** **POLICY**

### **I-1 INTRODUCTION**

The Acquisition Policy of Capital Metropolitan Transportation Authority (CapMetro) sets forth the minimum standards for processing third party procurement transactions. These policies are furnished to ensure that materials and services are obtained timely, efficiently, and economically, adhering to principles of good administrative practices and sound business judgment, utilizing Disadvantaged Business Enterprise (DBE) firms (for federally funded procurements) and Small Business Enterprise (SBE) firms (for locally funded procurements), as an integral part of the process as permitted by law.

All procurement transactions, except micro purchases as defined herein, shall be conducted in a manner that provides for maximum competition consistent with 2 CFR 200.317 through 200.327 (Super Circular), FTA Circular 4220.1G, "Third Party Contracting Requirements," Department of Transportation 49 CFR Part 18 and 26, and the CapMetro Employees' Code of Ethics, as in effect at any given time.

Contracts outside the scope of third party contracting include, but are not limited to, employment contracts, real estate contracts and intergovernmental agreements ("Non-Procurement Agreements"). When possible, CapMetro will purchase common goods and services using available Interlocal Cooperation Contracts and Agreements. CapMetro is responsible for assuring that each of its sub-recipients complies with the applicable requirements and standards of 2 CFR 200.317 through 200.327 and FTA Circular 4220.1G, as in effect at any given time, and that each of its sub-recipients is aware of the Federal statutory and regulatory requirements that apply to its actions as a sub-recipient.

CapMetro will not implement any procurement practices, which give in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

CapMetro policy recognizes five basic procurement methods:

1. Micro Purchases (below the Federal Micro Purchase Threshold set forth in 41 U.S.C. § 1902, as in effect at any given time ("the Micro Purchase Threshold")) (see Chapter III);
2. Small Purchase (exceeding the Micro Purchase Threshold to \$50,000.00) (see Chapter III);

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3. Sealed Bids (greater than \$50,000.00) (see Chapter IV);
4. Competitive Proposals (greater than \$50,000.00) (see Chapter V); and
5. Non-competitive Proposals (see Chapter VI).

These methods encompass every type of third-party contract currently utilized in procuring goods, services, equipment, and construction for CapMetro through local funds or Federally assisted programs or projects. A procedure has been developed for each method from inception of a project to its close out. Particular emphasis has been placed on certain aspects of the procurement process where warranted by the importance of the subject matter.

All procurement transactions must be conducted in a manner that allows for full and open competition in accordance with Texas Transportation Code Section 451.110, this policy and other applicable law. Contracts with a value of \$50,000.00 or more shall be awarded by sealed bid or competitive negotiation. The following practices are deemed restrictive of competition:

- Unreasonable requirements placed on firms to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or among affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Organizational conflicts of interest;
- Restrictive use of brand names;
- Any arbitrary action in the procurement process; and
- Geographic preferences (unless mandated).

## **I-2 VENDOR CONTACTS AND COMMUNICATIONS**

The importance of demonstrating constant and attentive sensitivity to ethics policies cannot be overemphasized. Employees shall avoid any conduct which may give reasonable basis for the impression that any person can improperly influence official acts or actions. Employees shall avoid compromising or culpable acts, including any action that gives the appearance of improper influence or personal conflict of interest as outlined in CapMetro's Code of Ethics.

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Employees must be mindful that one-on-one communications with vendors occurring prior to contract award are subject to enhanced scrutiny due to the importance of maintaining a “level playing field” among all eligible vendors during competitive procurements.

To avoid misunderstandings with vendors and contractors, the following guidelines shall govern CapMetro contacts with vendors /or contractors:

#### **2.1 Contacts Prior to Issuance of a Solicitation**

Informational and market research contacts with prospective vendors or contractors are a valuable source of data to CapMetro. These contacts must be guided by the exercise of good judgment. The primary pitfalls to be avoided are promises or implications of a future contract and requests for substantial complimentary goods or services, which may create the impression of an obligation on the part of CapMetro. Some specific services or assistance from potential vendors which should be avoided include, but are not limited to:

- Testing services;
- Custom drawings;
- Special investigations;
- Demonstrations;
- Furnishing significant samples; and
- Free trips to view products.

If any of the above are required, the Project Manager will invite Procurement to a demonstration/vendor meeting. . Prior to any vendor demonstration, the Project Manager must work with the Legal Department to have the vendor sign a Vendor Acknowledgment for Remote Demonstration Form, a Vendor Disclaimer Form, or any other form required by Legal.

#### **2.2 Contacts During Solicitation, Evaluation, Negotiation, and Award Process**

All contacts with vendors or contractors that relate to procurement that are in the solicitation, evaluation, negotiation, and award phase must be conducted through the Procurement Department. The Procurement Department will direct all technical questions to the Project Manager for evaluation.

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The only exception to the above policy is that Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) questions or issues must be directed to the department that handles such matters.

Employees should not volunteer any information to a vendor concerning their product, the product of a competitor, or the workings of CapMetro.

### **2.3 Acceptance of Gratuities by Procurement Personnel**

Invitations to any member of CapMetro Procurement received from vendors or potential contractors for business lunches, dinners, or parties should be politely refused, noting that it is the policy of CapMetro to avoid any situation that might give the appearance of improper influence.

Any offer of gratuities should be tactfully refused.

Any calendars, note pads, or similar items of nominal value received from vendors containing commercial advertising should not be used for CapMetro business or displayed in the Procurement Department.

### **I-3 CONTRACTOR CLAIMS**

Contractor claims must be submitted to the Chief Contracting Officer in accordance with the Disputes provision of the contract. Any contractor claim shall be accompanied by a certification that:

- (a) The claim is made in good faith;
- (b) Supporting data are accurate and complete to the best of the contractor's knowledge and belief; and
- (c) The dollar amount requested accurately reflects the contract adjustment for which the contractor believes CapMetro is liable.

If the contractor is an individual, that individual shall execute the certification. If the contractor is not an individual, the certification shall be executed by:

- (a) A senior company official in charge at the contractor's plant or location involved; or
- (b) An officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

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## **I-4     ORGANIZATIONAL CONFLICTS OF INTEREST**

### **4.1     Detailed Content**

An organizational conflict of interest occurs when the type of work to be performed may, without some restrictions on future or follow-on activities, result in an unfair competitive advantage or impair the contractor's objectivity in performing the contract work.

(a) When specifications and scope of work are prepared, it may identify the possibility that a firm:

- May have a competitive advantage because of prior work done (e.g. designed the information system to be installed).
- May have a bias performing the work because of prior work done or future interests of the firm (e.g. a firm proposing to provide legal representation and advice for construction claims has a major local construction firm as a long-term client).
- May have a competitive advantage in future or follow-on work as a result of the contract to be awarded (e.g. in a preliminary engineering procurement, many firms may wish to propose on the preliminary engineering work that also wish to propose on final design work of the same facility).

(b) If a situation as described above is identified, the firm's eligibility for the contract should be restricted. If such a situation exists, the firm should be restricted from performing both contracts, i.e. require the firm to choose in advance whether, by offering to perform the work at hand, it wants to restrict itself from the second contract.

(c) Many procurements have the potential of organizational conflict of interest, but they are more likely to occur in contracts involving:

- Management support services
- Consultant or other professional services, particularly preparation of plans, designs, or specifications for further work or products
- Contractor performance of, or assistance in, technical evaluations
- Systems engineering and technical work performed by a contractor that does not have overall responsibility for development or production
- Legal and accounting services

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#### 4.2 General Rule

The following general rule prescribes limitations on contracting as the means of avoiding, neutralizing or mitigating organizational conflicts of interest that might otherwise exist in the stated situations. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it.

The underlying principle is Contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.

By following this general rule, it assists in preventing the existence of conflicting roles that might bias a contractor's judgment and preventing unfair competitive advantage.

#### I-5 NON-PROCUREMENT PURCHASES

There are instances where goods or services are not processed through the Procurement Department; however, the Procurement Department may set up contract purchase agreements for these goods or services in the financial system to track expenditures on an annual basis.

Certain expenses are routinely incurred without the issuance of formal purchasing documents. Expenses that do not require a Purchase Order or Purchase Agreement and do not need to be processed through the Procurement Department include but are not limited to:

- Payroll account reimbursement, tax withholding payments, and all associated benefit payments.
- Claim settlements.
- Real property settlements and Escrow payments.
- Periodic vendor payments under established leases.
- Licenses and permits.
- Subscriptions and publications.

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- Conference and seminar registration fees.
- Training.
- Organizational and professional membership dues.
- Refunds (returns of bid deposits, overpayment of bus passes, etc.).
- Reimbursement of petty cash.
- Freight bills and/or courier service.
- Official Capital Metro newspaper advertisements by Marketing, Community Relations, Procurement, Personnel, and/or Legal.
- Travel advances and employee reimbursements.
- Replenishment of postage meters.
- Interlocal Cooperation Agreements.
- Utilities.
- Sub-recipients.
- Insurance Premiums.
- Partnership/Sponsorship Agreements.
- Other purchases or agreements that based on their nature, who they are with, or who they benefit, are determined to be exempt from procurement by the Chief Contracting Officer in consultation with Legal.

## **I-6     PREQUALIFICATION**

CapMetro does not maintain a prequalification program.

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**I-7 ENSURING MOST EFFICIENT AND ECONOMIC PURCHASE**

Departments, during their annual budget process, should determine the procurement actions necessary to sustain their operations through the fiscal year. A list of these procurement actions exceeding the Federal Micro Purchase Threshold should be forwarded to the Procurement Department annually. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase and to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. CapMetro considers various procurement sources to ensure economical purchases including, but not limited to DIR, HGAC, TXMAS, OMNIA Partners, GSA, and Buy Board, depending on funding source. Additionally, in accordance with Section 3019 of the Fixing America's Surface Transportation (FAST) Act, as in effect at any given time, CapMetro may purchase from another State's cooperative procurement contract, and Cooperative procurement contracts which are purchasing schedules between a state or eligible nonprofit with one or more vendors for rolling stock.

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## **CHAPTER II – PROCUREMENT REQUIREMENTS** **POLICY**

### **II-1 DELEGATION OF PROCUREMENT AUTHORITY**

#### **1.1 Board Authority**

Chapter 451 of the Texas Transportation Code provides that the Board of Directors shall have authority and responsibility to advertise, enter into, and amend contracts for the purchase or lease of goods or services through competitive bidding. It also authorizes the Board of Directors to adopt rules governing its procurement policy.

#### **1.2 President & CEO Authority**

The Board of Directors hereby authorizes and delegates to the President & CEO or their designee, identified by signed Certificate of Appointment, the authority and responsibility to:

- Approve and execute all purchase orders and contracts.
- Advertise and/or issue solicitation documents (RFQs/IFBs/RFPs/SOQs).
- Issue solicitation documents (RFQs/IFBs/RFPs/SOQs) and execute contract instruments for consumable items which are considered basic requirements in support of CapMetro's day-to-day transit operations such as, but not limited to, supply agreements for bus parts, supplies, petroleum products, tickets, and passes, regardless of the dollar amount.
- Approve and execute purchase orders and contract instruments awarded under CapMetro's micro and small purchase procedures.
- Execute contracts or options to contracts resulting from Invitation for Bids (IFB), Request for Proposals (RFP) and Statements of Qualifications (SOQ) which do not exceed the \$250,000 threshold per year (the "Board Threshold") for services the construction of improvements, or purchase of material, machinery, equipment, supplies and all other property, except real property. Any modification to the contract that causes the contract amount to exceed the total board-approved contract amount, base and options included, or the Board Threshold in any year of the contract shall require Board approval.
- Approve and execute contracts resulting from non-competitive procurements and unauthorized procurement actions that do not exceed the Board .

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- Approve and execute modifications to Board approved contracts which individually, or in combination, cannot exceed the Board Threshold or a Board approved contingency.
- Approve and execute contracts, modifications, or change orders in case of emergency, which shall mean cases where postponement of the action until the next scheduled meeting of the Board of Directors will result in loss of property, danger to life or health, or major adverse effect on transit service, provided that the President & CEO shall request ratification of each action under this emergency provision at the next meeting of the Board of Directors.
- Approve and execute settlements of contractual claims against CapMetro in an aggregate amount not to exceed the Board Threshold per claimant.

## **II-2 REPORTING REQUIREMENTS**

The Chief Contracting Officer shall report monthly all awards between the amount of \$150,000 - \$250,000 to the Finance, Audit and Administration Committee.

## **II-3 PURCHASE REQUISITIONS**

The Procurement Department is responsible for all soliciting, purchasing and associated contracting activities in support of CapMetro.

CapMetro staff shall follow sound procurement and contract administration practices that ensure timely delivery of materials and services, promote greater economy and efficiency and adhere to prudent business principles.

There will be no procurement action taken until a properly executed Purchase Requisition (PR) and any required backup documentation is received by the Procurement Department. The individual requesting the PR is responsible for the accuracy and adequacy of information supporting the request. PRs should be submitted early enough to have a purchase order or contract prepared, reviewed, and issued in time for the material or service to be obtained when needed. The requestor will be responsible for assuring that all advance preparations are made so that total PR processing time is expeditious. Incomplete PRs will be returned to the user department. PRs that contain incomplete information upon arrival in the Procurement Department will be returned to the originator for clarification prior to procurement action. PRs will not be accepted and processed for solicitation by the Procurement Department until the specifications or scope of work are adequate to provide clear communication to the bidders or offerors. Procurement will train requesters in the use of the ERP requisitioning function as needed. Purchase requisitions over the micro purchase threshold must have an independent cost estimate.

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The Grants Accountant (Finance) and the Budget Office must approve all Purchase Requisitions for FTA-funded procurements. The Chief Financial Officer and the President & CEO must approve, regardless of the dollar value, any Purchase Requisition which is not within approved budgets; that is, where the financial availability is dependent on future budget changes or amendments.

If the department desires to make any change in estimated dollar amount or scope of work to the PR subsequent to submittal to the Procurement Department, the person making the change must resubmit the PR with the correct information. If the award amount of a purchase is for less than the PR amount, no further approvals are needed.

#### **II-4 UNAUTHORIZED PROCUREMENT ACTIONS**

When persons acting outside the established limits of procurement authority direct, instruct, order, or request a person to do something for, or on behalf of, CapMetro without a purchase order, task order, contract, contract modification, or formal change order, they are creating an unauthorized procurement action. CapMetro may not be bound by the unauthorized procurement acts of individuals who have not been delegated procurement authority. Unauthorized procurement actions may include any of the following:

- (a) The outright purchase of an item by an employee outside the Procurement Department.
- (b) Placing orders against expired contracts, task orders, or purchase orders.
- (c) Placing orders in excess of the “not-to-exceed” value of a variable quantity contract, task order, or purchase order. Note that our fiscal year “budget” and the contract “not-to-exceed” values are not necessarily synonymous.
- (d) Directing changes to the scope of the contractor’s work under the Contract without express, written, or delegated authority. Changes could be:
  - requiring additional work;
  - deleting work;
  - requesting quantities in excess of or less than those specified;
  - “trading-off” item A for item B.

**or**

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- changes to the contractual terms and conditions;
- requiring acceleration or deceleration of the work schedule;
- promising to pay sooner than called for in the contract;
- promising to pay more than the specified amounts.

(e) Changing the Nature or Quality of the Goods, Services or Construction.

- Directing the vendor to perform work outside of the original intent of the contract.
- Allowing substitutions of brand-named items other than those specified in the agreement.

The President & CEO may reduce the department's budget by the amount of the inappropriate purchase amount or procurement action when a violation involves an amount exceeding the micro purchase threshold. The President & CEO may make a determination whether an employee will be required to pay CapMetro for the amount of the violation. The President & CEO may delegate to the Chief Contracting Officer authority to approve unauthorized procurement actions that are less than \$50,000.00.

An unauthorized procurement action may result in the employee authorizing the action being personally liable and making payment to the vendor for the goods or services procured, the vendor absorbing any losses, or ratification for the unauthorized procurement action.

In the event of an unauthorized procurement action, corrective or disciplinary action may be initiated against the employee charged with undertaking the unauthorized procurement action, up to and including termination. The severity of the disciplinary action shall be commensurate with the severity of the action taken. The employee's supervisor shall consult with the Department of People and Culture for compliance with applicable disciplinary policies. Factors to be considered in determining the severity of the action taken and the appropriate disciplinary action may be:

- The dollar value of the adverse effect of the action
- Whether this is the first unauthorized procurement action of the employee
- Whether the action was knowing or unintentional
- Whether the action subjected the Authority to operational or financial risk

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- Reputational impact of the action or creation of an appearance of conflict of interest

Examples of actions with a lower impact to CapMetro may be:

- Any action in which the adverse effect is less than the CapMetro's micro purchase threshold.
- Authorizing bidder or vendor to begin work prior to receipt of a purchase order, contract, task order, or contract notice to proceed.
- Authorizing substitution without prior written approval by the Procurement Department.
- Outright purchase of an item outside the Procurement Department that is not an emergency purchase.
- Changing the delivery address without modification to the purchase order or contract.

Examples of actions with a moderate impact to CapMetro may be:

- Any action in which the adverse effect is from the CapMetro's micro purchase threshold to less than \$50,000.00.
- Repeat of the same minor offense within one year.
- Changing the scope of work without a contract modification or task order revision.
- Placing orders against expired contracts, task orders or purchase orders.
- Directing the vendor to perform outside the original intent of the contract.
- Promising to pay sooner than called for or to pay more than the amount specified.
- Agreeing to change the terms and conditions of the contract without the Procurement Department's written modification.

Examples of actions with a severe impact to CapMetro may be:

- Knowingly committing an unauthorized procurement action which has an adverse effect of \$50,000.00 or more, or significantly affects public image.

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- Repeat of the same moderate offense within one year.
- Falsification of any documents submitted to the Procurement Department.
- Failure to disclose a known or potential organizational conflict of interest.
- Inappropriate discussion of proposals or their evaluation prior to award of a contract.

## **II-5 TRANSIT VEHICLE PURCHASES**

CapMetro will utilize a competitive procurement process (sealed bid or request for proposal, state purchases or co-ops) for procurement of transit vehicles in accordance with Transportation Code Section 451.137.

Transit Vehicle Manufacturer (TVM) certification requirements state that all bidders or proposers on transit vehicles purchased with FTA funds for the primary purpose of public transportation (this includes large buses, small buses, and vans) must certify compliance with 49 CFR Part 26, Subpart D. Vehicles purchased for use as support (non-revenue) vehicles rather than for transport of passengers are excluded. The threshold for Buy America Compliance is \$150,000. See 49 U.S.C. 5323(j)(13).

CapMetro may not purchase or lease a new bus model using FTA grant funds unless the bus model is tested at the Altoona test facility and receives a passing test score as required by and in accordance with 49 CFR 665 as in effect at any given time.

CapMetro must complete a pre-award audit in compliance with 49 CFR Part 663, as in effect at any given time, prior to contracting for the purchase of revenue service rolling stock with FTA funds. CapMetro must also complete a post-delivery audit prior to final acceptance in accordance with 49 CFR Part 663.

The Contract term limit for rolling stock purchases is five (5) years, inclusive of options. This term limit does not apply to delivery of the vehicles.

The Contract term limit for rail vehicles is seven (7) years, inclusive of options. This term limit does not apply to the delivery of the vehicles.

## **II-6 BUY AMERICA CERTIFICATION REQUIREMENT FOR STEEL AND MANUFACTURED PRODUCTS AND BUY AMERICA BUILD AMERICA ACT FOR CONSTRUCTION MATERIALS**

If steel or manufactured products (as defined in 49 CFR 661.3 and 661.5, as in effect at any given time) are being procured, or if construction materials under the Build America,

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Buy America Act, Public Law 117-58, div. G, tit. IX, sections 70911-70927 (2021), as implemented by the U.S. Office of Management and Budget, including, as applicable, 2 CFR Part 184 are being procured, the appropriate certificate as set forth in 49 CFR 661.6 shall be completed and submitted by each offeror in accordance with the requirement contained in 49 CFR 661.13(b). The threshold for Buy America Compliance is \$150,000. See 49 USC 5323 (j)(13).

**II-7 BUY AMERICAN CERTIFICATION REQUIREMENT FOR STEEL, IRON AND MANUFACTURED PRODUCTS AND BUY AMERICA BUILD AMERICA ACT FOR CONSTRUCTION MATERIALS (If applicable)**

If steel, iron, and manufactured products as defined in 41 USC 8302 and 48 C.F.R. § 25.001 are procured using certain federal funds, or if construction materials under the Build America, Buy America Act, Public Law 117-58, div. G, tit. IX, sections 70911-70927 (2021), as implemented by the U.S. Office of Management and Budget, including, as applicable, 2 CFR Part 184 are being procured, the appropriate certificate of compliance shall be completed and submitted by each offeror.

**II-8 EMERGENCY PURCHASES**

Except under emergency situations, only authorized members of the Procurement Department may obligate CapMetro to incur costs for the purchase of goods and services. Any other commitments are informal and expose whoever makes such a commitment to personal liability for costs thereby incurred. Genuine emergencies may arise at times when established purchasing procedures cannot be followed and non-Procurement Department personnel may be required to obligate CapMetro to incur costs. To avoid unauthorized procurement actions, contact the Procurement Department for specific details.

During normal business hours, the Procurement Department **MUST** be contacted before taking emergency action which obligates CapMetro.

After normal business hours, the person making the emergency purchase should attempt to obtain quotes to the extent practicable within the time available to resolve the emergency. A PR should be submitted to the Procurement Department within five (5) business days following the emergency procurement. The requisition must include an Emergency Purchase Justification Form containing an explanation of the emergency, why it could not have been anticipated, rationale for the selection of the awarded vendor, and a statement that the price is fair and reasonable, to include how the price fair and reasonable determination was made.

Emergency Purchase Justifications of \$100,000 or more require the signature and approval of the department's assigned Executive Vice President and the President &

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CEO on the Emergency Purchase Justification Form when it is submitted to the Procurement Department. If an emergency purchase meets or exceeds the Board Threshold, it must be taken before the board at the earliest possible opportunity.

## **II-9 TECHNICAL SPECIFICATIONS AND STATEMENTS OF WORK**

Technical Specifications and Statements of Work for either sealed bid or competitive proposal procurements shall describe accurately and in clear, concise language the technical requirements to be met by a contractor in satisfying CapMetro's needs (2 CFR 200.319(d)(1)). These documents shall be in a format that describes, in logical steps, the complete service or item to be delivered for each milestone of the total requirement from inception to 100% completion.

Specifications/requirements shall not be slanted toward any particular prospective contractor. Descriptive literature from one prospective contractor shall not be used as the sole basis for writing specifications/requirements. Descriptions shall not contain features that unduly restrict competition.

Solicitations of offers for professional services shall clearly and accurately set forth all requirements which the offerors must fulfill, including the factors to be used in evaluating the bids or proposals.

Work to be done on or to CapMetro property requires contractor insurance. Risk Management will provide insurance requirements based on specific contractor tasking.

## **II-10 CONTRACT TYPES AND OPTIONS**

### **10.1 Contract Types**

There are two basic contract types: the fixed-price type and the cost-reimbursement type. The fixed-price type is the only type of pricing arrangement that can be used in sealed bid procurements. In negotiated procurements (RFPs), either the fixed-price or the cost-reimbursement type contract can be used. The primary difference between the two contract types is risk.

A fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

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Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

**CapMetro shall not use a cost-plus-a-percentage-of-cost-contract. Such contracts are prohibited by law (2 CFR 200.324(c)).**

**Percentage of construction cost contracts are prohibited. 2 CFR 200 prohibits the use of the percentage of construction cost method of contracting (2 CFR 200.324(c)).**

Time and Materials contracts are restricted. 2 CFR 200.318(j) permits the use of time and materials type contracts only after a determination that no other contract type is suitable. If used, the contract must specify a ceiling price that the contractor may not exceed except at its own risk.

The Procurement Department will determine which contract type is most appropriate for each specific procurement.

#### **10.2 Federal Restrictions on Contract Term**

Except for procurements of rolling stock and replacement part contracts, which are limited by law to five (5) years, and seven (7) for rail vehicles, the other third party contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by Federal requirements restricting the maximum periods of performance. Nevertheless, the duration of the other contracts must be reasonable.

#### **10.3 Contract Options**

A contract option is a unilateral right in a contract by which, for a specified time, CapMetro may elect to purchase additional equipment, supplies, goods or services called for by the contract, or may elect to extend the term of the contract. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of the options will be considered a sole source procurement. CapMetro must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award.

In recognition of CapMetro's needs in certain service contracts for continuity of operations and the potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for continued service beyond the first contract period and competition is infeasible.

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CapMetro may exercise an option only after making a written determination, signed by the Project Manager, the department's assigned Vice President and/or Executive Vice President, and the Chief Contracting Officer and placed in the contract file, that the exercise of the option is the most advantageous method of fulfilling CapMetro's needs, considering price and other factors.

## **II-11 PERSONAL SERVICES CONTRACTS**

A Personal Services Contract is a contract that, by its express terms and as administered, makes the Contractor personnel appear to be, in effect, CapMetro employees. A Personal Services Contract is characterized by:

- (a) The employer-employee relationship it creates between CapMetro and the Contractor's personnel;
- (b) Relatively continuous supervision and control by a CapMetro Manager;
- (c) Contract performance may be virtual or accomplished at a CapMetro facility;
- (d) Principal tools, equipment, goods, supplies, and administrative support may be provided by CapMetro;
- (e) The services are applied directly to the integral effort of CapMetro in furtherance of an assigned function or mission;
- (f) The inherent nature of the service, or the manner in which it is provided, reasonably requires, directly or indirectly, CapMetro direction and supervision of contractor employees in order to:
  - Adequately protect CapMetro's interest;
  - Retain control of the function involved; or,
  - Retain full personal responsibility for the function supported by a duly authorized CapMetro officer or employee.
- (g) Personal Services Contractors shall be selected on a competitive basis except when competition is not required or is waived pursuant to non-competitive procurement guidelines.

### **11.1 President & CEO Approval**

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The President & CEO must approve the use of a Personal Services Contract prior to solicitation. The President & CEO must also approve any modifications to a Personal Services Contract.

#### **11.2 Reason for Use of Personal Services Contracts**

Personal Services Contracts may be considered when one or more of the following factors apply:

- Requirement of special expertise or unusual qualifications.
- Nature, magnitude, or complexity of services required.
- CapMetro lacks the resources, support staff, specialized facilities, or equipment.
- Lower cost.
- Short-term need for the services.
- Infrequent need for the services.
- Emergency requirements.

### **II-12 METHODS OF PROCUREMENT**

**12.1 Multiple Award Indefinite-Delivery A&E Contracts.** CapMetro is not precluded from making multiple award indefinite-delivery contracts for A&E services, provided the selection of A&E firms and placement of orders is consistent with the requirement for qualifications-based selection.

#### **12.2 Mixed A&E-Construction Contracts.**

(a) **Alternative Contracting Methods.** In a traditional design-bid-build delivery method, design services and construction services are procured through separate procurements. Alternative contracting methods (ACM) can combine these services in different ways. Design-build, construction manager/general contractor, and progressive design-build are three examples.

(b) **Procurement Method.** Generally, an ACM contract that combines design and construction services should be procured using the method that aligns with the predominant costs of the contract (Circular 4220.1G, Chapter VI, Section 3).

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## **II-13 OTHER CONTRACT TYPES**

### **13.1 Revenue Contracts**

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

- (a) Limited Contract Opportunities: If there are several potential competitors for a limited opportunity then CapMetro must use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- (b) Open Contract Opportunities: If, however, one party seeks access to a public transportation asset, and CapMetro is willing and able to provide contracts or licenses to other parties similarly situated, then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.
- (c) Joint Development: Joint Development is when a public transportation agency forms a partnership with the private sector in order to promote real estate development in and around transit facilities, which is often referred to as “joint development.” Although FTA joint development projects are primarily a means to provide private capital to transit projects, joint development projects combine aspects of federally assisted construction and revenue contracting. If a contract between CapMetro and a third party involving a joint development project is not a construction contract or a revenue contract as defined in FTA Circular 4220.1G, then that contract is not covered by FTA’s third-party contracting provisions. Nevertheless, even in situations not covered by the third-party contracting provisions, FTA generally favors full and open competition. Joint Development is a function of CapMetro’s Real Estate Department.

### **13.2 Design/Bid/Build**

It has been traditional in the construction industry to employ an architect/engineer (A/E) to complete a detailed design of the entire project before soliciting bids from construction contractors. This traditional approach is known as sequential design and construction. This sequential design/construction approach requires that a detailed design package of the entire project be 100% complete and signed and sealed by the registered or licensed individual of record before bids are solicited from construction contractors. Following award of the construction contract, the A/E is often retained by the owner for the construction phase, and acts as the owner’s agent, to inspect the construction work to ensure that the structures are built according to the designs and specifications.

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### 13.3 Design-Build

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expressly authorizes the use of FTA capital assistance to support design-build projects "after the recipient complies with Government requirements," 49 U.S.C. Section 5325(d)(2). CapMetro must follow Chapter 2269 of Texas Government Code for all Design-Build projects.

(a) **Construction Predominant:** The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based Brooks Act procurement procedures or Texas Professional Services Procurement Act.

(b) **Design Services Predominant:** When cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, CapMetro must use qualifications-based procurement procedures based on the Brooks Act or Texas Professional Services Procurement Act.

(c) **Public-Private Partnerships:** A Public-Private Partnership (PPP) is a formal contractual arrangement between CapMetro and one or more private partners establishing a mechanism for procuring property and services under which the private sector assumes some of the public sector's customary role in planning, financing, design, construction, operation, and maintenance. PPPs may use the following types of contracting delivery arrangements or project delivery systems including, but not limited to:

- Design-Build;
- Design-Build with a Warranty;
- Construction Manager at Risk;
- Design-Build-Operate-Maintain;
- Design-Build-Finance-Operate;
- Build-Operate-Transfer;
- Build-Own-Operate; and

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- Full Delivery or Program Management.

For a description of these types of PPPs, see FTA “Notice of establishment of Public-Private Partnership Pilot Program; solicitation of applications,” 72 FR 2583, esp. 2584, 2585-2591, January 19, 2007.

(d) Value Engineering: Value Engineering is a procedure designed to incentivize contractors to submit change proposals which reduce the cost of contract performance by promising the contractor a share of the savings. Contractors can often find less expensive ways to perform their contracts than the methods prescribed in their contract specifications. They will be reluctant, however, to propose changes which will reduce their contract price and have the effect of reducing their profit on the contract. Value engineering is a technique designed to overcome this disincentive by offering them a share of the savings resulting from their change proposals. See Part 48 of the FAR for additional details on value engineering.

## **II-14 COST OR PRICE ANALYSIS**

If the procurement will exceed the micro purchase threshold, CapMetro must perform a cost or price analysis consistent with 2 CFR 200.324. Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed.

## **II-15 IMPERMISSIBLE ACTIONS**

### **13.1 Improper Contract Extension**

A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.

### **13.2 Cardinal Changes**

A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons.” A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a “tag-on” or cardinal change. Cardinal changes are prohibited.

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## **II-16 ACQUISITION THROUGH ASSIGNED CONTRACT RIGHTS (PIGGYBACKING)**

Although FTA does not encourage the practice, CapMetro may find it useful to acquire contract rights through assignment by another recipient. A recipient that obtains contractual rights through assignment may use them after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. CapMetro does not need to perform a second price analysis if a price analysis was performed for the original contract. CapMetro must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. CapMetro will be responsible for ensuring the contractor's compliance with FTA's Buy America review certifications. Before proceeding with the assignment, Procurement must review the contract to be sure that the quantities do not exceed the amounts available under the contract. When piggybacking, the FTA's piggybacking checklist must be completed prior to making an award.

## **II-17 STATE CONTRACTS**

Section 3019 of the FAST Act allows CapMetro to purchase from:

- Another State's cooperative procurement contract; and
- Cooperative procurement contracts which are essentially purchasing schedules between a state or eligible nonprofit with one or more vendors for rolling stock.

State contracts (DIR, TXMAS, Buy Board, etc.) awarded competitively for the benefit of all State agencies are not considered "piggybacking/IDIQ" actions and do not require minimum and maximum quantities or assignability clauses. When using these contracts with federal funding, it must include all FTA required clauses and certifications. If buying a product that is other than the lowest offered price for that product under all State contracts, it must document the file as to why the higher priced product must be purchased. It must also be determined 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).

## **II-18 PROTESTS AND DISPUTES**

**A PROTEST MUST BE SUBMITTED TO THE CHIEF CONTRACTING OFFICER USING PROCEDURES SET FORTH IN EACH SOLICITATION.**

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Any interested party aggrieved or adversely affected in connection with the solicitation, evaluation, or award of a contract may file a protest with the Chief Contracting Officer of CapMetro and appeal any adverse decision to the President & CEO of CapMetro. Such protest must be in writing and received in the office addressed as follows: CapMetro, Attn: Chief Contracting Officer, Procurement Department, 2910 East Fifth Street, Austin, Texas, 78702.

Any "interested party" is defined with respect to the following:

- (a) With respect to complaints concerning the terms, conditions or form of a proposed procurement action, any prospective bidder or offeror whose direct economic interest would be affected by the award, or failure to award a contract.
- (b) With respect to complaints concerning award decisions, only those actual bidders or offerors who have submitted a bid or offer in response to a CapMetro solicitation and who, if their complaint is deemed by CapMetro to be meritorious, would be eligible for selection as the successful vendor for award of the contract.

Protests directed to the terms, conditions or proposed form of procurement action must be received by the Chief Contracting Officer at least five (5) working days prior to the date established for the opening of bids or receipt of proposals. Protests concerning award decisions, including bid evaluations, must be received by the Chief Contracting Officer within five (5) working days after such aggrieved person knows, or should have known, of the grounds of the protest. The Chief Contracting Officer will always respond to issues raised by protests involving fraud, gross abuse of the procurement process, or otherwise indicating substantial prejudice to the integrity of the procurement system.

**Reporting:** As part of the annual or quarterly Milestone Progress Report process, CapMetro will provide FTA with a list of all bid protests and appeals for solicitations and contracts in excess of \$500,000 where federal funds are utilized. Additionally, the FTA Chief Counsel or FTA Regional Counsel for Region VI will be promptly notified of all disputes.

**AFTER CONTRACT AWARD A DISPUTE MUST BE SUBMITTED TO THE CHIEF CONTRACTING OFFICER USING PROCEDURES SET FORTH IN THE CONTRACT.**

All questions concerning interpretation or clarification of the Contract, or the acceptable fulfillment of the Contract by the Contractor shall be immediately submitted in writing to the Authority's Contracting Officer in accordance with the Contract for determination.

All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the CapMetro President/CEO within two (2) weeks after the Authority notifies the Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the dispute.

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## II-19 CONTRACT AUDIT POLICY

Internal Audit, Procurement, and Finance will annually conduct a joint review and risk assessment of existing and planned contract actions. A proposed risk-based list of planned contract-related audits and/or audit services will be developed. Internal Audit will request operating budget funds annually to address jointly-identified contract risk areas.

Risk considerations include, but are not limited to:

- Contract type / solicitation requirements
- Contract and/or change order (modification) amount
- Use of grant funding
- Management requests / urgency

Internal Audit will allocate internal and/or external audit resources to address identified high risk areas based upon availability of budget/staffing resources.

### **Scope**

Internal and/or external audit resources can be used to perform or assist with the following contract-related activities:

- Evaluating cost proposals / pre-award audit
- Performing cost / price analyses
- Performing interim and/or contract close-out audits
- Other contract areas as deemed necessary (e.g., evaluating overhead rates)

## II-20 CONTRACT BONDING POLICY

CapMetro Procurement, Risk and user departments will jointly review construction, vehicle manufacturing, information technology, transportation operation and maintenance service solicitations and future contract modifications to determine if bonding requirements are appropriate, and if so, assess and determine at what levels. Each purchase will be evaluated on an individual basis as to risk and financial loss potential. This will include an assessment of a requirement for bonding to the contingency level as approved by the CapMetro Board of Directors.

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For construction or facility improvement contracts or sub-contracts, CapMetro will adhere to Federal and State statutory bonding requirements. If Federal and State bonding requirements begin to diverge, CapMetro bonding requirements policy will always mirror the most conservative statutory compliance requirement.

Non-construction contracts shall be reviewed on a case-by-case basis, depending on risk factors.

For all identified contracts, if the value of the undelivered work exceeds the bond amount by a material amount because of contract modifications, Procurement will seek to raise the value of the bond, or if federally funded, may request a waiver from FTA. Procurement will consider cost associated with a larger bond, whether the prime has required bonds from its subcontractors, and the performance record and financial resources of the prime.

When essential to the best interests of the Authority, or as required by law, the President & CEO may waive or require bonding, or may increase bonding amounts on any contract or purchase in weighing the effect on cost, competition and DBE participation.

For all contract-related bonds, CapMetro will require that any and all bond dividends, rebates, and refunds be returned to CapMetro.

Exceptions to this policy require the written authorization of the President & CEO.

## **II-21 COST PRINCIPLES**

CapMetro shall require contractors to comply with 48 CFR, Part 31 (FAR) as in effect at any given time.

## **II-22 GSA SCHEDULES**

CapMetro is authorized specifically by Federal law to use a GSA Federal Supply Schedule. These uses are limited, but include:

- Information Technology (IT) – Section 211 of the E-Government Act of 2002, 40 U.S.C. Section 502(c)(1), authorizes State and local governments, within limits established by law, to acquire IT of various types through GSA's Cooperative Purchasing Program, Federal Supply Schedule 70.
- Major Disaster or Emergency Recovery – Section 502(d) of title 40 U.S.C. authorizes State and local government entities to use any GSA Federal Supply Schedule to acquire property and services in advance of a major disaster declared by the President of the United States, as well as in the aftermath of an emergency event. The State or local

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government is then responsible for ensuring that the property or services acquired will be used for recovery.

- Local Preparedness Acquisition – Section 502(c)(2) of title 40 U.S.C. authorizes State and local governments, within limits established by law, to acquire law enforcement, security and certain related items of various types through GSA's Cooperative Purchasing Program Federal Supply Schedule 84, or any amended or later version of that Federal supply classification group.

In addition to the above, CapMetro is also eligible to use any GSA vendor provided they have been identified as a participant in GSA's Cooperative Purchasing Program. These contracts are marked with a "COOP PURCH" icon on the GSA website.

When using GSA schedules to acquire property or services in this manner, CapMetro must ensure all Federal requirements, required clauses, and certifications (including FTA's Buy America requirements) are properly followed. Note that GSA schedules are not subject to FTA's Buy America regulations and may include manufactured products that are not eligible for FTA funds. In these cases, CapMetro must ensure that all Buy America certifications or waivers are received before awarding a contract or purchase order.

Also, when using GSA schedules to acquire property or services, CapMetro can fulfill the requirement for full and open competition by seeking offers from multiple sources. Any purchases from GSA schedules must be certified fair and reasonable.

## **II-23 SUB-RECIPIENT OVERSIGHT**

When CapMetro passes through funding to a subrecipient, competitive procurement requirements may apply to the subrecipient. This requirement would usually apply to any subrecipient which performs primary project activities normally performed by CapMetro directly. In such circumstances, the procurement process of the subrecipient shall meet Federal requirements contained in the FTA Master Agreement, including Buy America, debarment and suspension, and lobbying requirements.

Monitoring of compliance with FTA third-party contracting requirements will require a review of procurement procedures, either through site visits or a periodic review of written procurement manuals. CapMetro is not required to review each subrecipient's procurement to ensure compliance with Federal requirements. CapMetro may review selected procurements on a periodic basis in conjunction with a site visit or other general review of compliance with Federal requirements. CapMetro's Grants team is responsible for sub-recipient oversight, including procurement activities of those sub-recipients.

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## **CHAPTER III – MICRO AND SMALL PURCHASE PROCUREMENTS**

### **POLICY**

All micro and small purchases shall be made from sources known to provide the types of goods or services required. Disadvantaged Business Enterprise and Small Business Enterprise firms are encouraged to participate in these procurements. Micro and small purchase procurements may not be modified to increase the dollar value of the purchase order in excess of the procurement method used, i.e. a purchase order based on the micro purchase method may not be modified beyond the Federal Micro Purchase Threshold or an order for \$49,500 may not be increased beyond \$50,000.00. Micro and small purchases are exempt from Buy America requirements.

#### **III-1 MICRO PURCHASE**

Micro purchases, including delivery charges, may be accomplished without securing competitive quotations if CapMetro considers the price reasonable based on research, experience, purchase history, or other information, and maintains documents to support its conclusion. The threshold for Federal Micro Purchases is established in 2 CFR 200.1; 48 CFR 2.101.. The Procurement Department is not obligated to purchase from the department's suggested source if the price is not considered fair and reasonable. Micro purchases made under the Purchasing Card (PCard) Program are not excluded from the need for rotation.

Dividing a purchase requirement with the intent of avoiding exceeding the Federal Micro Purchase threshold, competition requirement, or other dollar thresholds is considered bid-splitting and is therefore prohibited.

**NOTE:** Micro Purchase Procedures must not be used for construction contracts with a value of \$2,000.00 or more. Any construction purchase over \$2,000.00 must include Davis Bacon wage rates.

#### **III-2 SMALL PURCHASE**

Small purchases (from the Federal Micro Purchase Threshold to \$50,000.00) shall be made by soliciting competitive written quotations, encouraging participation by Disadvantaged Business Enterprise/Small Business Enterprise firms if possible. "Competitive" means that the Buyer obtained price or rate quotations from an adequate number of qualified sources. The Buyer may exercise judgment in determining what number is adequate. Written records of solicitations must be recorded. In the absence of adequate price competition, a determination that the price is fair and reasonable must be made. Dividing or reducing the size of the purchase to avoid procurement requirements applicable to larger acquisitions is prohibited. CapMetro must maintain records to support its decision to use the small purchase, the selection of contract type, the sources solicited, and the reasons for contractor selection or rejection.

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## **CHAPTER IV – SEALED BID PROCUREMENTS (INVITATION FOR BID (IFB))** **POLICY**

In accordance with 2 CFR Part 200.319, all goods and services estimated to cost \$50,000.00 or more should be purchased using full and open competition procedures. Procurement Department personnel may use Texas Centralized Master Bidder's List (CMBL), the requestor's source list, the internet, and other methods to assist them in identifying sources.

A sealed bid or Invitation for bid (IFB) procurement method is a method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the lowest responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids. This method is appropriate where discussions are expected to be unnecessary as award of the contract will be principally based on price.

### **IV-1 DESCRIPTIVE LITERATURE/WRITTEN DATA**

Bidders are normally not required to furnish descriptive literature or written data as a part of their bid. CapMetro may deem that such literature or written data is needed before award to determine whether the products offered meet the specification requirements of the Invitation for Bids and/or to establish exactly what the bidder proposes to furnish.

### **IV-2 BID SAMPLES**

Bidders should not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described, adequately in the applicable specification or purchase description, thus necessitating the submission of a sample with the bid to assure procurement of an acceptable product.

### **IV-3 BIDDING TIME**

Consistent with the need for obtaining goods, services or construction contracts, all Invitations for Bids must allow sufficient bidding time (i.e., the period of time between the date of distribution of an Invitation for Bids and the date set for opening of bids) to permit prospective bidders to prepare and submit bids.

### **IV-4 ADVERTISING AND SOLICITATION OF SEALED BIDS**

#### **4.1 Advertising**

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Every IFB shall be advertised in a local newspaper, and, as appropriate, on the internet, trade journals, etc. In accordance with Texas Transportation Code Section 451.110, the notice must be published in a newspaper of general circulation at least once each week for two consecutive weeks before the date set for the bid opening. The first notice must be published at least 15 days before the date set for the bid opening.

#### **4.2 Delivery to Prospective Bidders**

Notice of IFBs should be delivered to the maximum number of prospective bidders deemed practicable and necessary to assure adequate competition.

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

The Procurement Department must retain a record of every Invitation for Bids issued and of each abstract or record of bids, known as the Bid Tabulation, subject to records management guidelines. This record should be reviewed at the time of each subsequent procurement request for the same and/or similar items to ensure that historical data is analyzed for all pertinent purposes.

#### **4.4 Amendment to Invitation for Bids**

If, after issuance of Invitation for Bids, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous IFB, such changes will be accomplished by issuance of an amendment to the IFB. The amendment will be posted on the internet at CapMetro's customary solicitation posting site.

Any information given to a prospective bidder concerning an Invitation for Bid must be furnished promptly by amendment to all other prospective bidders. No award will be made on the IFB unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

#### **4.5 Responsiveness of Bids**

To be considered for award, a bid must comply in all material respects with the Invitation for Bids, both to the method and timeliness of submission and to the substance of any resulting contract, so that all bidders are treated equally and the integrity of the formal solicitation process is maintained.

#### **4.6 Time of Bid Submission**

Bids must be received by the due date and time specified in the IFB document.

#### **4.7 Late Bids**

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Bids are "late bids" when they are received by the Procurement Department (as directed in the IFB) after the exact time specified. Late bids will not be accepted by CapMetro, unless it can be proven that the bid was received timely and mishandled by CapMetro employees, or as otherwise set forth in the solicitation.

#### 4.8 Modification or Withdrawal of Bids

Bids may be modified or withdrawn not later than the exact time set for opening of bids.

#### 4.9 Late Modifications and Withdrawals

Modifications of bids and requests for withdrawal of bids which are received after the exact due date and time are "late modifications" and "late withdrawals," respectively. A late modification of an otherwise successful bid will not be considered. A late withdrawal may be considered, provided that the request is fully documented.

### **IV-5 BID RECEIPT AND OPENING**

#### 5.1 Receipt of Bids

Bids are received electronically through an online bid portal and time/date stamped by that system.

#### 5.2 Opening of Bids

The official designated as the bid opening officer should announce when the time set for bid opening has arrived and will so declare to those present. All bids received prior to the exact time set for bid opening will then be publicly opened, recorded, and, when practicable, read aloud to the persons present. If it is impracticable to read the entire bid, as when many items are involved, the total amount of each bid will be read, if feasible.

#### 5.3 Recording of Bids

The assigned Buyer/Contract Administrator and one other department employee should be present at each bid opening to facilitate bid opening and recording of the bids. When the items are too numerous to warrant the recording of all bids completely, an entry should be made of the IFB number, opening date, general description of the procurement items, and the total bid price where definite quantities are involved.

#### 5.4 Cancellation of Invitation for Bid After Opening

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Preservation of the integrity of the sealed bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the IFB.

When an IFB must be canceled, it should be because (1) all bids were at unreasonable prices, (2) there is evidence of collusion or bad faith, (3) competition was not adequate to assure a reasonable price, or (4) it is in the best interest of CapMetro. In such instances, thorough documentation to support the action taken must be included in the files.

Invitation for Bids may be canceled after opening, but prior to award, and all bids rejected, where the Chief Contracting Officer determines that circumstances justify such action. Complete written documentation of these cases must be placed in the contract files.

#### **5.5 Rejection of Individual Bids**

Any bid which fails to conform to the essential requirements of the Invitation for Bids, such as specifications, delivery schedule, or to any alternatives or other requirements which may be specifically provided for in the IFB, shall be rejected as non-responsive.

Ordinarily, a bid will be rejected when the bidder imposes conditions which would modify requirements of the Invitation for Bids or limit their liability to CapMetro so as to give them an advantage over other bidders.

Any bid may be rejected if the Chief Contracting Officer determines in writing that it is unreasonable as to price. The determination must be supported by review and analysis of the action. Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the Invitation for Bids, the bid must be rejected.

All rejected bids, and any written findings with respect to such rejections, will be preserved with the documents relating to the procurement.

After submitting a bid, if a bidder transfers all of its assets or that part of its assets related to the bid during the period between bid opening and the award, accordingly, the bid may be rejected.

Low bids received from firms determined not to be responsible or ineligible for any reason by CapMetro will be rejected.

#### **5.6 Notice to Bidders of Rejection of All Bids**

When a determination is made to reject all bids, the Buyer/Contract Administrator should issue a notification through the online bid portal that the solicitation has been canceled.

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#### **5.7 Restrictions on Disclosure of Descriptive Literature/Written Data**

When a bid is accompanied by descriptive literature or written data and the bidder imposes a restriction that such literature may not be publicly disclosed, such restriction may render the bid non-responsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid which relate to quantity, price, and delivery terms.

Descriptive literature restricted by a bidder against public disclosure will only be disclosed in accordance with the Texas Public Information Act.

#### **5.8 All or None Qualifications**

Unless the Invitation for Bids so provides, a bid is non-responsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the Invitation for Bids. However, bidders will not be permitted to modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

#### **5.9 Mistakes in Bids**

Mistakes are usually discovered after bids are opened and before the contract is awarded. Four generally accepted categories of bid mistakes, and remedies to be exercised at CapMetro's option are as follows:

##### **(a) Minor informalities or irregularities in bids prior to award of the contract**

These may be a matter of form and not substance, or an immaterial defect in a bid that can be corrected or waived without being prejudicial to other bidders. The defect is immaterial when the effect on price, quality, or delivery is negligible when contrasted with the total cost or scope of the requirement being procured.

Examples of minor informalities or irregularities include the failure of a bidder to:

- (1) sign the bid, but only if the unsigned bid is accompanied by other material clearly indicating the bidder's intent to be bound; or
- (2) acknowledge receipt of an amendment to the IFB, but only if:
  - it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

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- the amendment involved had a negligible effect on price, quantity or delivery.

(b) Obvious or apparent clerical mistakes discovered prior to award

These mistakes are obvious or apparent on the face of the bid, such as misplacement of a decimal point, mistake in designation of unit, transposition errors, arithmetical errors, and typographical errors. Verification and correction must be made prior to award.

(c) Mistakes other than minor informalities or irregularities in bids, or obvious or apparent clerical mistakes that are discovered prior to award

These mistakes are generally raised by the bidder along with a request to withdraw its bid, such as a subcontractor's price element was omitted from the bid. Generally, the bidder will be allowed to withdraw its bid without prejudice.

(d) Mistakes discovered after award

CapMetro may allow mistakes discovered after award to be corrected if the correction would be favorable to CapMetro and not change the essential requirements of the specification.

## **IV-6 EVALUATION OF BIDS**

The Procurement Department shall conduct a public bid opening for all sealed bids. Contracts shall be awarded to the lowest responsive and responsible bidder considering price and other price-related factors set forth in the IFB.

### **6.1 Responsible Bidder**

The term "responsible" refers to a bidder's financial resources, judgment, skill, integrity, and ability to fulfill successfully the requirements of the contract. The principal criteria used to determine a bidder's responsibility are the following:

- Technical status as a manufacturer, supplier or construction contractor
- Financial resources and status
- Skill, experience, and staffing levels
- Prior conduct and performance of a contract

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- Debarment and suspension.
- Contractor integrity, business ethics, and compliance with public policy.

Before awarding any contract, the Authority will verify, using the Federal System for Award Management and the Texas Comptroller's Debarred Vendor List, that the offeror recommended for contract award has no unsatisfactory performance history that would prohibit awarding them a contract.

The Procurement Department will make the determination as to whether or not a bidder is considered responsible.

#### 6.2 Responsive Bidder

The responsiveness of the bid itself is determined by its conformance to the technical and legal requirements of the bid solicitation. Generally, a bid is not responsive and may not be considered for award when it contains a deficiency as to any material factor, defined as circumstance which affects price, quality, or quantity of the articles or services furnished.

#### 6.3 Two-Step Sealed Bidding

For Two-Step Sealed Bidding, CapMetro will follow the process stated in FAR Part 14.5 and applicable State law.

### **IV-7 AWARD PROCESS**

#### 7.1 Award

Award must be made by CapMetro by written notice within the time for acceptance specified in the bid or extension thereof to the responsive, responsible bidder. Award will **not** be made until Board authorization has been obtained, if required, and contract is fully executed.

#### 7.2 Delay of Award

If administrative difficulties cause unavoidable delays in awarding of contracts, and such delays threaten to delay award beyond the bidders' acceptance period, the Buyer/Contract Administrator will request that all bidders extend their bid acceptance period in writing for an additional specific number of days with the consent of sureties, if any. The Buyer/Contract Administrator processes this written request prior to the expiration of the bids in an attempt to avoid the need for re-advertising.

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Directors****7.3 Award to a Single Bidder**

In the event a single bid is received in a sealed bid procurement, CapMetro must conduct a price or cost analysis of the bid. A single bid can be converted to a negotiated procurement if deemed necessary.

**7.4 Award Criteria**

In all sealed bid procurements, the award of contracts shall be to the lowest responsive, responsible bidder.

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## **CHAPTER V – COMPETITIVE PROPOSAL PROCUREMENTS POLICY**

### **V-1 INTRODUCTION**

In accordance with 2 CFR Part 200.320(b)(2) and applicable State law, this chapter outlines the CapMetro policies for the competitive proposal and qualifications-based procurement methods. The use of Expressions of Interest (EOI) or a Request for Information (RFI) are for informational purposes only and by themselves cannot result in negotiated procurement.

Competitive proposals should be used when circumstances are such that there is a need for discussions or it is important to base the contract award on factors other than price alone due to the nature of the procurement. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price. On the other hand, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in the construction project are not services for which qualifications-based procurement procedures may be used.

**RFP:** A Request for Proposals (RFP) leading to a negotiated procurement shall be solicited from an adequate number of potentially qualified proposers in order to obtain the greatest possible competition. Contract award under the competitive proposal method is dependent upon the negotiation of a mutually acceptable agreement between CapMetro and the successful proposer(s). CapMetro reserves the right to reject all proposals and resolicit or cancel the procurement if deemed by CapMetro to be in its best interest. CapMetro reserves the right to enter into a contract with any offeror based upon the initial proposal or on the basis of a final proposal revision (FPR) without conducting written or oral discussions.

**SOQ:** The qualifications-based procurement of statutory professional services, subject to the Texas Professional Services Procurement Act, Title 10, Chapter 2254 of the Texas Government Code, shall be accomplished utilizing the Federal Transit Administration best practices “Statement of Qualifications” (SOQ) method. After technical evaluations have been completed, discussions will be held with all firms determined to be in the technically competitive range. Price is never an evaluation factor for qualifications-based statutory professional services.

The selection of the technically “most qualified firm” shall be made at the conclusion of discussions and based upon the evaluation of a revised SOQ unless the determination has been made to award on the basis of the initial SOQ without conducting discussions with any of the competing firms. Where multiple awards are proposed, more than one firm

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can be considered as most qualified. Negotiations are conducted only after the most qualified firm or firms has been identified. If an agreement cannot be reached on price, the firm's submittal is rejected and negotiations are conducted with the next most qualified firm.

This SOQ method will be used for procurement of statutory professional services, such as preliminary engineering, design, architectural, engineering, surveying, mapping, and related services which require performance by a registered or licensed architect or engineer.

When using the SOQ method for procurement of statutory professional services, as stated in Texas Government Code chapter 2254, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

**Late Proposals:** Proposals are “late proposals” when they are received by the Procurement Department (as directed in the solicitation) after the exact time and date for the proposal closing. Late proposals will not be accepted by the online bid portal and, if submitted in another fashion, will be returned to the offeror unopened.

**NOTE:** After receipt of proposals, none of the information contained in the proposals or concerning the number or identity of offerors shall be made available to the public or to anyone in CapMetro not having a legitimate interest or need to know prior to the approval of execution of the contract, unless explicitly stated in statute.

## **V-2 PREPARATION OF SOLICITATION DOCUMENTS FOR NEGOTIATION**

1.1 Competitive proposals are generally utilized to obtain, among other things, the following goods and services:

- Architect/Engineer or related services contracts;
- Professional Services and Consulting Contracts;
- Rolling Stock Contracts;
- Construction Services Contracts

1.2 All RFPs/SOQs shall be based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such requirements shall not contain features that unduly restrict competition.

1.3 The user department is responsible for providing the in-house independent cost estimate (ICE), technical specifications, scope of work, plans, drawings, evaluation criteria

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and their corresponding weights, and other documents deemed necessary for the procurement.

1.4 In addition to the technical requirements/statement of work, additional and special terms and conditions may be prepared to cover such items as required or desired delivery schedule, and progress reporting requirements. Requestors are responsible for providing this information, together with the Purchase Requisition, to the Procurement Department.

1.5 The Procurement Department is responsible for the solicitation package. A solicitation package includes instructions to offerors, technical specifications, the special terms and conditions recommended by the Department Project Manager, the contractual provisions required by the Federal government (if needed), the proposed contract terms and conditions, and the evaluation criteria that will be utilized to determine contractor selection.

1.6 When all reviews have been completed and approvals obtained, the Procurement Department will issue the final solicitation.

1.7 Solicitations will be posted on the internet at CapMetro's online bid portal. Notice of the solicitation will be emailed to all vendors whose registration criteria match any of the commodity codes assigned to the solicitation.

1.8 Every RFP/SOQ may be advertised, as appropriate, on the internet, in local newspapers, media trade journals, national media trade journals, etc. The notice must be published in a newspaper of general circulation at least once each week for two consecutive weeks before the date set for the submittal of proposal. The first notice must be published at least 15 days before the date set for receipt of offers. In the case of contracted transit services, the solicitation must be advertised once per week for eight (8) consecutive weeks as required by Texas Transportation Code Section 451.137.

### **V-3 CONFIDENTIALITY OF PROPOSALS**

All cost and pricing data received by CapMetro in competitive proposal procurements is to be treated as confidential during the solicitation process.

All technical data received in response to a competitive proposal is confidential except for data contained in the awarded contract.

Requests for these items shall be referred immediately to the office of the Chief Counsel for handling under the Texas Public Information Act.

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#### **V-4 GUIDELINES FOR THE EVALUATION OF PROPOSALS**

Proposals shall be evaluated and ranked on the basis of criteria and the corresponding adjectival rating prepared by the department and contained in the solicitation. Numerical ratings will only be used if required by statute. The criteria will specify the overall technical ranking as well as the analysis of cost. Generally, emphasis will be placed on the best value, technical expertise of the firm and, while price is a consideration, it is not normally the only determining factor. The objective is to select the firm or individual that can best provide the goods or services, when technical ability, price (if applicable), and other factors have been considered.

Several steps are normally completed prior to the selection of a successful proposer:

##### **3.1 Evaluation Committee**

Only technically qualified, independent and impartial members are selected for the evaluation of all requests for proposals.

##### **3.2 Evaluation Criteria**

Included in the RFP is a list of evaluation criteria, which will be used by the evaluation committee in reviewing the proposals. Typically, the evaluation criteria or factors will relate to the areas of technical expertise, project approach, and cost and price information.

###### **(a) Technical Expertise**

The solicitation will identify for the proposer the types of technical expertise required for the particular job. The proposers will then be evaluated on their competence in those areas. For example, a solicitation for A/E services might require expertise in the following areas:

- architectural
- structural
- mechanical
- electrical
- landscape
- civil engineering
- soils

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- graphics
- acoustics
- traffic engineering
- environmental assessment

All areas may not be given equal value in the evaluation process but may be weighted to reflect their relative contribution to the project. The technical criteria must be listed in the solicitation so that the proposer is aware of the items and their relative emphasis.

(b) Project Approach

The proposer will be evaluated on its understanding of the nature and scope of the work to be performed. The evaluation committee will consider both organization and experience with attention to factors such as:

- Experience and make-up of the firm
- Experience of key personnel assigned to the project
- Experience with government agencies
- Experience with transit projects
- Past achievements
- Commitment of key personnel to the project
- Costs
- Innovative management techniques

(c) Cost and Price Information

The following criteria (not listed in order of relative importance) will be used in the evaluation of cost proposals:

- Clarity and visibility of proposed cost breakdown for the proposer and its subcontractors and subconsultants.

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- Credibility of labor hours and dollar cost estimates when related to the proposed project approach.
- Profit negotiated as a separate element of price.
- Total price, including base and all option years.

CapMetro may require proposers to submit information which would indicate the proposer's financial capability to perform the effort required by the solicitation.

### 3.3 Evaluation Forms

The Procurement Department prepares an evaluation form for each proposer to be used by committee members in evaluating the proposals. The form must be based on the evaluation criteria listed in the solicitation.

### 3.4 Competitive Range

The CapMetro evaluation committee shall make the determination of which proposals are in the competitive range. The competitive range shall be determined on the basis of the evaluation criteria stated in the solicitation, and should include all proposals which meet the requirements or have a reasonable chance of being made acceptable. The initial number of proposals considered as being within the competitive range may be reduced when, as a result of the written communication or oral discussions, individual proposals are determined to be unacceptable.

Proposals submitted by responsible offerors that meet the technical requirements of what is being procured should be included in the competitive range unless the proposal includes pricing that renders it infeasible.

In the two-step sealed bid process, when unpriced technical proposals are solicited, they should be evaluated in the same manner as an RFP, holding discussions if needed and establishing a competitive range. In phase two, sealed bids are solicited from offerors whose proposals are determined to be acceptable to CapMetro. Award is made to the lowest responsive and responsible bidder.

### 3.5 Oral Interviews/Written Communication

The committee members prepare lists of questions that they may ask the proposers during the oral interviews. These questions generally address items that are not sufficiently covered by the proposers in the proposals. The proposer may be required to update the proposal in writing if clarification or additional information is provided in the oral interview.

The format of the oral interviews is varied. Proposers are either asked to make formal presentations or to be prepared for a question and answer session. The preferable method

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is for the proposer to be prepared for a question and answer session since CapMetro will obtain more valuable information as it relates to the specific proposal. Oral interviews should not be an opportunity for a sales presentation.

- (a) Written or oral discussions shall be conducted with all responsible offerors who submit proposals which are determined to be within the competitive range, price and other factors considered (including technical quality where technical proposals are requested) **except** that this requirement need not necessarily be applied to the following procurements:
  - less than \$50,000.00;
  - in which prices or rates are fixed by law or regulation;
  - in which date of delivery will not permit discussion;
  - the solicitation stipulated that award might be made on the basis of initial proposals received.
- (b) For the sole purpose of eliminating minor uncertainties or irregularities, an inquiry may be made to an offeror concerning their proposal. Such inquiries and resulting clarification furnished by the offeror shall not constitute discussions. If the clarification prejudices the interest of other offerors, award may not be made without discussion with all offerors in the competitive range.

### 3.6 Discussions with Offerors

- (a) Any offeror determined to be in the competitive range and selected for oral discussions should be provided written notification of the deficiencies in their proposal that will require clarification. A deficiency is defined as that part of a proposal that does not completely satisfy a CapMetro requirement.
- (b) Discussions shall not disclose the strengths or weaknesses of competing offerors or disclose any information about other proposals.
- (c) Auction techniques are strictly prohibited. Indicating to an offeror a price which must be met to obtain further consideration, or informing them that their price is not low in relation to another offeror are examples of auctioning. However, it is permissible to inform an offeror that their price may be considered by CapMetro to be unbalanced or too high with respect to the marketplace .
- (d) At the conclusion of discussions, a final, common cutoff date which allows a reasonable opportunity for submission of a Final Proposal Revision shall be established and all remaining participants so notified. If oral notification is given, it shall be confirmed in writing.

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The notification shall include information to the effect that (i) discussion has been concluded, (ii) offerors are being given an opportunity to submit a Final Proposal Revision and, (iii) if any such modification is submitted, it must be received by the date and time specified.

### 3.7 Final Proposal Revision (FPR)

After all discussions have been completed, the Authority reserves the right to shorten its competitive range based upon the results of the oral discussions. Each of the offerors still in the competitive range will be afforded the opportunity to revise its proposal and submit its FPR. The request for FPR should include:

- (a) Notice that discussions/negotiations are concluded;
- (b) Notice that this is the opportunity for submission of a FPR;
- (c) A common date and time for submission of written FPRs, allowing a reasonable opportunity for preparation of written FPRs;
- (d) Notice that if any modification to a FPR is submitted, it must be received by the date and time specified for the receipt of FPRs and is subject to the late submissions, modifications, and withdrawal of proposals provision of the Request for Proposal;
- (e) Notice that if offerors do not submit a FPR or a notice of withdrawal and another FPR, their immediate previous offer will be construed as their FPR.

**NOTE:** CapMetro reserves the right to make an award to an offeror whose proposal it judges to be most advantageous without conducting any written or oral discussions with any offerors or solicitation of any FPRs.

### 3.8 Debriefing of Unsuccessful Offerors

When requested by an unsuccessful offeror, a debriefing will be conducted following contract award, by the Buyer/Contracts Administrator and Department Project Manager utilizing the evaluation matrix, documentation of scoring process, and the narrative appraisal describing the strengths and weaknesses as basis for the debriefing discussion. When a DBE firm requests a debriefing, the DBE Coordinator may be invited to participate in the debriefing.

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### 3.9 Procurement Summary

The Buyer/CA will prepare written record of procurement history. At a minimum, the following records shall be maintained:

- The rationale for the method of procurement;
- selection of contract type;
- reasons for contractor selection or rejection; and
- the basis for the contract price.

3.10 Before awarding any contract, the Authority will verify, using the Federal System for Award Management and the Texas Comptroller's Debarred Vendor List, that the offeror recommended for contract award has no unsatisfactory performance history that would prohibit awarding them a contract.

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## **CHAPTER VI – NON-COMPETITIVE PROCUREMENTS POLICY**

### **VI-1 SOLE SOURCE**

A Sole Source procurement is an acquisition where only one source can provide the goods or services. Proprietary does not justify sole source if there is more than one potential supplier available.

Consistent with Federal and State law, purchase requisitions for goods and services valued at the Federal Micro Purchase Threshold or more shall be competitively procured. Sole Source procurements may only be used when the award of a competitive contract is infeasible under Small Purchase, Sealed Bidding or Competitive Proposal procedures. One of the following circumstances must apply for Sole Source to be used:

- The item is one-of-a-kind equipment, goods or services, especially high technology or scientific, and available from only one source of supply;
- The public emergency for the requirement will not permit a delay resulting from competitive solicitation, or where an unusual and compelling urgency means CapMetro would be seriously injured unless it were permitted to limit the solicitation. In such a case, CapMetro should limit its contract only to the quantities or period of performance necessary to see it through the emergency;
- After solicitation of a number of sources, competition is determined inadequate; or
- Non-Competitive Negotiations are authorized by law or regulatory authority.

The Procurement Department shall negotiate the purchase as to price or cost, delivery, terms and, as applicable, service(s), training, warranties, etc. A cost analysis, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required. Profit must be negotiated as a separate element of price.

CapMetro will avoid Sole Source procurements except in circumstances where it is allowed by law and in the best interest of the agency. Sole Source procurements shall be allowed only on an exceptional and fully documented basis. Sole Source procurements are not justified based on staff's lack of advance planning.

In all situations, CapMetro should solicit offers from as many potential sources as is practicable under the circumstances.

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## **VI-2 UNSOLICITED PROPOSALS**

Unsolicited proposal is defined as a written proposal that is submitted to CapMetro on the initiative of the submitter for the purpose of obtaining a contract with CapMetro and which is not in response to a formal or informal request.

Unsolicited proposals that CapMetro determines to be acceptable based on need, favorable evaluation, and available funding will be processed as Sole Source procurements. The offeror should demonstrate a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to the recipient only from one source and has not in the past been available to the recipient from another source.

Unsolicited proposals are a valuable means for CapMetro to obtain innovative or unique methods or approaches to accomplishing its mission.

Advertising material, commercial item offers, contributions or technical correspondence are not considered to be unsolicited proposals.

### **2.1 A valid unsolicited proposal must:**

- Be innovative and unique.
- Be independently originated and developed by the offeror.
- Be prepared without CapMetro supervision.
- Include sufficient detail to permit a determination that CapMetro support could be worthwhile and the proposed work could benefit the agency's mission responsibilities.
- Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.
- Not be in response to a publicized general statement of agency needs that are not considered to be independently originated.

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## 2.2 Advance Guidance

CapMetro should encourage potential offerors to make preliminary contacts with appropriate agency personnel before expending extensive effort on a detailed unsolicited proposal or submitting proprietary data to CapMetro. These preliminary contacts include:

- Inquiries as to the general need for the type of effort contemplated.
- Contacts with agency technical personnel for the limited purpose of obtaining an understanding of the agency mission and responsibilities relative to the type of effort contemplated.

CapMetro shall make available to potential offerors of unsolicited proposals at least the following information:

- Definition and content of an unsolicited proposal acceptable for evaluation.
- Requirements concerning responsible prospective contractors and organizational conflicts of interest.
- Role of technical correspondence before proposal preparation.
- Agency contact points for information regarding advertising, contributions, solicitation mailing lists and other types of transactions frequently mistaken for unsolicited proposals.
- Procedures for submission and evaluation of unsolicited proposals.
- Information sources on agency objectives and areas of potential interest.
- Instructions for identifying and marking proprietary information.

Agency personnel shall conduct personal contacts without making any agency commitments concerning the acceptance of unsolicited proposals.

## 2.3 Content of Unsolicited Proposals

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:

### (a) Basic information including:

- Offeror's name and address and type of organization; e.g. profit, nonprofit, educational, small business.

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- Names and contact information of technical and business personnel to be contacted for evaluation or negotiation purposes.
- Identity of proprietary data to be used only for evaluation purposes.
- Names of other federal, state, local agencies, transit authorities receiving the proposal or funding the proposed effort.
- Date of submission.
- Signature of person authorized to represent and contractually obligate the offeror.

(b) Technical information including:

- Concise title and abstract of the proposed effort;
- A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;
- Names and biographical information on the offeror's key personnel who would be involved, including alternates; and
- Type of support needed from the agency; e.g. facilities, equipment, materials, or personnel resources.

(c) Supporting information including:

- Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation.
- A six-month period of time for which the proposal is valid.
- Type of contract preferred.
- Proposed duration of effort.
- Brief description of the organization, previous experience in the field and facilities to be used.
- Required statements about organizational conflicts of interest.

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#### **2.4 Award of unsolicited proposals**

Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. CapMetro will take the following actions before entering into a contract resulting from an unsolicited proposal:

- Publicize receipt of the unsolicited proposal and include an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought;
- Publicize CapMetro's interest in acquiring the property or services described in the proposal and provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- Publicize CapMetro's intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, CapMetro may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific property or services proposed.

#### **VI-3 APPROVAL LEVELS FOR NON-COMPETITIVE PROCUREMENTS**

Non-competitive procurements are required to have a "Sole Source Justification Form" processed along with the purchase requisition. Approval levels for non-competitive procurements are as follows:

##### **Dollar Value**

Federal Micro Purchase Threshold to \$149,999.99  
\$150,000 to \$249,999.99  
\$250,000 and higher

##### **Signature Authority**

Department Head  
Executive Vice President  
President & CEO

The Chief Contracting Officer shall approve all non-competitive procurements over the Federal Micro Purchase Threshold.

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## **CHAPTER VII – CONTRACT ADMINISTRATION POLICY**

Contract administration is managing the performance of both parties in all aspects of the contract to ensure successful completion. Contract administration encompasses preparing, executing, and administering assigned contracts in accordance with the warranted authority, including issuing contract modifications, change orders, task orders, and contract closeout or termination. The major players are the Department Project Manager and the Contract Administrator.

### **VII-1 DEPARTMENT PROJECT MANAGER RESPONSIBILITIES**

After contracts are awarded and the Contractor has been issued “Notice to Proceed”, the Project Manager oversees the Contractor through the work process. The Project Manager shall manage and review the progress of the work and initiate review by CapMetro staff, public agencies, and affected utilities as required.

The Project Manager shall review the Contractor's documentation and invoices in relation to the milestones, work completed to date, and is solely responsible for the department budget information. The Project Manager shall also review invoices for accuracy and content and then approve for payment in accordance with Contract Terms and Conditions. The Contract Administrator must approve payment requests before Finance will process payment.

The Project Manager has the primary responsibility for providing technical direction to the Contractor as well as providing performance oversight to ensure the products and services for which the Project Manager is responsible are delivered by the Contractor in accordance with the terms and conditions of the contract, including quality. The Project Manager performs inspection and acceptance of work, as required, and conducts periodic reviews, audits, and surveillances of the Contractor to ensure compliance with the contract, as required.

### **VII-2 CONTRACT ADMINISTRATOR RESPONSIBILITIES**

Immediately after full execution and award of the contract, and issuance of the “Notice to Proceed” the technical administration and project oversight of the contract becomes the responsibility of the Project Manager with the administrative assistance of the Contract Administrator from the Procurement Department. The Contract Administrator's role is to prepare, execute, and administer assigned contracts in accordance with the warranted authority. The Contract Administrator and Project Manager establish the methods and procedures to be utilized in the performance of the contract as laid out stated in the Contract Management Plan.

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Prior to the contract completion date, the Contract Administrator should contact the Project Manager to confirm that no contractor effort will be required after the specified contract completion date and that the contract may be closed out. This action should be initiated at least sixty (60) days prior to the specified completion date, whenever possible. This is necessary to determine whether there will be an overrun, to negotiate and extend the period of performance if necessary, and to allow sufficient procurement lead time if there is a follow-on effort. If the contract is to be completed on schedule, the Contract Administrator should proceed with the contract closure; otherwise, appropriate action should be taken to extend the contract.

### **VII-3 CONTRACT MODIFICATIONS**

Contract Modifications shall be used pursuant to the Changes provision in the Contract when it becomes necessary to change the contract cost and/or fee, Statement of Work, Period of Performance, or any other mutually agreeable change to the Contract. The authorized representative of the Contractor and Contract Administrator must execute all Contract Modifications in writing.

The Project Manager shall coordinate the requirement for a contract modification as soon as the need is known and shall provide the necessary documentation to permit the Modification to be processed in the most expeditious manner to prevent delays in the Project Schedule.

### **VII-4 CHANGE ORDERS**

Under certain unforeseeable conditions, it may become necessary to redirect the Contractor's effort to prevent an adverse impact on the project. In such instances, the Contract Administrator may issue directions by a unilateral "Change Order" pursuant to the Changes provision. If such direction causes an increase or decrease in the estimated cost and/or fee, a change in the period of performance, or affects any other provision of the Contract, the Change Order shall be incorporated into the Contract by formal Contract Modification in the most expeditious manner possible.

All change orders issued will have cost justifications supporting each change. Procurement must approve any proposed change order before it is issued.

The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of the contract, and reasonable for the completion of project scope.

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## **VII-5 ADVANCE PAYMENTS**

Advance payments are payments made to a contractor before they incur costs. CapMetro does not make advance payments to contractors before the contractor has incurred costs for which payments would be attributed, except for sound business reasons including but not limited to:

- Software licenses;
- Software subscriptions;
- Software and hardware maintenance agreements; or
- Service maintenance agreements.

Exceptions require review and approval by the Chief Contracting Officer.

Adequate security must be obtained when using advance payments.

The Federal Transit Administration (FTA) allows advance payments to contractors under certain conditions. These conditions include:

- **Business reason:** The recipient must have a sound business reason for the advance payment.
- **Security:** The recipient must obtain adequate security for the advance payment.
- **FTA concurrence:** The recipient must obtain written concurrence from the FTA before making the advance payment.
- **Customarily required:** The advance payment must be customary in the marketplace.

Examples of adequate security Surety bonds, Personal or corporate endorsements, Advance payment bonds, Pledges of collateral, and Taking first priority lien on property.

## **VII-6 PROGRESS PAYMENTS**

CapMetro's policy is to make progress payments to contractors for costs incurred in the performance of the contract. CapMetro can use FTA assistance to support progress payments provided it obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

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## **VII-7 CONTRACT TERMINATION**

The performance of work under a contract may be terminated in part or in whole when the Chief Contracting Officer determines that such termination is in the best interests of CapMetro. Contracts may be terminated for convenience, such as a reduced need or in the best interests of CapMetro, or for default, such as the Contractor failing to perform in accordance with the contractual requirements.

## **VII-8 CONTRACT CLOSEOUT**

The Contract Administrator and the Project Manager are responsible for ensuring that contract files are closed in a timely manner and the closeout actions are documented on the closeout checklist, and in such additional details as appropriate.

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## **CHAPTER VIII – INVESTMENT RECOVERY** **POLICY**

### **VIII-1 DISPOSAL OF CAPMETRO SURPLUS OR OBSOLETE PROPERTY**

#### 1.1 Purpose:

The intent of this policy is to establish uniform guidelines for the disposal or transfer of surplus, for obsolete CapMetro equipment and supplies. This policy is consistent with CapMetro's Environmental and Sustainability Policy (SUS-100) and Fixed Assets Capitalization & Disposal Policy (FIN-104). This policy shall apply to all tangible personal property, including rolling stock and technology equipment. This policy excludes the transfer, sale or disposal of real property.

#### 1.2 Definitions:

**Damaged** – property that is not operable and would require excessive repair (cost, manpower) to return the asset to serviceable condition.

**Destroyed** – property that is not operable due to destruction beyond repair.

**Fair Market Value (FMV)** – an estimate for the cost of an asset generated from market research for that particular asset.

**Hazardous Waste** – regulated and listed waste that is dangerous or capable of having a harmful effect on human health or the environment.

**Landfill** – lowest priority disposal method. Disposal of waste products in a properly regulated landfill.

**Member Unit** – any governing body, municipality, or county within the CapMetro service area which participates in the appointment of a CapMetro Board member.

**Obsolete** – property that no longer meets CapMetro's specifications or requirements but is still serviceable or useable.

**Recovered Products** - those materials which have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not requiring subsequent separation processing.

**Scrap** – property that no longer functions, is unserviceable but may contain some market value for its basic material content.

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Surplus – property that is in excess of CapMetro's requirements and is no longer needed but may be useable.

Waste – property that is worthless, useless, and has no market value.

Zero Waste – material handling methods that prioritizes reuse, repurposing, composting and recycling over landfilling.

Zero Waste Hierarchy – a method of evaluating the end of use of products that emphasizes conservation, reuse, product take-back, recycling and recapturing material/energy; and avoids disposal methods that cause the release of toxic materials. Properly regulated landfilling is the last choice in the hierarchy.

## **VIII-2 PURCHASES MADE WITH RECOVERED PRODUCTS**

CapMetro will maximize the purchase of products made with recovered materials in accordance with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

## **VIII-3 PROPERTY DISPOSAL FORM**

The Property Disposal form authorizes the process for disposing of assets in accordance with the Investment Recovery Policy. A fully authorized Property Disposal Form is required in order to dispose of any CapMetro asset. Further information regarding the Property Disposal Form can be found in the Finance Department's Fixed Assets Capitalization & Disposal Policy (FIN-104); Disposal of Locally Financed Assets.

## **VIII-4 DETERMINING THE METHOD OF DISPOSAL**

The President & CEO or their designee shall be responsible for the segregation, sale and disposal of surplus, obsolete material and equipment in accordance with all applicable laws and regulations.

The determination for the method of disposal will be made once a fair market value analysis is conducted. If surplus, obsolete material and equipment is found to be more cost effective to dispose of as scrap or landfill, the Authority will label it as scrap and attempt to salvage through recycling vendors and/or landfill.

All surplus property will adhere to the following hierarchy method to determine disposition established for the property:

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- (a) Obsolete, Non-repairable or Surplus Vehicles:
  - (1) Offered to each Member Unit at fair market value
  - (2) Sale through public auction or Request for Offer (RFO)
  - (3) Salvage through recycle vendors
- (b) Obsolete or Surplus Property:
  - (1) Reuse within Cap Metro
  - (2) Offered to each Member Unit at fair market value
  - (3) Sale through public auction or Request for Offer (RFO)
  - (4) Recycle
  - (5) Landfill
- (c) Obsolete or Surplus IT Equipment:
  - (1) Reuse within Cap Metro
  - (2) Trade in as part of new IT procurement
  - (3) Offered to each Member Unit at fair market value
  - (4) Sale through public auction or Request for Offer (RFO)
  - (5) Recycle
  - (6) Landfill
- (d) Obsolete, Non-repairable or Scrap:
  - (1) Sale through public auction or Request for Offer (RFO)
  - (2) Salvage through recycle vendors
  - (3) Landfill

## **VIII-5 FAIR MARKET VALUE**

In estimating the Fair Market Value of such Surplus Property, reference should be made to identifiable active markets for such property and information concerning additional factors may also be considered, which may include one or more of the following:

- (1) Original purchase cost (if available)

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- (2) Depreciation
- (3) Residual Value
- (4) Estimated Replacement Value
- (5) Current condition and or market value of the item
- (6) Independent Appraisal

#### **VIII-6 SALE OF OBSOLETE OR SURPLUS VEHICLES**

When obsolete or surplus vehicles become available, they will be disposed of in accordance with this policy and applicable laws and regulations. A list of the vehicles, including the offered price based on fair market value, will be made available to each Member Unit within the CapMetro Service Area. Any vehicle not sold to a Member Unit within five (5) business days after notification of vehicle availability will be sold to the general public.

Methods for disposing of obsolete or surplus vehicles include but are not limited to:

- (1) Request for Offers (RFO), public auction or online auction;
- (2) transfer or sale to other public agencies;
- (3) transfer to non-profit agencies or organizations consistent with established legal parameters;
- (4) trade-in as part of a new procurement; or
- (5) sale to recycling or scrapping vendors for material content.

The sale or transfer of surplus vehicles funded by the Federal Transit Administration (FTA) shall be processed in accordance with 49 CFR 18.32 and FTA Circular 5010.1D, *Grant Management Requirements* as stated in the *Finance Fixed Asset Policy (FIN104); Removal from Service and Disposal of Grant Purchased Assets.*

#### **VIII-7 SALE OF OBSOLETE OR SURPLUS PROPERTY**

When obsolete or surplus assets become available, they will be disposed of in accordance with this policy and applicable laws and regulations. A list of the assets, including the fair market value (FMV), will be offered to any Member Unit within the CapMetro service area. CapMetro may accept an offer of in-kind service equal to FMV

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instead of monetary payment. Any asset not acquired by a Member Unit within five (5) business days after notification of availability will be sold to the general public.

#### 6.1 Surplus Property:

Methods for disposing of obsolete or surplus property include but are not limited to:

- (1) Request for Offers (RFO), public auction or online auction;
- (2) transfer or sale to other public agencies;
- (3) transfer to non-profit agencies or organizations consistent with established legal parameters;
- (4) trade-in as part of a new procurement; or
- (5) sale to recycling or scrapping vendors for material content.

The sale or transfer of obsolete or surplus property funded by the Federal Transit Administration (FTA) shall be processed in accordance with 49 CFR 18.32 and FTA Circular 5010.1D, Grant Management Requirements as stated in the Finance Fixed Asset Policy: Removal from Service and Disposal of Grant Purchased Assets.

#### 6.2 IT Equipment:

The Information Technology Department will be responsible for the review of the continued usefulness of computer equipment and telecommunications equipment within CapMetro and may identify such equipment as Surplus Property. Surplus IT equipment shall be disposed of using the methods described in section 6.1 above.

### **VIII-8 SALE OF SCRAP, DAMAGED OR DESTROYED PROPERTY**

Scrap, damaged, or destroyed property as determined by the President & CEO or his/her designee shall be sold in accordance with industry best practices through scrap or recycle vendors at the market price for the material content (i.e. steel, metal, plastic, etc.) of the property.

### **VIII-9 DISPOSAL OF OBSOLETE MATERIAL OR EQUIPMENT, SCRAP, DAMAGED OR DESTROYED PROPERTY WITHOUT MONETARY VALUE**

#### 8.1 Surplus Property

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The President & CEO or his/her designee has the authority to dispose of the property in the most cost-effective means consistent with all relevant laws and regulations through proper waste channels in accordance with industry best practices for the following:

- Scrap without monetary value
- Damaged property
- Destroyed property

These items may be deemed as trash if they have no net monetary value.

## 8.2 IT Equipment

Disposal of worthless damaged or destroyed IT equipment should be made through a certified electronics recycling and disassembly facility in accordance with all relevant laws, regulations and industry best practices.

## **VIII-10 ZERO WASTE, SUSTAINABILITY AND DISPOSAL OF HAZARDOUS WASTE MATERIALS**

### 9.1 Zero Waste and Recycling:

To the highest extent possible, the disposition of product that is no longer useful to CapMetro should follow the zero-waste hierarchy. This standard is consistent with sustainability and state of good repair best practices and allows for the highest and best use. Zero waste methods include: reuse, repurposing, vendor take-back, packaging minimization and reuse, recycling, composting, and other methods that conserve natural resources and minimize landfilling.

All electronic waste disposal will follow best practices by using a recycling facility or vendor that follows Sustainable Electronics Recycling International (SERI) R2 (or similar standards) guidelines whenever possible.

### 9.2 Disposal of Hazardous Materials:

When hazardous waste materials become available all waste disposal activities will be completed in accordance with all applicable local, state and federal waste disposal law, ordinances and rules.

Surplus Property containing any of the Hazardous Waste materials referenced below shall be identified in the Property Disposal Form.

The materials may include (but are not limited to):

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- (1) Paints (Oil, Enamel, Polyurethane, Latex)
- (2) Batteries (All types)
- (3) Chemicals (Acid/Base/Flammables)
- (4) Pesticides
- (5) Petroleum Products
- (6) Tires (new outdated or used)
- (7) Refrigerants (i.e. Freon) - Any surplus equipment that utilizes refrigerants must be certified free of refrigerant before disposal
- (8) Electronic equipment containing hazardous materials

#### **9.2 Vendors and Sustainability Practices:**

In accordance with CapMetro's *Environmental and Sustainability Policy (SUS-100)*, all efforts will be taken to make vendors aware of CapMetro's Environmental Sustainability Management System (ESMS) Policy for assurance that they will dispose of any surplus materials properly, while adhering to all environmental laws and regulations.

#### **VIII-11 CONFLICT OF INTEREST (COI) RESTRICTIONS**

CapMetro Procurement personnel, the requesting employee, the requesting department's manager and/or supervisor and their immediate family members are restricted from purchasing all surplus items due to conflict of interest concerns. Generally, CapMetro employees may make an offer and/or purchase CapMetro surplus property under the same rules as the general public, unless they are a party listed above. Violations by parties that are restricted from purchasing CapMetro surplus property can result in disciplinary action up to and including termination.

#### **VIII-12 DONATION RESTRICTIONS**

Donations by a governmental entity to a public, non-profit or any other organization are prohibited under Sec. 51 of the Texas Constitution. It is considered granting of public funds without receipt of value. Donations of CapMetro surplus property are restricted under this policy.

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### **VIII-13 ANTI-SCAVENGING RESTRICTION**

CapMetro property that has been identified as surplus and turned in for disposal, including items that cannot be sold, falls under the anti-scavenging restriction, meaning that unauthorized removal, disposal, or expropriation of CapMetro Property or Surplus Property is considered theft and could subject individuals to disciplinary action up to and including termination or criminal prosecution.