

ATTACHMENT B
PROCUREMENT POLICY REVIEW

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Procurement Policy

Table of Contents

CHAPTER 1	INTRODUCTION	5
CHAPTER 2	CODE OF ETHICS AND CONFLICT OF INTEREST POLICY	7
2.1	WRITTEN STANDARDS OF CONDUCT	7
2.1.1	Personal Conflict of Interest	7
2.1.2	Organizational Conflicts of Interest	8
2.2	COMPLIANCE WITH THE CODE OF ETHICS AND CONFLICT OF INTEREST POLICY	9
CHAPTER 3	QUICK REFERENCE GUIDE	12
3.1.	STEP-BY-STEP GUIDE TO THE PROCUREMENT PROCESS FOR KCAPTA	
PROGRAMS, SERVICES, AND SUPPLIES	12	
3.1.1	Methods of Procurement and Delegation	12
CHAPTER 4	POLICIES AND PROCEDURES	14
4.1	PROCUREMENT POLICIES	14
4.1.1	Executive Director, Staff, and Project Manager Responsibilities	14
4.1.2	Standards of Conduct and Conflict of Interest Policies	16
4.1.3	Purchasing Policies	16
4.1.4	Public Records Act	17
4.2	PROCEDURES	18
4.2.1	Independent Cost Estimate	18
4.2.2	Approval to Solicit	18
4.2.3	Reasonableness of Price (Price/Cost Analysis)	18
4.2.4	Best Value	19
4.2.5	Tag-ons	20
4.2.6	Piggybacking	20
4.2.7	Use of Brand Name	20
4.2.8	Options	20
4.2.9	Advance Payments	21
4.2.10	Progress Payments	21
4.2.11	Geographic Preference	21
4.2.12	Arbitrary Action	21
4.2.13	Excluded Parties List (Suspension and Debarment)	21
4.2.14	Business References	22
4.2.15	Public Works	22
4.3	PROCUREMENT BY MICRO-PURCHASE	22
4.4	SMALL PURCHASE	22
4.5	SEALED BIDS (Formal Advertising)	23
4.5.1	Invitation for Bid (IFB)	23
4.5.2	Issuance of IFB	24
4.5.3	IFB Packet	24
4.5.4	Pre-Bid Conference	25
4.5.5	Amendments to Invitation for Bids	25
4.5.6	Cancellation of IFB	25
4.5.7	Receipt of Bids	26
4.5.8	Withdrawal of Bids	26
4.5.9	Bid Opening	26
4.5.10	Recording of Bids	27
4.5.11	Tabulation of Bids	27
4.5.12	Mistakes in Bids	27
4.5.13	Minor Irregularities in Bids	28
4.5.14	Multiple or Alternate Bids	28
4.5.15	Analysis of Limited Bid Response	28

4.5.16	Determination of Responsiveness	28
4.5.17	Responsible Bidder Evaluation	29
4.5.18	Rejection of All Bids	30
4.5.19	Rejection of Individual Bids	31
4.5.20	Award of the Contract	31
4.5.21	Final Award	32
4.5.22	Project Completion.....	32
4.6	REQUESTS FOR PROPOSALS (RFP).....	32
4.6.1	Issuance of RFP	32
4.6.2	RFP Packet	33
4.6.3	Pre-Proposal Conference.....	34
4.6.4	RFP Amendments.....	34
4.6.5	Cancellation of RFP	35
4.6.6	Receipt of Proposals	35
4.6.7	Withdrawal of Proposals	35
4.6.8	Format of Proposal.....	35
4.6.9	Evaluation and Selection Process	35
4.6.10	Responsible Proposer Evaluation	35
4.6.11	Interviews and Best and Final Offers (BAFOs)	36
4.6.12	Board Makes Final Determination.....	36
4.6.13	Notice of Contract Award	36
4.6.14	Final Contract Draft.....	37
4.6.15	Project Completion.....	37
4.7	ARCHITECTURAL / ENGINEERING SERVICES REQUEST FOR PROPOSAL	37
4.7.1	Issuance of an "A/E" RFP	37
4.7.2	"A/E" RFP Packet	38
4.7.3	Pre-Proposal Conference.....	38
4.7.4	Amendments of "A/E" Requests for Proposals	39
4.7.5	Cancellation of an "A/E" RFP	39
4.7.6	Receipt of Proposals	39
4.7.7	Withdrawal of Proposals	39
4.7.8	Format of Proposal.....	40
4.7.9	Evaluation and Contract Negotiation	40
4.7.10	Responsible Proposer Evaluation.....	41
4.8	PROCUREMENT OF DESIGN-BID-BUILD	42
4.9	PROCUREMENT OF DESIGN-BUILD.....	42
4.10	SOLE SOURCE PROCUREMENTS.....	42
4.11	EMERGENCY PROCUREMENTS.....	43
4.12	AMENDMENTS AND CHANGE ORDERS	44
4.13	BLANKET PURCHASE ORDERS.....	44
4.14	PURCHASE REQUISITION/ORDER PROCEDURES	44
4.15	PROTEST PROCEDURES	45
4.15.1	Purpose	45
4.15.2	General.....	45
4.15.3	Definitions.....	46
4.15.4	Grounds for Protest.....	46
4.15.5	Contents of Protest	46
4.15.6	Timing Requirements and Categories of Protests	47
4.15.7	Review of Protest by KCAPTA.....	47
4.15.8	Effects of Protest on Procurement Actions	48
4.15.9	Summary Dismissal of Protests	48
4.15.10	Protest Decisions	48
4.15.11	California Department of Transportation (Caltrans) Appeal, (Only if Federal 5311 funds are used in the procurement).....	49
	(1) Violation of Federal law or regulations. Violation of State or local law shall be under the jurisdiction of State or local authorities.....	49
4.15.12	Judicial Appeals.....	49

4.15.13	Federal Transit Administration Appeal (Only if Federal funds are used in the procurement).....	49
4.16	BUY AMERICA PRE-AWARD/POST-DELIVERY AUDIT PROCEDURES	50
4.16.1	Pre-Award Audit	50
4.16.2	Pre-Award Buy America Certification Requirment	50
4.16.3	Buy America-Compliant Rolling Stock	50
4.16.4	Buy America-Exempt Rolling Stock	51
4.16.5	Purchaser's Pre-Award Requirements Certification	51
4.16.6	FMVSS Pre-Award Certification Requirement.....	52
4.16.7	FMVSS-Compliant Rolling Stock	52
4.16.8	FMVSS-Exempt Rolling Stock	52
4.16.9	Post-Delivery Audit.....	53
4.16.10	Post-Delivery Buy America Certification Requirement.....	53
4.16.11	Buy America-Compliant Rolling Stock	53
4.16.12	Buy America-Exempt Rolling Stock	54
4.16.13	Post-Delivery Purchaser's Requirements Certification	54
4.16.14	More Than Ten Buses or Modified Vans	55
4.16.15	Ten or Fewer Buses or Modified Vans, or any Number of Unmodified Vans.....	55
4.16.16	Post-Delivery FMVSS Certification Requirement.....	56
4.16.17	FMVSS-Compliant Rolling Stock	56
4.16.18	FMVSS-Exempt Rolling Stock	56
CHAPTER 5	GUIDELINES AND REQUIREMENTS	57
5.1	CONTRACT ADMINISTRATION GUIDELINES.....	57
5.2	FEDERAL PROCUREMENT REQUIREMENTS	57
5.3	BONDING REQUIRIEMENTS.....	57
5.3.1	Purpose	57
5.3.2	Responsibility	58
5.3.3	Types of Bonds	58
5.3.4	Procedures	58
5.4	INSURANCE REQUIRIEMENTS	59
5.5	LIQUIDATED DAMAGES	59
5.6	INDEMNIFICATION	59
5.7	TERMINATION	60
5.7.1	Termination for Convenience	60
5.7.2	Termination for Default.....	61
5.8	DISPUTE RESOLUTION	61
5.9	FINAL CONTRACT APPROVAL AND DISTRIBUTION	61
5.9.1	Contract Approval	61
5.9.2	Contract Distribution.....	62
5.10	WRITTEN RECORD OF PROCUREMENT HISTORY	62
CHAPTER 6	TYPES OF CONTRACTS	63
6.1.	FIXED PRICE CONTRACTS	63
6.1.1	Firm-Fixed Price.....	63
6.1.2	Fixed Price Contracts With Economic Price Adjustment	63
6.2	COST REIMBURSEMENT CONTRACTS	63
6.3	INDEFINITE DELIVERY CONTRACTS AND TASK ORDERS CONTRACTS	64
6.4	TIME AND MATERIAL CONTRACTS.....	65
6.5	LABOR HOUR CONTRACTS	65
6.6	REVENUE CONTRACTS.....	65
6.7	CONTRACT TERM LIMITS.....	65

Appendix LIST 67

CHAPTER I

Introduction

CHAPTER 1 INTRODUCTION

This procurement manual applies specifically to purchases of goods and services for Kings County Area Public Transit Agency.

Kings County Area Public Transit Agency (KCAPTA) has major responsibilities, which include the operation of a public transportation system and the planning, design, and programming of transportation projects. All contracts are awarded by KCAPTA, which is responsible for identifying its needs and originating the procurement package for supplying those needs.

KCAPTA receives funding from both the federal government and the state, as well as other agencies. Therefore, KCAPTA adopts procurement policies and procedures that are consistent with federal regulations and the laws of the state of California. Specific requirements for procurements funded by the Federal Transit Administration (FTA) are identified. These procedures apply to any revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity, or to create business opportunities utilizing a Federal Transit Administration-funded asset.

The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and Architectural/Engineering services necessary for the operation of KCAPTA's transit service. These procedures include guidelines for the solicitation, award, and administration of formally advertised contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated and Architectural/Engineering contracts.

Competitive proposals and sealed bid transactions will be conducted in a manner to provide maximum open and free competition consistent with FTA **Circular 4220.1F Circular 4220.1G** "Third Party Contracting Guidance," and 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards".

The Goal of procurement practices is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. KCAPTA will avoid the following situation considered to be restrictive of competition:

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (6) The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- (7) Any arbitrary action in the procurement process.

The procurement procedures are designed to:

- (1) Ensure that the prices paid for the procurement of transit related goods and services are fair and reasonable;
- (2) Instill public confidence in the procurement process of KCAPTA;
- (3) Ensure fair and equitable treatment for all vendors who seek to deal with KCAPTA;

- (4) Ensure maximum open and free competition in the expenditure of public funds;
- (5) Provide the safeguards to maintain a procurement system of quality and integrity;

The methods by which the foregoing is implemented are described in detail in the remainder of this document and the attachments hereto.

The procurement process is ongoing throughout the fiscal year (July 1 – June 30). During annual budget preparation and other longer range planning activities, transit staff will estimate the needs for all operating and capital supplies, material, equipment and services that will be procured during a specified period of time.

This manual will be reviewed for updates to references, laws, regulations, and other sources of guidance no later than December 31st of each year.

CHAPTER 2

Code of Ethics and Conflict of Interest Policy

CHAPTER 2 CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

2.1 WRITTEN STANDARDS OF CONDUCT

In order to conduct procurement activities in an ethical manner, a Code of Ethics and Conflict of Interest Policy is established for KCAPTA, stated as follows.

2.1.1 *Personal Conflict of Interest*

No KCAPTA employee, officer, agent, Board member, or immediate family member shall participate in the selection of, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved. Such a *personal conflict of interest* would arise when any of the following has a financial interest or other interest in the firm selected for the award:

- 1) The employee, officer, agent, or Board member,
- 2) Any member of his/her immediate family,
- 3) His/her partner, or
- 4) An organization that employs, or is about to employ, any of the above.

KCAPTA employees, officers, agents, and Board members shall neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from actual contractors, potential contractors, or parties to sub-agreements, including but not limited to monies, credits, discounts, seasonal or special occasion presents, edibles, drinks, household appliances and furnishings, clothing, vacations, travel or hotel expenses, various forms of entertainment if:

- 1) It tends to influence the employee, officer, agent, or Board member in the discharge of employee's official duties; or
- 2) The employee, officer, agent, or Board member recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender; or
- 3) The employee, officer, agent, or Board member has or appears to have influence over KCAPTA actions affecting the donor or lender in the employee's official capacity.

Notwithstanding the above, this section shall not apply to the following scenarios:

- 1) An occasional unsolicited non-pecuniary gift of insignificant value (less than \$50.00) such as accepting food or refreshment of nominal value on infrequent occasions in the ordinary course of a business luncheon or business dinner meeting or other meeting, or unsolicited thank you cards or gifts of insignificant value such as coupons, balloons, floral arrangements, or small gift baskets; or
- 2) Unsolicited advertising and promotional material such as pens, pencils, note pads, calendars, or other business-related items of nominal intrinsic value; or
- 3) An unsolicited gift, gratuity, favor, entertainment, loan, or other thing of value when circumstances make it clear that an obvious long-standing social or family relationship rather than the business of the persons concerned is the motivating factor.

Purchasing employees must recognize that their purchasing activities are of public interest and a matter of public record; therefore, their actions must be conducted in a manner so as to be fully substantiated and legally defended in accordance with the authority of KCAPTA. At all times, KCAPTA employees must endeavor to keep from involvements that could result in a possible position of "conflict of interest."

When an actual or potential **violation** of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter. If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

2.1.2 *Organizational Conflicts of Interest*

The Procurement Officer and technical personnel are encouraged to work closely with KCAPTA Attorney to review all situations that appear to have the potential for an organizational conflict of interest. (See Appendix A for the name, telephone number, and e-mail address of the person to contact.)

Counsel can help in the preparation of restrictive contracting clauses suitable for the particular situation. Counsel can also recognize when involvement by FTA regional counsel would be appropriate.

Organizational conflicts of interest can cause two distinct problems. One concerns the issue of *bias*; the other involves the issue of *unfair competitive advantage*. An organizational conflict of interest occurs due to the type of work to be performed under a third party contract, or because of other activities or relationships such as:

- ◆ A contractor is unable, or potentially unable, to render impartial assistance or advice to KCAPTA;
- ◆ A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- ◆ A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. In fact, KCAPTA should always consider using a "Conflict of Interest Disclosure Statement," such as follows, in its solicitation when contracting for services of this nature.

- 1) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) affected by any KCAPTA employee, officer, agent, or Board member; any member of these entities' immediate family, partner, or organization that employs, or is about to employ, any of the above, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors, and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract, where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.
- 2) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.
- 3) In the absence of any relevant interest identified in (1) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.
- 4) KCAPTA Attorney will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to KCAPTA, will be used to determine whether an award to the offeror may create a conflict of

interest. If any such conflict of interest is found to exist, KCAPTA's Attorney may (a) disqualify the offeror, or (b) determine that it is otherwise in the best interest of KCAPTA to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

- 5) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to KCAPTA Attorney. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. KCAPTA Attorney may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of KCAPTA by sending the contractor a Notice of Termination specifying the nature of default

The problem of *unfair competitive advantage* occurs most often when a contractor is developing specifications or statements of work that will be used in a future competitive solicitation. The problem most often causing unfair advantage occurs when the contractor writes specifications or statements of work around its own corporate competitive strengths or products, and then bids on those specifications or statements of work. KCAPTA can overcome the unfair advantage by placing reasonable restrictions on the contractor's involvement in the procurement that will utilize the specifications. Some form of advance restriction (limitation on future contracting) must be agreed to with the contractor as a provision within its consulting contract. Another typical problem scenario is that a contractor developing specifications or work statements may have access to information that KCAPTA has paid the contractor to develop, or which KCAPTA has furnished to the contractor for its work and which has not been made public. When this information enhances the contractor's competitive position in the bidding, it represents an unfair competitive advantage. The potential solution to this problem is to fully disclose all information to the bidders for a reasonable time prior to receipt of proposals.

The situation of "unfair competitive advantage" is to be distinguished from a "fairly won competitive advantage" which naturally accrues to any contractor that can do work more efficiently because it has more experience (i.e., won more contracts) for its products or services. It is a fact that competitors are frequently discouraged from bidding on a particular procurement because they perceive an incumbent contractor to have an insurmountable competitive advantage by virtue of its previous work.

Environmental Impact Statements – There is a special regulatory requirement imposed by 40 CFR 1506.5 on contractors who develop *environmental impact statements*. These contractors are required to sign a *disclosure statement* certifying that the firm has no financial or other interests in the execution or outcome of the proposed project. This certification is intended to avoid situations where contractors are hired to study alternatives and potential environmental impacts of proposed projects when they have some corporate interest in the outcome of their findings. Grantees are advised to include such a certification in their Requests for Proposals for the consultant services so that such conflicts can be identified early in the contracting process, thus avoiding unnecessary expense to offerors and delays to the project.

Obtaining Access to Proprietary Information When a consulting contractor requires proprietary information from others to perform a KCAPTA contract; the contractor may gain an unfair competitive advantage. Imposed restrictions protect the information and encourage companies to provide it when necessary for contract performance. A contractor doing work for KCAPTA and requiring such information is required to enter into agreements with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and also to refrain from using it for any purpose other than that for which it was furnished. The KCAPTA Procurement Officer will obtain copies of these agreements.

2.2 COMPLIANCE WITH THE CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

KCAPTA requires that all employees involved in procurement functions sign a Conflict-of-Interest Statement in July of each year; that members of the Board of Directors sign the Statement in July of every year; and that these signatures be kept on file by the Clerk of the Board.

This policy will be reviewed for updates to references, laws, regulations, and other sources of guidance no later than December 31st of each year.

CONFLICT OF INTEREST POLICY

As a General Policy, KCAPTA seeks to prevent and avoid any conflicts of interest in the conduct of its business operations and to avoid any appearance of such conflicts to the public it services. Each board member or committee member has the duty to place the interests of KCAPTA foremost in any dealings on behalf of the organization and has a continuing responsibility to comply with this Policy.

In order to comply with this Policy, it is expected that:

If a board or committee member has an interest in a proposed transaction with KCAPTA in the form of a significant personal or organizational financial interest in the transaction or holds a position as trustee, director, officer or staff member in such organization or business, he or she must make full disclosure of such interest before any discussion or negotiation of such transaction. The disclosure shall be recorded in the minutes of the meeting.

Any board or committee member who has a potential conflict of interest with respect to any matter coming before the board or a committee shall not participate in any discussion of or vote in connection with the matter. The disclosure shall be recorded in the minutes of the meeting.

Any board or committee member who gains privileged information by virtue of his or her role as a board, committee or staff member shall not use that privileged information for personal or professional gain.

This Policy shall be distributed annually to board and committee members. A signature in the designated space at the bottom of this Policy will indicate that board or committee members' agreement to abide by this Policy to the best of his or her ability. Noncompliance with the intent and spirit of this Conflict of Interest Policy may result in action deemed appropriate by the Board of Directors of KCAPTA.

This Policy may be revised or amended as determined appropriate by the Board of Directors.

I have read the above statement of policy regarding conflict of interest and agree to abide by the policy to the best of my ability in my role as an employee, board, or committee member.

Signature: _____ Date: _____

Printed Name: _____

cc: Personnel File

CHAPTER 3

Quick Reference Guide

CHAPTER 3 QUICK REFERENCE GUIDE

3.1. STEP-BY-STEP GUIDE TO THE PROCUREMENT PROCESS FOR KCAPTA PROGRAMS, SERVICES, AND SUPPLIES.

Step 1: Staff must determine the following:

1. Project scope, including reason for the requirement, magnitude factors (quantity, hours, size, etc.), timing factors (one time, annual, multiyear, frequency or recurrence of purchases, etc.);
2. Expected cost of the procurement;
3. Funding source and whether the procurement is budgeted or non-budgeted; and
4. Whether the procurement will be informal or formal.

Step 2: For procurement type, Staff should refer to the policies described herein. Any questions regarding the procurement process should be immediately discussed with the Executive Director **or designee** to ensure that the policies are being followed.

Step 3: Staff is responsible for the administration of the procurement, which include attaching the proper boiler plate agreements and clauses and obtaining the required approval, if necessary, before initiating the procurement process.

Step 4: Over a certain threshold, approval of the procurement by the Board.

Step 5: Upon completion of the procurement process, execution of the contract prior to a notice to proceed, or initiation of work.

3.1.1 *Methods of Procurement and Delegation*

1. Goods and Services

Definition: Procurements of services, supplies, or other property, with the exception of Professional, Architectural & Engineering services, or labor and/or materials for public works/construction projects.

Contract Threshold	Method of Procurement	Required Approval Level	Notes
Less than \$10,000	Micro Purchase	Management/Senior Staff	This threshold follows federal limits as amended
>\$10,000 - \$30,000	Small Purchase Quotes/RFP/IFB	Executive Director or designee	With signed Requisition form
Greater than \$30,000	Small Purchase Quotes/RFP/IFB	Board of Directors	With signed Requisition form

Less than or equal to \$30,000	Sole Source	Executive Director or designee	With signed Requisition form
Greater than \$30,000	Sole Source	Board of Directors	With signed Requisition form
Less than or equal to \$30,000	PW/Construction	Executive Director	Including UPCCAA*, with signed Requisition form
Greater than \$30,000	PW/Construction	Board of Directors	Including UPCCAA*, with signed Requisition form

*California Uniform Public Construction Cost Accounting Act (UPCCAA), dated January 2017.

Modifications to contracts or purchase orders which represent no change in the scope of the character of material or services provided in the original contract or purchase order may be approved by the Executive Director **or designee** if the cumulative dollar value of the modification and the original contract amount are within the Executive Director's **or designee's** award authority.

KCAPTA may acquire property and services valued at \$10,000 or less without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$1,000, even though KCAPTA uses micro-purchases procurement procedures.

2. Professional Services/Architectural and Engineering Services

Professional service means service such as, but not limited to, the services of attorneys, physicians, architects, engineers, and other consultants or individuals or organizations possessing a high degree of technical skill.

Architectural and Engineering Services (A/E means program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying mapping, or related services) A/E services require the use of and A/E method of procurement.

CHAPTER 4

Policies and Procedures

CHAPTER 4 POLICIES AND PROCEDURES

4.1 PROCUREMENT POLICIES

KCAPTA is governed by the Board of Directors. Among other duties, the Board is responsible for governing the operation of KCAPTA, including all procurement policies that serve as a basis upon which procurement procedures can be developed.

Procurements shall be reviewed to avoid purchase of unnecessary or duplicative items and to ensure that an organizational conflict of interest does not exist. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternative and any other appropriate analysis to determine the most economical approach.

4.1.1 *Executive Director or designee, Accountant, Staff, and Project Manager Responsibilities*

a) Executive Director

The Executive Director **or designee** will act in the capacity of Executive Director, having authority to authorize contract actions. Whenever the term "Executive Director" shall appear in this document, the term shall also include authorized designee(s). (The authority of the designees varies significantly depending on the value and type of procurement action).

- I. The Executive Director **or designee** is responsible for updating these procurement procedures on an as-needed basis.
- II. The Executive Director **or designee** shall be authorized to enter into, administer, and terminate contracts. However, the Executive Director **or designee** may bind KCAPTA only to the extent of the contracting authority delegated by the Board.
- III. The Executive Director **or designee** is responsible for managing procurements and coordinating with Staff to ensure procurement files meet local, state, and federal requirements.
- IV. The Executive Director **or designee** shall ensure that a clear and accurate specification / scope of work is developed for each procurement.
- V. The Executive Director **or designee** shall not enter into a contract or recommend that KCAPTA enter into a contract unless the Executive Director **or designee** has ensured that all applicable requirements of Federal law, Federal regulations and Circulars, California law, and all other applicable KCAPTA procedures (including approvals) have been met.
- VI. The Executive Director **or designee** shall ensure that contractors receive impartial, fair, and equitable

treatment in accordance with the policies specified in this Manual.

- VII. The Executive Director **or designee** or his/her designee shall be the primary KCAPTA employee to determine that contract prices are fair and reasonable prior to signing the contract or any changes thereto.
- VIII. The Executive Director **or designee** shall not make any purchase or enter into any contract for an amount, which exceeds his or her specifically delegated contracting authority.
- IX. The Executive Director or his/her designee is responsible for such tasks as writing, preparing and assembling contract documents; obtaining necessary pre-solicitation approvals; advertising RFP's and IFB's, issuing amendments, obtaining post-bid opening approvals for award, conducting investigations of proposed Contractor's past performance, conducting consultant selection meeting for negotiated contracts and conducting negotiations, consulting with Staff to monitor Contractor's performance, and managing termination of default or convenience procedures whenever the need arises and for maintaining all official contract files.

b) Accountant

The Accountant or designee will review all requisitions for compliance and forward to the **Executive Director** **Executive Director or designee** for approval once satisfied that this policy has been met. This review will be conducted by discussing the Scope of Work (SOW) and potential bidders or proposers with staff and/or the Project Manager (PM) and conducting any other review that is deemed necessary based on the circumstances of each planned procurement.

c) Staff/Program Manager (PM)

A duly appointed KCAPTA employee who will be directly responsible for the daily technical administration of a contract including monitoring the contractor in its performance of the contract and performing those functions as specified. The PM should be a responsible individual assigned to and familiar with the procedures and requirements of KCAPTA, state and federal procurement requirements. As such, the PM is The Executive Director's **or designee's** technical expert to assist in insuring contractor compliance with technical requirements of the contract. Normally, the PM approves or disapproves the technical acceptability and timelines of the work completed and the invoices submitted by the contractor for payment.

- I. The PM shall be the primary agency employee to determine that contract prices are fair and reasonable.
- II. The PM is responsible for soliciting bids and proposals directly or working with the Executive Director or **designee** on such solicitation; for serving as the chairperson of pre-bid and pre-proposal conferences, qualification hearings and proposal evaluation meetings; for conducting contract negotiation sessions; for managing the non-technical aspects of post award contract administration including negotiation of modifications, claims, and supplemental agreements. And for maintaining procurement files.
- III. The PM shall ensure that sufficient unencumbered funds are available for obligation for each contract.
- IV. The PM shall develop a clear and accurate specification / scope of work for each procurement.
- V. The PM is also the person to whom reports of warranted equipment malfunctions, failures or any problems with the contractor's performance are submitted, pursuant to the specific authority granted by the user department manager. The PM makes the initial request for contractor remedial action. The Executive Director **or designee**/Counsel becomes

involved when and if the lapse constitutes a serious, i.e., repetitive, or unresolved, breach of contractor's civil or contractual responsibility.

- VI. Should the contractor fail to respond in a timely or adequate manner to rectify any problem, the PM notifies The Executive Director or **designee** Counsel that an apparent breach of the contract exists. After investigating the situation, The Executive Director **or** **designee**/Counsel and PM take any steps necessary and available to enforce KCAPTA's rights under the contract. This may include withholding payment, imposing liquidated damages, negotiation and recommending a settlement, terminating the contractor for default, or referring the matter for legal action.
- VII. The PM also attends pre-bid and pre-proposal conferences as the technical expert, conducts investigations of proposed contractor's technical past performance, questions prospective contractors during clarifications and discussions as to their technical capability to perform the contract, assists The Executive Director **or** **designee** with contract negotiations, ascertains the availability of funds prior to asking The Executive Director **or** **designee** to initiate the negotiation and approval process for change orders, contract modifications and supplemental agreements, and issues directions to correct or replace defective items of work.
- VIII. Coordinates and communicates with Executive Director **or** **designee** and includes Executive Director **or** **designee** in necessary meetings, conferences, and written communications.

4.1.2 Standards of Conduct and Conflict of Interest Policies

All KCAPTA personnel involved in procurements will comply with KCAPTA's procurement code of conduct as described in Chapter II.

4.1.3 Purchasing Policies

a) Equal Employment Opportunity/Affirmative Action

All procurement documents issued by KCAPTA require all interested vendors to certify:

- I. That the vendor does not discriminate against any employee or applicant for employment, because of race, religion, sex, age, creed, color, disability or national origin;
- II. That the vendor is in compliance with all Executive Orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment; and
- III. That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

b) Disadvantaged Business Enterprise.

The Board has determined that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, all KCAPTA procurements funded with Federal funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services, as set forth in KCAPTA's Disadvantaged Business Enterprise program.

At the time the procurement takes place, the PM will coordinate with the KCAPTA DBE Liaison Officer for the effective tracking of DBE information as it relates to KCAPTA DBE program, goals and reporting.

c) Small Business Enterprises.

The Board has determined that in accordance with the State of California's definition of "microbusiness" as set forth in California Government Code Section 14837 and amended by the Director of General Services, "Small business Enterprise" is defined as: (1) A small business which, together with affiliates, has average annual gross receipts of three million five hundred thousand dollars or less over the previous three years, or (2) A small business manufacturer with 25 or fewer employees, have an equitable opportunity to participate in KCAPTA procurements.

At the time the procurement takes place, the PM will coordinate with KCAPTA DBE Liaison Officer for the effective tracking of Small Business information as it relates to KCAPTA Small Business Enterprise Program.

d) Cooperative Procurement

When circumstances warrant, KCAPTA may attempt to fill requirements through a cooperative purchasing agreement (without independent bids or quotations) with the State of California, or with other appropriate public agencies.

e) Open Competition Required.

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- I. Unreasonable requirements placed on firms in order for them to qualify to do business;
- II. Unnecessary experience and excessive bonding requirements;
- III. Noncompetitive pricing practices between firms or between affiliated companies;
- IV. Noncompetitive award to any person or firm on retainer contracts;
- V. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to KCAPTA; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.
- VI. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered;
- VII. Exclusionary or discriminatory specifications; and
- VIII. Any arbitrary action in the procurement process.

4.1.4 Public Records Act

All bids and proposals received become the exclusive property of KCAPTA. At such time as a contract award is recommended to the Board, all bids and proposals become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" OR "PROPRIETARY." KCAPTA shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

4.2 PROCEDURES

4.2.1 *Independent Cost Estimate*

An independent cost estimate (ICE) shall be completed before issuing a solicitation. An ICE can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as drawings, specifications, and prior data, such as cost data from prior procurements. The pre-solicitation ICE should inform the post-bid cost and prices analysis. The ICE can assist in determining the reasonableness or unreasonableness of price and/or the estimated cost to perform the work. If a breakdown of estimated cost is required by the bidder, then the ICE should be broken down into the various cost elements.

The extent of the cost estimate will depend on the type of procurement being pursued. For example, a cost estimate for a micro purchase (see explanation below) may be as simple as determining that the price is fair and reasonable based on such facts as recent competitive purchase or catalogue prices; while a cost estimate for the procurement of a commuter bus would require a more involved process to assess the market and to develop a reasonably accurate estimate. The cost required to research and prepare the estimate should not outweigh the potential benefits of the estimate. An independent estimate can be obtained from different sources including the following:

- Published competitive prices
- Results of competitive procurements
- Estimates by in-house estimators
- Outside estimators

The ICE will be included in the procurement records. All construction bids will require an engineering estimate as part of the plans, specifications and engineering phase of the project.

4.2.2 *Approval to Solicit*

- I. All purchases above the small purchase threshold begin with an Approval to Solicit. The PM shall prepare and submit a written Approval to Solicit to the Executive Director **or designee**.
- II. A properly completed Approval to Solicit includes: a description of the item to be procured, the quantity needed, unit cost, and total cost.

4.2.3 *Reasonableness of Price (Price/Cost Analysis)*

In FTA-funded procurements, a price or cost analysis shall be used to determine the reasonableness of the bid price. A price analysis will normally be used to evaluate reasonableness. However, if a valid price analysis cannot be completed, a cost analysis of a bid price may be conducted.

"Price analysis" is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Normally, price analysis may be accomplished through one or more of the following activities:

- I. Comparison of prices received in a bidding situation.
- II. The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).

- III. The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry.
- IV. The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, to KCAPTA with discount or rebate arrangements.
- V. The comparison of proposed prices with estimates of cost independently developed by personnel within the Authority.
- VI. The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

"Cost analysis" is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs in order to form an opinion on the degree to which the contractor's proposed costs represent the cost of performance of the contract, assuming reasonable economy and efficiency.

Normally, cost analysis may be accomplished through the following:

- I. Verify contractor's cost data.
- II. Evaluate specific elements of costs and project these elements to determine the effect on prices of such factors as:
 - The necessity for certain costs;
 - The reasonableness of amounts estimated for the necessary costs;
 - Allowances for contingencies; and
 - The basis used for allocations of particular overhead costs to the proposed contract.
- III. When the necessary data is available, compare the contractor's estimated cost with:
 - Actual costs previously incurred by the contractor;
 - The contractor's last prior cost estimate for the same or similar estimates;
 - Current cost estimates from other possible sources; and
 - Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- IV. Forecasting future trends in costs from historical experience:
 - In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
 - In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area: (1) Is the cost allowable in accordance with guidelines in Section 31 of the Federal Acquisition Regulations (FAR) (2)? Is the cost allocable to the particular project?; and, (3) Is the cost reasonable?

If only one bid is received, the sole bidder must cooperate with KCAPTA as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

4.2.4 Best Value

"Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to the procuring agency.

4.2.5 Tag-ons

"Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.

The use of tag-ons is prohibited and applies to the original buyer as well as to others.

4.2.6 Piggybacking

"Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

4.2.7 Use of Brand Name

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

4.2.8 Options

KCAPTA may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If KCAPTA chooses to use options, the requirements below apply:

a) Evaluation of Options

The option quantities or periods contained in the contractor's bid or offer must be evaluated and the evaluation must be documented in order to determine contract award. Option years of services contracts in which pricing is based on US Bureau of Labor Statistics indices (e.g. Consumer Pricing Index or Producer Pricing Index) must also be evaluated and documented. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

b) Exercise of Options

- I. KCAPTA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

- II. An option may not be exercised unless KCAPTA has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.
- III. Options must be evaluated at the time of the original bid, and the cost basis for exercising the option must be established at the time of the bid.
- IV. Option process and/or conditions cannot be negotiated at the time of the exercise of an option.

4.2.9 Advance Payments

KCAPTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on KCAPTA's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

4.2.10 Progress Payments

KCAPTA may use progress payments provided the following requirements are followed:

- I. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- II. KCAPTA must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect KCAPTA's interest in the progress payment.

4.2.11 Geographic Preference

KCAPTA shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

4.2.12 Arbitrary Action

Any arbitrary action in the procurement process is considered to be restrictive of competition and is prohibited.

4.2.13 Excluded Parties List (Suspension and Debarment)

Any procurement, contract or vendor contract exceeding \$25,000 is subject to the federal Excluded Parties List (LPLS/SAM).

After all qualified bids or quotes have been opened the System of Award Management (SAM) database must be reviewed. This database contains all businesses that have been barred or suspended from receiving federal funds or participating in federal contracts. The PM will perform an SAM business name search or DUN # search on each of the businesses as part of the bid evaluation process.

- i. If a business reference returns a positive listing on the SAM, a printout of the web page will be included in the procurement file, while a second copy will be forwarded to the bidding business with a notice that they have been removed from consideration in the procurement.

- ii. If the SAM search returns no listing on a specific business, a copy of the web page, showing the negative return, will be made and included in the procurement file.

4.2.14 Business References

a. CA Secretary of State Business Entity Search

Prior to final award or completion of a draft contract (pre-counsel review), the PM will perform a Business Entity search on the California Secretary of State's website (<http://kepler.sos.ca.gov>) to confirm the business is register to do business in the State of California.

- i. If the business is not listed on the Secretary of State's website, a business representative will be notified of their status and be provided 30 calendar days to either correct the listing, or provide documentation that they have submitted an application, to the Secretary of State and are pending approval.
- ii. If the business is registered in the State of California as a legal business, a copy of the web page listing will be included in the procurement file.

4.2.15 Public Works

The California Public Works Reform (SB 854) was signed into law on June 20, 2014. The reforms made several significant changes to the administration and enforcement of prevailing wage requirements by the Department of Industrial Relations (DIR).

- a. Prior to final award or completion of draft contract (pre-counsel review), the PM will perform a Business Entity search on the California Department of Industrial Relations website (www.dir.ca.gov/Public-Works/Contractors.html) to confirm the business is register with DIR.
 - i. If the business is not listed on the DIR website, a business representative will be notified of their status and be provided 15 calendar days to correct the listing.
 - ii. If the business is registered on the DIR website, a copy of the web page listing will be included in the procurement file.
- b. Within five (5) days of awarding the contract, the PM will register the project with DIR by completing form PWC-100.

4.3 PROCUREMENT BY MICRO-PURCHASE

Purchases by micro-purchase are the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (48 C.F.R. 2.1/as amended by OM-18-18 \$10,000). These purchases may be made without obtaining competitive quotations if it is determined by the PM that the price is fair and reasonable. The PM will document how this determination was derived. The Davis-Bacon Act and California Public Works Reform apply to public works/construction contracts exceeding \$1,000.

PM should distribute micro-purchases equitably among qualified suppliers. Purchases may not be divided or reduce the size of the procurement merely to come within the micro-purchase limit.

Required documentation (Determination Price is fair and reasonable with a description of how the determination was made).

4.4 SMALL PURCHASE

Small purchase are those relatively simple and informal procurement for securing services, supplies, or other property that are valued at more than the micro-purchase threshold (currently \$10,000 but less than the Federal Simplified Acquisition (2 CFR 200.88 as amended by OM-18-18), currently \$250,000. Price or rate quotations must be obtained from an adequate number of qualified sources. Oral quotes will be accepted with written confirmation received in 24 hours. Purchases may not be divided or reduce the size of the procurement merely to come within the Small Purchase limit. The responsibility for soliciting quotations rests with the PM. Appropriate documentation, including but not limited to a list of the vendors contacted, a fair and reasonable price determination and the quotes received, shall be filed with the project documentation.

4.5 SEALED BIDS (Formal Advertising)

The Sealed Bid procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all material terms and conditions of the Invitation for Bid (IFB), is lowest in price.

4.5.1 *Invitation for Bid (IFB)*

The IFB method of procurement is employed when all of the following apply:

- i. A complete, adequate and realistic specification or purchase description is available.
- ii. Two or more responsible suppliers are willing and able to compete effectively for the contract.
- iii. The procurement lends itself to a firm-fixed price contract.
- iv. The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. **Selection may not be determined on the basis of other factors.**
- v. No discussion with bidder is needed.

The following general rules apply to scopes of work and specifications:

- I. A common basis for bidding must be provided. Specifications and scopes of work should set out the essential characteristics of the items or services to be procured. Whenever possible, the expected quality of services to be provided or the performance characteristics of the item should be specified.
- II. Specifications and scopes of work should not call for features or quality levels which are not necessary to meet the bid requirements.
- III. All optional items should be identified by KCAPTA, and the solicitation documents should set forth the expected needs and the manner in which the related bid prices will be considered.
- IV. In order to foster free and open competition, specifications may not require a "brand name" product without allowing an "or equal" product to be offered. The specifications would, accordingly, describe the performance or other salient characteristics of the brand name product.
- V. Because standard specifications and requirements allow for more efficient operations and result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, federal, state and local government specifications and requirements.

4.5.2 *Issuance of IFB*

- I. The PM shall initiate an approval to solicit at the start of the IFB process.
- II. A notice of an Invitation for Bid (IFB) will be prepared by the PM and advertised in a newspaper of general circulation at least once. Publish the notification a minimum of thirty (30) days before the Bid Opening Date. The notice must include the following minimum information:
 - A clear and accurate description of the services or goods to be purchased
 - Where to request an IFB
 - The location, day and time of the Pre-Bid Conference (If one is scheduled)
 - The location, last day and hour bids will be accepted (deadline)
 - Bid Acceptance Period
 - Whether Federal funds are being used for the procurement.

4.5.3 *IFB Packet*

The PM will coordinate the release of the IFB packet. The IFB packet will include the following:

- I. **Instructions To Bidders** - General instructions concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information
- II. **Submittal Documents** – Required forms to be complete by the bidder and submitted with the bid.
- III. **Attachments** - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidders to properly respond to the IFB
- IV. **General Terms and Conditions** - General provisions concerning the IFB process.
- V. **Special Terms and Conditions** – Provisions unique to each IFB, if applicable, will be included (e.g., special terms of the resulting contract; any modifications to general terms and conditions; milestones; and special payments procedures).
- VI. **Technical Specifications**
 - Specifications shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Specifications shall also seek to promote overall economy for the purposes intended, and encourage competition in satisfying KCAPTA needs. Descriptions shall not contain features that unduly restrict competition. The description shall include a statement of the qualitative nature of the material, product, or service to be procured. When necessary, the description shall set forth those minimum essential characteristics and standards to which it must confirm if it is to satisfy its intended use.
 - Overly detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description will be used.
 - A "brand name or equal" description can be used only when an adequate specification or more detailed description cannot be provided, without performing an inspection and analysis, in time for the acquisition under consideration. If "brand name or equal" is used, the IFB must carefully identify the minimum needs, and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

A control record will be maintained by the PM as IFB packets are distributed to prospective bidders. The control record has two primary purposes, to serve as a mailing list for the issuance of addenda and to provide a record for verification in cases of vendor protests and other issues. The control record profiles the following information:

- I. Date and time IFB packets are distributed
- II. Names and addresses of bidders receiving bid invitations and attending pre-bid conferences

4.5.4 Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by potential bidders is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective bidders.

The pre-bid conference shall be chaired by the PM, and shall follow the format below:

- I. Discuss basic requirements such as instructions to the bidders, funding, contract type, and specific points that should be addressed in each bid;
- II. Discuss the participation requirements for disadvantaged business enterprises (DBE);
- III. Discuss the scope of work and have the appropriate staff available to answer technical questions; and,
- IV. Conclude by announcing when and where the bids are due.

4.5.5 Amendments to Invitation for Bids

If after issuance of an IFB, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, opening dates, etc., or to correct or clarify a defective or ambiguous IFB, such changes shall be accomplished by the issuance, in writing, of an amendment to the IFB. Before issuing an amendment to an IFB, the period of time remaining until the time set for bid submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective bidders of an extension of time by facsimile or telephone. Such notification should be confirmed in the amendment. The amendment shall be sent to each prospective bidder to whom the IFB was furnished and shall provide:

- I. Amendment number and date;
- II. Number, date and the title of the IFB concerned;
- III. Clearly stated changes made in the IFB and the extension of the opening date, if applicable;
- IV. Instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge and return the amendment.

4.5.6 Cancellation of IFB

Invitations for bids shall not be canceled unless cancellation is clearly in KCAPTA's interest (i.e., where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved.

If the invitation for bids is canceled before the time for bid openings, this fact shall be recorded in the control file, with a statement of the number of entities invited to bid and the number of bids received.

4.5.7 Receipt of Bids

Bids shall be submitted so as to be received at the location designated in the invitation for bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at KCAPTA's offices is the time/date stamp of KCAPTA, which shall be placed on the bid wrapper immediately upon receipt. KCAPTA staff person receiving the bid shall sign the exterior of the bid package to verify the date and time received and person receiving the bid. The timeliness of bids is the sole responsibility of the bidder.

4.5.8 Withdrawal of Bids

Any bidder may withdraw their bid, either personally or by written request, received by KCAPTA, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of 60 days following bid opening.

4.5.9 Bid Opening

Upon receiving the bids, it is the PM's responsibility to record their receipt and keep them unopened and secure, except as stated below.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to KCAPTA representatives who have a proper need for such information, as determined by the PM.

Unidentified bids may be opened solely for the purpose of identification and then only by the PM. If a sealed bid is opened by mistake or for purposes of identification, the PM shall immediately write on the envelope an explanation of the opening, the date and time opened the invitation for bid number, and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The PM shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received prior to the time set for receipt shall then be publicly opened and when practical, read aloud by the PM to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read.

A second KCAPTA representative shall be present to witness the opening and reading of the bids and, along with the PM, shall sign the recording document to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

The original bid form shall not be allowed to pass out of the hands of the PM. The original bids may not be removed from the office except for official review and evaluation by KCAPTA legal counsel. A copy of each bid must be maintained in KCAPTA's procurement files in lieu of such originals for the interim period.

All bids will be open to public review after award has been made. All bids, including attachments shall be retained for the official files.

4.5.10 Recording of Bids

The invitation for bid number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered on the official KCAPTA record and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record shall be completed as soon as practical after bids have been opened and read aloud. The PM shall be responsible for maintaining files of these records and abstracts.

The file of the invitation for bids shall show the distribution that was made and the date thereof. The names and addresses of prospective bidders requesting the invitation for bids who were not included on the original solicitation list shall be added and made a part of the record.

4.5.11 Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation for Bids. Award shall be made to the bidder submitting the lowest bid, unless KCAPTA determines that the bid is not responsive and/or the bidder is found to be not responsible.

4.5.12 Mistakes in Bids

- I. **General.** Technicalities or minor irregularities in bids may be waived if the PM determines that it shall be in KCAPTA's best interest. The PM may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to KCAPTA's advantage to do so.
- II. **Mathematical Errors.** Errors in extension of unit prices or in mathematical calculations shall be corrected by KCAPTA prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed.
- III. **Mistakes Discovered Before Opening.** A bidder can correct mistakes discovered before the time and date set for bid opening by withdrawing the original bid and submitting a new bid prior to the time and date set forth for bid opening.
- IV. **Confirmation of Bid.** If the PM knows or has reason to conclude that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid, or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid will be corrected or withdrawn if any of the following conditions are met:
 - If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and must not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors.
 - A bidder will be permitted to withdraw a low bid if:
 - A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

- The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.

V. **Determination Required.** When a bid is corrected or withdrawn, or correction or withdrawal is denied, the PM shall prepare a determination showing that the relief was granted or denied.

4.5.13 *Minor Irregularities in Bids*

- I. A minor irregularity is one that is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid from the exact requirement of the solicitation. If such a situation exists, the correction of the irregularity or waiver of the requirement may be made if it would not be prejudicial to other bidders.
- II. A defect or variation in a bid is considered immaterial and inconsequential when its significance as to price, quantity, quality or delivery is trivial or be eligible when contracted with the total cost or scope of the procurement.
- III. The PM may either give the bidder an opportunity to cure any deficiency resulting from minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of KCAPTA.

4.5.14 *Multiple or Alternate Bids*

Unless multiple or alternate bids are requested in the solicitation, these bids will not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder. These provisions shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

4.5.15 *Analysis of Limited Bid Response*

If one (1) bid has been received, the PM or the Executive Director **or designee** will contact vendors to determine reasons for the single bids. The purpose of this examination is to ascertain and document the reason for the single bid. If the determination is that the IFB restricted competition, the procurement may be rebid. A price or cost analysis shall be performed to establish the reasonableness of the bid price before an award is made.

4.5.16 *Determination of Responsiveness*

- I. Any bid which fails to confirm to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
- II. A bid shall be rejected when the bidder imposes conditions, which modify requirements of the invitation for bids. Bids may be rejected in cases, including but not limited to, in which the bidder:
 - Attempts to protect itself against future changes in conditions such as increased costs, if a total price to KCAPTA cannot be determined for bid evaluation.
 - Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."
 - States a price but qualifies such price as being subject to "price in effect at time of delivery".

- Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
- Limits rights of KCAPTA under any contract clause.
- Fails to comply with all of the requirements of the IFB.
- If a bid bond is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

III. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

IV. After submitting a bid, if a bidder transfers all of his assets or the part of his assets related to the bid during the period between the bid opening and the award, KCAPTA may accept or reject the bid at its sole discretion.

4.5.17 Responsible Bidder Evaluation

Before awarding the contract, KCAPTA shall determine that a prospective contractor is responsible and that prices are reasonable. Bidders may be asked to provide any information required to determine the responsibility of the bidder. A responsible bidder is one who meets the standards set forth below:

- I. Has an adequate financial resource or the ability to obtain such resources as required during performance of the contract.
- II. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- III. Has a satisfactory record of performance. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible bidders. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
- IV. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- V. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
- VI. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
- VII. Has not been barred or suspended from receiving federal funds or participating in federal contracts.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

- I. Review of SAM database. This database contains all businesses that have been barred or suspended from receiving federal funds or participating in federal contracts. The PM will perform an SAM business name search and/or DUN# on each of the businesses as part of the bid evaluation process.

If a business reference returns a positive listing on the SAM, a printout of the web page will be included in the procurement file, while a second copy will be forwarded to the bidding business with a notice that they have been removed from consideration in the procurement. If a business returns a negative listing on SAM, a printout of the web page will be included in the procurement file.

- II. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
- III. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
- IV. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.

V. Documented past performance on contracts with KCAPTA.

The procurement files will document the determination of responsive and responsible bidders.

4.5.18 Rejection of All Bids

Anytime prior to the bid opening date and time, KCAPTA may cancel or postpone the bid opening, or cancel the IFB in its entirety.

Preservation of the integrity of the competitive 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 compelling reason to reject all bids and cancel the invitation.

Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices.

As a general rule, after opening, an invitation for bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the invitation for bids and the additional quantity should be treated as a new procurement.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal and State procurement regulations. A written determination must be included in the invitation for bid file stating that cancellation is in the best interest of KCAPTA for reasons such as the following:

- I. Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.
- II. The supplies or services are no longer required.
- III. The invitation for bids did not provide for consideration of all factors of cost to KCAPTA.
- IV. Bids received indicate that the needs of KCAPTA can be satisfied by a less expensive item differing from that on which bids were received.

V. All otherwise acceptable bids received are at unreasonable prices.

- VI. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to KCAPTA's legal counsel.
- VII. The bids received did not provide competition which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.
- VIII. The bids received exceed funds available to KCAPTA

When it is determined to reject all bids, KCAPTA shall notify each bidder that all bids have been rejected and stating the reason for such action.

4.5.19 Rejection of Individual Bids

Any bid that fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected where the bidder imposes conditions that modify requirements of the invitation for bids. For example, bids may be rejected in which the bidder:

- I. Attempts to protect itself against future changes in conditions such as increased costs, if a total price to KCAPTA cannot be determined for bid evaluation.
- II. Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."
- III. States a price but qualifies such price as being subject to "price in effect at time of delivery".
- IV. Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
- V. Limits rights of KCAPTA under any contract clause.
- VI. Fails to comply with all of the requirements of the IFB.

Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.

Low bids received from firms determined to be not responsible pursuant to Federal or State procurement regulations shall be rejected in accordance with the procedures set forth in this Chapter.

A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file 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 the bid opening and the award, the transferee may not take over the bid, thus KCAPTA may reject the bid.

4.5.20 Award of the Contract

Unless all bids are rejected, award shall be by written notice or electronic notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.

When award is made to other than the lowest bidder, KCAPTA will document in the procurement files the reason for not choosing the lowest bid.

4.5.21 Final Award

The contract will be drafted by the PM and reviewed by legal counsel for appropriate language and terms. The PM will ensure that the contract is executed at the approval level required in these procedures.

Two original signed copies of each contract will be executed by KCAPTA and the contractor. The PM will maintain one original of the contract and distribute additional copies to appropriate parties.

4.5.22 Project Completion

All original documentations related to each procurement such as the IFB, Bid, control record, board report, background data, evaluation criteria and scores, meeting reports/notes, as well as the logs documenting bid opening dates and bid receipt dates will be submitted to the Accounting Staff or storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of five (5) years after the project is closed out and completed unless a different time period is mandated by a funding entity.

4.6 REQUESTS FOR PROPOSALS (RFP)

The Request for Proposals (RFP) competitive procurement process is used when conditions are not appropriate for the use of an IFB. The latter is generally the case in the purchase of services such as lease agreements, maintenance and service contracts, rental contracts and professional service contracts. The RFP process is coordinated by the PM.

The RFP process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offeror. An RFP generally includes:

- I. Project, department and agency background
- II. Purpose of the engagement
- III. General firm qualifications desired
- IV. Scope of work (see subsection B)
- V. Project schedule
- VI. Proposal requirements
- VII. Criteria for selection
- VIII. Payment terms

4.6.1 Issuance of RFP

- I. The PM shall initiate an approval to solicit at the start of the RFP process.

- II. A notice of an RFP will be prepared by the PM, and will be advertised as a public notice, and must be published in a newspaper of general circulation at least once. Publish the notification a minimum of thirty (30) days before the Bid Due Date. The notice must include the following minimum information:
 - A general description of the services or goods to be purchased
 - Where to request an RFP
 - The location, day and time of the Pre-Proposal Conference (If one is held)
 - The location, last day and hour proposals will be accepted (deadline)
 - Whether Federal funds are being used for the procurement.

4.6.2 *RFP Packet*

The Executive Director **or designee** will coordinate the release of the RFP packet. The RFP packet will include the following:

- I. **Instructions To Proposers** - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.
- II. **Attachments** - Required forms to be completed by the proposer and submitted with the proposal and documents which display key facts, specifications, maps, report formats, and other important information to clearly define the good or services needed in order for the proposers to properly respond to the RFP.
- III. **Scope of Work** - Each RFP will contain a statement or scope of work prepared by the Project Manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of KCAPTA, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:
 - A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
 - A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;
 - A proposed delivery schedule; and,
 - A proposed contract period.
- IV. **Evaluation Criteria** – Each RFP will contain the criteria and method that will be used to select the successful proposer. If the selection is to be made by lowest price, that will be stated in the solicitation documentation. If the selection process will be a "best value" determination, the solicitation will state so and the relative significance of each criteria will also be included in the solicitation document.

A control record will be maintained by the PM as RFP packets are distributed to prospective bidders. The control record profiles the following information:

- I. Date and time RFP packets are distributed.
- II. Names and addresses of vendors receiving the RFP and attending the pre-proposal conference.

The control record has two primary purposes:

- I. Serves as a mailing list for the issuance of addenda.
- II. Provides a record for verification in cases of vendor protests and other issues.

4.6.3 Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers who attended the conference.

The pre-proposal conference shall be chaired by the PM, and shall follow the guidelines below:

- I. Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;
- II. Discuss the participation requirements for disadvantaged business enterprises (DBE);
- III. Discuss the scope of work; and,
- IV. Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

4.6.4 RFP Amendments

If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP, such changes shall be accomplished by issuance, in writing, of an addendum to the RFP. Before issuing an addendum to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by facsimile or telephone. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective proposer to whom the RFP was furnished.

Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP. No award shall be made on the request unless such addendum has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.

The RFP will indicate that KCAPTA is not bound by any oral representations, clarifications, or changes made in the written specification by KCAPTA's employees, unless such clarification or change is provided to potential proposers in written addendum form from KCAPTA.

Each amendment issued to a request for proposals shall:

- I. Be serially numbered and dated.
- II. Include the number, date and a description of the original RFP concerned.
- III. Clearly state the changes made in the RFP and the extension of the due date, if any.
- IV. Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

4.6.5 Cancellation of RFP

KCAPTA has the right to cancel RFP's at any time.

4.6.6 Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFP not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at KCAPTA's offices is the time/date stamp of KCAPTA which shall be placed on the proposal wrapper immediately upon receipt. KCAPTA staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

4.6.7 Withdrawal of Proposals

Any proposer may withdraw its proposal, either personally or by written request, received by KCAPTA at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of a proposer in preparing the proposal confers no right of withdrawal of the proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

4.6.8 Format of Proposal

The response to each RFP must be made in accordance to the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations or misrepresentations may be cause for rejection of a proposal.

4.6.9 Evaluation and Selection Process

Proposals submitted in response to the RFP will be evaluated by an Evaluation Committee established by KCAPTA, in accordance with the criteria set forth in the RFP. The Evaluation Committee shall score the proposals and make a recommendation for award of the contract. Original scoring forms, or summary records of the Evaluation Committee scoring, will be maintained in the procurement file.

4.6.10 Responsible Proposer Evaluation

Before awarding the contract, KCAPTA shall determine that a prospective contractor is responsible and that prices are reasonable. Proposers may be asked to provide any information required to determine the responsibility of the proposer. A responsible proposer is one who meets the standards set forth below:

- I. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
- II. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- III. Has a satisfactory record of performance. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible proposers. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
- IV. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- V. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.

VI. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

- I. A list of debarred, suspended or ineligible firms or individuals. (www.sam.gov)
- II. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
- III. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
- IV. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
- V. Documented past performance on contracts with KCAPTA.

4.6.11 Interviews and Best and Final Offers (BAFOs)

Interviews and negotiations may be held by the Executive Director **or designee** and/or his/her representatives with all PROPOSERS determined to be in the competitive range. The Executive Director, or designee and/or his/her representatives shall have the right to conduct a cost/price analysis, to review and audit all business records and related documents of any and all PROPOSERS (including any affiliate or parent company, partner, or joint venture member) to determine the fairness and reasonableness of the proposal, to contact any and all client references, and to conduct site visits and investigations. An interview and presentation may be required. At the conclusion of this process, PROPOSERS in the competitive range will be asked to submit Best and Final Offers (BAFO), which will include final price proposals. After the submittal of BAFOs, the Evaluation Committee will score the BAFOs and prepare its recommendation for Agreement award.

Notwithstanding the above, KCAPTA reserves the right to make the award under the RFP based upon the initial proposals submitted, without establishment of a competitive range or discussions and submission of BAFOs.

4.6.12 Board Makes Final Determination

After the review and scoring of the BAFOs, the Executive Director, or designee shall submit the Evaluations Committee's recommendation for Agreement award to the Board. After review and consideration of this recommendation, the Board shall have the discretion to: 1) award the Agreement to the PROPOSER whose proposal is most advantageous to KCAPTA, price and other evaluation factors specified of the RFP considered, or 2) reject any and all proposals. The Board is not bound by the recommendation of the Evaluation Committee.

4.6.13 Notice of Contract Award

Award shall be made by mail, personal delivery, or electronic notice to the successful proposer of a notice of award and the proper contract documents. KCAPTA will finalize the execution of the contract and send a copy to the successful proposer. In addition, KCAPTA will notify all unsuccessful proposers of its intent to award a contract to the successful proposer at the same time it notifies the successful proposer if

KCAPTA Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required.

4.6.14 Final Contract Draft

The contract will be drafted by the PM and reviewed by legal counsel for appropriate language and terms. The Executive Director (or designee) will ensure that the contract is executed at the approval level required in these procedures.

Two or more original signed copies of each contract will be executed by KCAPTA and the contractor. The Executive Director will maintain one original of the contract and distribute the others to appropriate parties including at least one original to the contractor.

4.6.15 Project Completion

All original documentation related to each procurement such as the RFP, successful proposal, BAFO, control record, agenda report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the Accounting Staff for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

Negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis.

4.7 ARCHITECTURAL / ENGINEERING SERVICES REQUEST FOR PROPOSAL

The Architectural / Engineering Request for Proposal qualifications-based process will be used for the procurement of architectural and engineering ("A/E" hereafter) services and related services such as ***program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services.***

Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. Under this method, KCAPTA may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is conducted with only the most qualified offeror. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified offeror, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even through a firm that provides the above types of services are also potential sources to perform other services.

4.7.1 Issuance of an "A/E" RFP

- I. The PM shall initiate an approval to solicit at the start of the "A/E" RFP process.
- II. A notice of a RFP will be prepared by the PM, and will be advertised as a public notice in a newspaper of general circulation and/or in an electronic format on a website that is accessible by the public and vendor community. Additional sources for posting the A/E RFP may include national and state print or online transit community publications. The notice must include the following minimum information:
 - A general description of the services
 - Where to request an RFP
 - The location, day and time of the Pre-Proposal Conference (if one is held)
 - Whether Federal Funds are being used for the procurement

4.7.2 "A/E" RFP Packet

The PM will coordinate the release of the RFP packet. The RFP packet will include the following:

- I. **Instructions to Proposers** - General instructions concerning the proposal format pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.
- II. **Attachments** – Required forms to be completed by the proposer and submitted with the proposal. Documents which display key facts, specifications, maps, report formants, and other important information to clearly define the services needed in order for the proposers to properly respond to the RFP.
- III. **Scope of Work** – Each RFP will contain a statement or scope of work prepared by the PM which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of KCAPTA, and be developed in manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:
 - A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
 - A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;
 - A proposed delivery schedule; and,
 - A proposed contract period.

A control record will be maintained by the PM as RFP packets are distributed to prospective bidders. The control record profiles the following information:

- Date and time RFP packets are distributed
- Names and addresses of vendors receiving the "A/E" RFP and attending the preproposal conference.

The control record has two primary purposes:

- Serves as a mailing list for the issuance of addenda
- Provides a record for verification in cases of vendor protests and other issues

4.7.3 Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers who attended the conference.

The pre-proposal conference shall be chaired by the PM, and shall follow the guidelines below:

- I. Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;

- II. Discuss the participation requirements for disadvantaged business enterprises (DBE);
- III. Discuss the scope of work; and,
- IV. Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

4.7.4 Amendments of "A/E" Requests for Proposals

If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP such changes shall be accomplished by issuance, in writing, of an addendum to the RFP. Before issuing an addendum to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by facsimile or telephone. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective proposer to whom the RFP was furnished.

Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP. No award shall be made on the request unless such addendum has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.

The RFP will indicate that KCAPTA is not bound by any oral representations, clarifications, or changes made in the written specification by KCAPTA's employees, unless such clarification or change is provided to potential proposers in written addendum form from KCAPTA.

Each amendment issued to a request for proposals shall:

- I. Be serially numbered and dated.
- II. Include the number, date and a description of the original RFP concerned.
- III. Clearly state the changes made in the RFP and the extension of the due date, if any.
- IV. Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

4.7.5 Cancellation of an "A/E" RFP

KCAPTA has the right to cancel RFP's at any time.

4.7.6 Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFQ not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at KCAPTA's offices is the time/date stamp of KCAPTA which shall be placed on the proposal wrapper immediately upon receipt. KCAPTA staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

4.7.7 Withdrawal of Proposals

Any proposer may withdraw their proposal, either personally or by written request, received by KCAPTA at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of proposers in

preparing their proposal confers no right of withdrawal of their proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

4.7.8 Format of Proposal

The response to each RFP must be made in accordance to the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations or misrepresentations may be cause for rejection of a proposal.

4.7.9 Evaluation and Contract Negotiation

The steps to be used for proposal evaluation and contract negotiation for A/E and related services solicitations are as follows:

- I. An evaluation committee shall be established by the PM to review eligible firms and all responses to a RFP.
- II. Evaluation Committee evaluates the firms based on:
 - Professional qualifications for performance of the required services;
 - Specialized experience and technical competence in the type work required;
 - KCAPTA to accomplish the work in the required time; and,
 - Past performance in terms of cost control, quality of work and compliance with performance schedules.
- III. Evaluation team holds discussions with the most highly qualified firm.
- IV. Evaluation team prepares a selection report for the PM recommending, in order of preference, the firm that is considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the PM to review the basis upon which the recommendation was made. The PM shall not add firms to the selection report. If the recommended firm is deemed to be unqualified or the report is inadequate, the PM shall document the reasons therefore and return the report to the evaluation team for appropriate revision.
- V. The final selection shall be made by the Executive Director **or designee** from a list of the most highly qualified firms prepared by the evaluation team. The Executive Director **or designee** will list those firms in order of preference for negotiating a contract.
- VI. After the final selection has taken place, KCAPTA may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract. If negotiations are terminated without awarding a contract to the highest rated firm, KCAPTA may release information that negotiations will take place with the next highest rated firm.
- VII. The final selection authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates.
- VIII. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment.

IX. In determining the amount of compensation and the method of payment, consideration shall be given to:

- Scope and complexity of designs, surveys and other work and the skills necessary for these services.
- Quality and quantity of data provided to the A/E by KCAPTA.
- Location of, and conditions under which, the services will be performed
- Date services to begin and time allowed for performance

X. Costs should be negotiated taking into consideration:

- Direct Labor
- Overhead
- General and administrative expenses
- Materials
- Other direct costs
- Profit, which is further influenced by:

- Degree of A/E's risk
- Level of effort
- Level of talent or expertise and A/E must furnish
- Amount of subcontracting
- Amount of top level a/E management involved
- Subcontracts
- Contractor's investment

XI. When the contract is negotiated and signed, the negotiations are documented and placed in the file.

XII. The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract.

XIII. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to KCAPTA for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

4.7.10 Responsible Proposer Evaluation

Before awarding the contract, KCAPTA shall determine that a prospective contractor is responsible and that prices are reasonable. Proposers may be asked to provide any information required to determine the responsibility of the proposer. A responsible proposer is one who meets the standards set forth below:

- I. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
- II. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- III. Has a satisfactory record of performance. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible proposers. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.

- IV. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- V. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
- VI. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

- I. A list of debarred, suspended or ineligible firms or individuals. (www.sam.gov)
- II. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
- III. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
- IV. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
- V. Documented past performance on contracts with KCAPTA.

4.8 PROCUREMENT OF DESIGN-BID-BUILD

KCAPTA may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of **Circular 4220.1F Circular 4220.1G** relative to the method of procurement used and all other applicable federal requirements.

4.9 PROCUREMENT OF DESIGN-BUILD

KCAPTA must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature, unless required by State law.

4.10 SOLE SOURCE PROCUREMENTS

A sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable.

Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- I. **Unique Capability or Availability:** The property or services are available from one source if one of the conditions describe below is present:
 - a. **Unique or Innovative Concept.** The offeror demonstrates 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.
 - b. **Patents or Restricted Data Rights.** Patents or data rights restrictions preclude competition.
 - c. **Substantial Duplication Cost.** In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - d. **Unacceptable Delay.** In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
- II. **Single Bid or Single Proposal:** Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
 - a. **Adequate Competition.** Competition is adequate when the reasons for few responses were caused by conditions beyond KCAPTA control. Many unrelated factors beyond KCAPTA control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, Competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award.
 - b. **Inadequate Competition.** Competition is inadequate when, caused by conditions within KCAPTA control. For example, if the specifications used were within KCAPTA control and those specifications were unduly restrictive, competition will be inadequate.
- III. **Public Exigency or Emergency:** The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to KCAPTA, or a situation requiring immediate action by KCAPTA, as determined by KCAPTA) for the requirement will not permit a delay resulting from competitive solicitation.
- IV. FTA authorizes noncompetitive negotiations;

A cost analysis, i.e., verifying the proposed cost data, the projection of the data, and the evaluation of the specific elements of costs and profit, is required.

The reasons for the sole source procurement and the cost analysis will be documented in the Procurement File

4.11 EMERGENCY PROCUREMENTS

Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical KCAPTA function or activity) will be handled immediately and expedited as required. The Executive Director **or designee** has the authority to approve the purchase of all goods and services in emergency conditions. Upon completion of the emergency procurement, the Executive Director **or designee** will document the actions taken and execute a proper requisition.

4.12 AMENDMENTS AND CHANGE ORDERS

- I. An amendment is any change to a contract, task order, or work order for any professional services including all architectural and engineering services that alters the terms and conditions of the original document. Any change in the scope of a contract that increases the cost of the contract must follow the Sole Source Procurement procedures.
Amendments are formal changes that must be approved at the same signature authority level as the original document.
- II. KCAPTA shall have the right, based on a clause contained in each contract for construction or the delivery of goods and services other than those listed in subsection (A) above, to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. In addition, KCAPTA shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order.
- III. All amendments and change orders shall be submitted to the Executive Director **or designee** complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
- IV. Verification of Amendments and Change Orders: The Executive Director **or designee** will verify all amendments and change orders as to the:
 - Appropriateness of the modification of the contract and whether it is unreasonable to do a separate bid for the item under consideration.
 - The methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.
 - The issuance of change orders for each individual contract shall be handled by the Executive Director **or designee**.

4.13 BLANKET PURCHASE ORDERS

The Executive Director **or designee** will issue a blanket purchase order for goods or services based, if possible, on competitive quotations to procure items on an as-needed basis.

4.14 PURCHASE REQUISITION/ORDER PROCEDURES

a) Step 1: Purchase Requisition

- I. A Purchase Requisition must be completed before a Purchase Order can be prepared. The PM is responsible for its completeness and accuracy. The PM is responsible for ensuring the availability of funds in the proper account. To ensure a need exists for the item to be requisitioned, before purchase is made, a complete and accurate description

of the item must be provided, along with all other information necessary to make the procurement decision.

- II. A properly completed Purchase Requisition includes: a description of the item to be procured, the quantity needed, unit cost, total cost, and all vendor quotations, where appropriate. The description section shall provide detailed specifications regarding the item to be purchased and, when applicable, when and where the service will be performed or when and where the items will be delivered.
- III. The account name and number must be provided by the department manager to determine which account will be expensed when the requisition is invoiced. If the procurement is to be expensed against more than one account code, all accounts should be listed.

b) Step 2: Approval of Purchase Order

- I. Purchase Order numbers may only be assigned by the Accounting Staff or designee and only following receipt of a completed Purchase Requisition. The Accounting Staff or designee will review the Purchase Requisition and all documentation to ensure its completeness and accuracy.
- II. Following the above review, the Accounting Staff or designee will assign the next consecutive Purchase Order number.
- III. Purchases are handled by orally notifying the vendor of the approved Purchase Order number. Written confirmation will be sent to the vendor, if appropriate. The method of purchase may be specified on the Purchase Requisition.
- IV. Vendors should be told to include their Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

c) Step 3: Receipt of Goods/Services and Authorization to Pay

- I. Receipt of Goods: The PM is responsible for receipt of the physical merchandise ordered. Upon receipt, the packing slip shall be compared to the goods received. If correct, the PM or designee will forward the resulting invoice to the Accounting Department to authorize payment.
- II. Receipt of Services: The PM is responsible for the receipt of services. Upon completion, the PM shall match and approve all invoices that confirm the proper completion of services performed and forward the approved invoice to the Accounting Department to authorize payment.
- III. The PM or designee must approve all payments.

4.15 PROTEST PROCEDURES

4.15.1 Purpose

The purpose of these procedures is to set forth the procedures to be utilized by KCAPTA in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.

4.15.2 General

In order for a bid protest to be considered by KCAPTA, it must be submitted by an interested party (as defined below) in accordance with the procedures set forth herein. A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered

by KCAPTA. In all instances where KCAPTA receives a protest involving a potential contract that will be funded with Federal Transit Administration funds, KCAPTA will notify the Federal Transit Administration of the protest, provide information concerning the nature of the protest, and keep the Federal Transit Administration informed about the status of the protest.

4.15.3 Definitions

For purposes of these Bid Protest Procedures:

1. The term "Bid" includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
2. The term "contract" means that document to be entered into between KCAPTA and the successful bidder and offeror.
3. The term "days" refers to normal business days of KCAPTA staff offices.
4. The term "interested party" means any person: who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and whose direct economic interest would be affected by the award of the contract or by failure to award a contract. A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.
5. The term "solicitation" means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment, supplies, or services.

4.15.4 Grounds for Protest

Any interested party may file a bid protest with KCAPTA on the grounds that:

1. KCAPTA has failed to comply with applicable Federal or State Law.
2. KCAPTA has failed to comply with its procurement procedures.
3. KCAPTA has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable.
4. KCAPTA has issued restrictive or discriminatory specifications.
5. Award is made to other than not lowest responsive and responsible bidder on formally advertised (IFB) procurements.

4.15.5 Contents of Protest

1. A bid protest must be filed in writing and must include:
 - a. The name and address of the protestor
 - b. The name and number of the procurement solicitation
 - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of KCAPTA procurement procedures, or specific term of the solicitation alleged to have been violated.
 - d. Any relevant supporting documentation the protesting party desires KCAPTA to consider in making its decision.

- e. The desired relief, action, or ruling sought by the protestor.
2. Protest must be filed with:

KCAPTA
Clerk of the Board
610 W 7th 210 E. 7th Street
Hanford, CA 93230
3. All protest must be received by KCAPTA address listed above during normal office hours of 9:00 a.m. to 5:00 p.m., Pacific Standard Time.
4. If any of the information required by this section is omitted or incomplete, KCAPTA will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

4.15.6 Timing Requirements and Categories of Protests

KCAPTA will consider the following categories of bid protest within the time period set forth in each category:

1. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed not later than five (5) calendar days prior to the scheduled bid opening or deadline for submittal or proposals, in order to be considered by KCAPTA. Any protest based on such grounds not filed within this period will not be considered by KCAPTA. This category of protest includes, but not limited to, allegation of restrictive or exclusionary specifications or conditions.
2. Any bid protest regarding the evaluation of bids or proposals by KCAPTA, or improprieties involving the approval, or award, or proposed approval, or award of a contract must be filed with KCAPTA no later than five (5) calendar days after the protestor's receipt of KCAPTA written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the evaluation of bids, or proposals, or the contract approval, or award will not be considered by KCAPTA. KCAPTA will notify all unsuccessful bidders or proposers of its intent to award a contract to the successful bidder or proposer by email at the same time it notifies the successful bidder or proposer if Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required.

4.15.7 Review of Protest by KCAPTA

1. KCAPTA will notify the protestor within three (3) days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, KCAPTA will inform the protestor of any additional information required for evaluation of the protest by KCAPTA, set a time deadline for submittal of such information. If KCAPTA request additional information and it is not submitted by the stated deadline, KCAPTA may either review the protest on the information before it, or decline to take further action on the protest.
3. In its sole discretion, KCAPTA may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to KCAPTA relative to the merits of the bid protest. KCAPTA will set a time deadline for submittal of such comments, which will be no later than five (5) days after KCAPTA provides notification of the protest.

4. In its sole discretion, KCAPTA may schedule an informal conference on the merits a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by KCAPTA in deciding the bid protest if it is submitted to KCAPTA in writing within three (3) days after the conference.

4.15.8 Effects of Protest on Procurement Actions

1. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, KCAPTA will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless KCAPTA determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment of all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval, or award of a contract, KCAPTA will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
3. Notwithstanding the pendency of a bid protest, KCAPTA reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - a. Where the item to be procured is urgently required.
 - b. Where KCAPTA determines, in writing, that the protest is vexation or frivolous.
 - c. Where delivery or performance will be unduly delay or other undue harm to KCAPTA will occur, by failure to make the award promptly.
 - d. Where KCAPTA determines that proceeding with the procurement is otherwise in the public interest.

4.15.9 Summary Dismissal of Protests

KCAPTA reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by KCAPTA in a previous bid protest by any interested party in the same solicitation or procurement action.

4.15.10 Protest Decisions

1. After review of a bid protest by appropriate KCAPTA staff and/or legal counsel, a recommendation shall be made to the KCAPTA Executive Director **or designee** concerning the appropriate disposition of such protest.
2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences and KCAPTA own investigation and analysis.
3. The decision of the KCAPTA Executive Director **or designee** shall be in writing and shall be the final bidding agency action. Except in exceptional circumstances, the decision of the KCAPTA Executive Director **or designee** will be issued within thirty (30) days after the date all relevant information submitted according to the dealing set forth in these procedures.
4. If the protest is upheld, KCAPTA will take appropriate action to correct the procurement process and protect the rights of the protestor, including resolicitation, revised evaluation of bids or proposals, or KCAPTA determination, or termination of the contract.

5. If the protest is denied, KCAPTA will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

4.15.11 California Department of Transportation (Caltrans) Appeal, (Only if Federal 5311 funds are used in the procurement)

Under certain limited circumstances, and after the protester has exhausted all administrative protest remedies made available to them at KCAPTA, an interested party may appeal KCAPTA's unfavorable decision to Caltrans. The deadline for submitting protest to Caltrans prior to proposal opening is **TIME AM/PM., PST, DATE**. The deadline for submitting protest to Caltrans after opening/announcement of award is **TIME AM/PM., PST DATE**.

Caltrans review of any protest will be limited to:

- (1) Violation of Federal law or regulations. Violation of State or local law shall be under the jurisdiction of State or local authorities.
- (2) Violation of KCAPTA protests procedures or KCAPTA failure to review a complaint or protest.

The protest filed with Caltrans shall:

- (1) Include the name and address of the protester
- (2) Identify KCAPTA as the party responsible for the RFP process
- (3) Contain a statement of the grounds for protest and any supporting documentation. (The grounds for protest filed with Caltrans must be fully supported to the extent feasible. Additional materials in support of an initial protest will only be considered if authorized by the FTA regulations)
- (4) Include a copy of the protest filed with KCAPTA, and a copy of KCAPTA's decision, if any.
- (5) Indicate the ruling or relief desired from Caltrans.

Such protest should be sent to:

California Department of Transportation
Division of Rail & Mass Transportation
P.O. Box 942874-M.S. 39
Sacramento, CA 94274-0001

A copy of such protest should be sent to KCAPTA, Executive Director **or designee**

4.15.12 Judicial Appeals

A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court in the State of California.

4.15.13 Federal Transit Administration Appeal (Only if Federal funds are used in the procurement)

1. A protestor adversely affected by a bid protest decision of the KCAPTA Executive Director **or designee** may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA **Circular 4220.1F Circular 4220.1G**, as currently in effect as of the date of KCAPTA's decision on the bid protest. A Protestor must exhaust its administrative remedies by pursuing KCAPTA's protest procedures to completion before appealing KCAPTA's decision to FTA.
2. Under the provision of the FTA Circular, FTA will only review protest regarding the alleged failure of KCAPTA to have written protest procedures, the alleged failure of KCAPTA to have complied with its protest procedures; or KCAPTA alleged failure to review a protest when presented the opportunity to do so. FTA will not consider every appeal filed by a protestor merely because a Federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction

over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violation of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.

3. In accordance with the FTA Circular, such protest must be filed with the FTA's Regional Office no later than five (5) working days after the date when the protestor has received actual or constructive notice of KCAPTA's final decision or within five (5) working days of the date when the protester has identified other grounds for appeal to FTA (i.e., KCAPTA failure to have or failure to comply with its protest procedures or failure to review the protest).

4.16 BUY AMERICA PRE-AWARD/POST-DELIVERY AUDIT PROCEDURES

4.16.1 *Pre-Award Audit*

KCAPTA must ensure that a pre-award audit in compliance with ~~49 CFR Part 663~~ **49 CFR Part 661** is completed before entering into a formal contract for the purchase of rolling stock. A pre-award audit consists of (1) a pre-award Buy America Certification, (2) a purchaser's pre-award requirements certification and (3) the manufacturer's Federal Motor Vehicle Safety certification (FMVSS).

4.16.2 *Pre-Award Buy America Certification Requirement*

This subsection discusses procedures that KCAPTA may follow to demonstrate compliance with the pre-award Buy America certification requirement.

Rolling Stock to be purchased by a KCAPTA must fall into one of two categories under this requirement:

1. Rolling Stock that meets the Buy America domestic content and assembly requirement
2. Rolling Stock for which a Buy America waiver is available. The procedures for each category are described below.

4.16.3 *Buy America-Compliant Rolling Stock*

Most rolling stock must meet the ~~60~~ **65** percent minimum domestic content and U.S. final assembly requirements set forth in the Buy America Rule. Therefore, KCAPTA must be satisfied that the rolling stock will meet the requirements. In other words, KCAPTA must be satisfied that the manufacturer who is proposing to sell the rolling stock can and will comply with the content and assembly requirements.

As a first step in the pre-award review process, KCAPTA, or a duly appointed analyst, must review the Buy America information that the proposed manufacturer must provide for the review.

The manufacturer's information must include:

- A listing of the rolling stock components and subcomponents that will be used to calculate the percent domestic content
- The **proposed** final assembly location
- Activities that will take place during final assembly
- The **proposed** total cost of final assembly.

Each component and subcomponent on the list must be identified by manufacturer, country of origin, and cost (in either a dollar or percentage format). Final assembly costs are not to be included when

calculating the percent domestic content of the bus. Likewise, component manufacturing costs are not to be used when calculating the percent domestic content of a component.

The manufacturer's list must identify the domestic subcomponents for major components used in the content calculation, such as engines, transmissions, and wheelchair lifts.

To be assured that the manufacturer can comply with the requirements, the analyst must verify that the rolling stock will contain a minimum of **60-65** percent domestic products, by cost. Therefore, the analyst must:

- Review the component and subcomponent listings to verify a minimum of **60-65** percent domestic product content
- Review the final assembly cost.

The analyst should subtract the final assembly cost from the price of the rolling stock to approximate the total component cost and thus the percentage base that the manufacturer used to calculate the domestic cost contribution for each item listed in the manufacturer's information.

To verify that the final assembly location will be within the United States, the analyst must:

- Check that the manufacturer has identified a final assembly location that is within the United States
- Review the list of final assembly activities, which should include activities, such as welding, subassembly activities, component installation, and painting, to ensure that activities at the cited final assembly location qualify as final assembly.

After the analyst has completed the steps described above, KCAPTA must:

- Complete a pre-award Buy America compliance certification
- Keep the Buy America certification on file for future FTA reviews.

If the manufacturer agrees, KCAPTA should, **but is not required to**, keep a copy of the manufacturer's Buy America information with the Buy America certification in the file.

4.16.4 Buy America-Exempt Rolling Stock

Although little rolling stock is exempt from the Buy America domestic content and final assembly stock from the requirements. If a waiver does exist for the rolling stock KCAPTA must:

- Obtain a Buy America waiver letter from the FTA for the rolling stock
- Complete a pre-award Buy America exemption certification
- Keep the Buy America certification on file for future FTA reviews.

KCAPTA should keep a copy of the FTA waiver letter with the Buy America certification in the files. Appendix C summarizes details of current Buy America waivers.

4.16.5 Purchaser's Pre-Award Requirements Certification

This subsection discusses procedures that KCAPTA may follow to demonstrate compliance with the pre-award purchaser's requirements certification requirement. This requirement is intended to eliminate those manufacturers that appear irresponsible and/or incapable of complying with KCAPTA's solicitation specifications.

To comply with the purchaser's requirements certification, KCAPTA, or a designated analyst, must check:

- That the manufacturer's bid specifications are in compliance with KCAPTA's solicitation specifications
- That the **proposed** manufacturer will be capable of meeting the specifications. To ensure compliance, the analyst should review:
 1. The solicitation specifications, the bid specifications, and KCAPTA's approval of any approved equals
 2. The manufacturer's qualifications (such as quality control measures, previous customer's, and other qualification documents).

After the review has been completed, KCAPTA must:

- Complete a pre-award purchaser's requirements certification
- File the purchaser's requirements certification for future FTA reviews.

KCAPTA should keep copies of their solicitation specification, the manufacturer's bid specification, approvals of any approved equals, and manufacturer qualifications with the purchaser's requirements certification in the file.

4.16.6 FMVSS Pre-Award Certification Requirement

This subsection discusses procedures to demonstrate compliance with the FMVSS certification requirement.

Most rolling stock must comply with the FMVSS regulations, although these standards may not apply to all bus procurements.

4.16.7 FMVSS-Compliant Rolling Stock

As previously stated, most rolling stock must comply with the FMVSS regulations. If this is the case, KCAPTA must:

- Obtain the FMVSS self-certification sticker information from the manufacturer
- Complete a pre-award FMVSS compliance certification
- File the FMVSS certification for future FTA reviews.

KCAPTA should keep the manufacturer's pre-award FMVSS sticker information with the FMVSS certification in the file.

4.16.8 FMVSS-Exempt Rolling Stock

Although nearly all rolling stock is subject to the FMVSS regulations, some rolling stock may not be subject to the FMVSS regulations. Details of exemptions are explained in Title 49 of the Code of Federal Regulations Part 555, "Temporary Exemption from Motor Vehicle Safety Standards." If the rolling stock is not subject to the FMVSS regulations, KCAPTA must:

- Obtain the manufacturer's certified statement indicating that the contracted rolling stock will not be subject to the FMVSS regulations

- Complete a pre-award FMVSS exemption certification
- File the FMVSS certification for future FTA reviews.

KCAPTA should keep the manufacturer's pre-award FMVSS statement with the FMVSS certification in the file.

4.16.9 Post-Delivery Audit

KCAPTA must ensure that post-delivery audit in compliance with ~~49 CFR part 663~~ **49 CFR Part 661** is completed before title to the rolling stock is transferred to KCAPTA. A post-delivery audit consists of (1) a post-delivery buy America certification, (2) a purchaser's post-delivery requirements certification and (3) the manufacturer's Federal Motor Vehicle Safety certification (FMVSS).

The process for complying with the post-delivery Buy America certification requirement is similar to the pre-award requirement, except that KCAPTA is now certifying the *actual* rolling stock rather than the proposed rolling stock.

4.16.10 Post-Delivery Buy America Certification Requirement

This subsection discusses procedures that KCAPTA may follow to demonstrate compliance with the post-delivery Buy America certification requirement.

The process for complying with the post-delivery Buy America certification requirement is similar to the pre-award requirement, except that KCAPTA is now certifying the actual rolling stock rather than the proposed rolling stock. As with the pre-award review, the rolling stock received must fall into one of two categories under this requirement: (1) rolling stock meeting the Buy America domestic content and assembly requirements and (2) rolling stock for which a Buy America waiver is available. The procedures for each category are described below.

If the Buy America information has not changed since the pre-award review and KCAPTA is satisfied that this is the case, KCAPTA may use the pre-award review documentation for the post-delivery review. However, if there is some doubt, another review should be conducted.

4.16.11 Buy America-Compliant Rolling Stock

Most rolling stock must meet the ~~60~~ **65** percent minimum domestic content and U.S. final assembly requirements set forth in the Buy America Rule. Therefore KCAPTA must be satisfied that the rolling stock complies with the requirements. Before certifying that the purchased rolling stock meets the Buy America requirements, KCAPTA or a duly designated analyst must review the Buy America information, which must be provided by the manufacturer. This information must include:

- A listing of rolling stock components and subcomponents used to calculate the percent domestic content
- The **actual** final assembly location
- The activities that took place during final assembly
- The **actual** total cost of final assembly.

Each component and subcomponent on the list must be identified by manufacturer, country of origin, and cost (in either a dollar or percentage format). Final assembly costs are not to be included when calculating the percent domestic content of the bus. Likewise, component manufacturing costs are not to be used when calculating the percent domestic content of a component.

The manufacturer's list **must** identify domestic subcomponents for major components used in the content calculation, such as engines, transmissions, and wheelchair lifts.

Section Four, "Examples of Complying with the Pre-Award and Post-Delivery Review Requirements," presents samples of domestic content calculations. Section Five, "Frequently Asked Questions about the Pre-Award and Post-Delivery Review," answers questions concerning the domestic content of components and subcomponents and the cost to be used in the domestic content calculations of the bus.

To be assured that the rolling stock is in compliance with the requirements, the analyst must verify that the rolling stock contains a minimum of **60-65** percent domestic products, by cost. Therefore, the analyst must:

- Review the component and subcomponent listings to verify **60-65** percent domestic product content
- Review the total final assembly cost.

The analyst should subtract the final assembly cost from the price of the rolling stock to approximate the total component cost and thus the percentage base that the manufacturer used to calculate the domestic cost contribution for each item listed in the manufacturer's information. The manufacturer is not required to give the analyst or KCAPTA a copy of the cost information to retain in KCAPTA's files.

To verify that the final assembly location was within the United States, the analyst must:

- Check that the manufacturer's final assembly location is located within the United States
- Review the list of final assembly activities, which should include activities such as welding, subassembly activities, component installation, and painting, to ensure that the activities at the final assembly location qualify as final assembly.

After the analyst has completed the steps described above, KCAPTA must:

- Complete a post-delivery Buy America compliance certification
- Keep the Buy America certification on file for future FTA reviews.

If the manufacturer agrees, KCAPTA should, **but is not required to**, keep a copy of the manufacturer's Buy America information with the Buy America certification in the file.

4.16.12 Buy America-Exempt Rolling Stock

Although little rolling stock is exempt from the Buy America domestic content and final assembly requirements, some manufacturers' rolling stock may be eligible for an FTA waiver, exempting the rolling stock from the requirements. If the rolling stock is exempt, KCAPTA must:

- Obtain a Buy America waiver letter from the FTA for the rolling stock
- Complete a post-delivery Buy America exemption certification
- Keep the Buy America certification on file for future FTA reviews.

KCAPTA should keep a copy of the FTA waiver letter with the Buy America certification in the files.

4.16.13 Post-Delivery Purchaser's Requirements Certification

This subsection discusses procedures that KCAPTA's may follow to demonstrate compliance with the post-delivery purchaser's requirements certification requirement.

The requirements for and process of complying with the post-delivery purchaser's requirement certification depend on the number of rolling stock purchased. KCAPTA has more demanding responsibilities when procuring more than ten buses or modified vans than when procuring ten or fewer buses or modified vans, or any number of unmodified vans.

The purchaser's requirements certification is meant to help safeguard KCAPTA by ensuring that the rolling stock is built to contract specifications.

4.16.14 More Than Ten Buses or Modified Vans

To demonstrate compliance with the purchaser's requirements certification requirement when procuring more than ten buses or more than ten modified vans, KCAPTA, or its duly appointed analyst, must:

- Send a resident inspector to the manufacturer's final assembly facility
- Visually inspect and road test the buses and/or vans.

The resident inspector must complete a manufacturing report, which should include any information that supports or refutes claims made by the manufacturer concerning its capabilities or the bus specifications. This information will help support KCAPTA in any disputes that might arise with the manufacturer. For buses manufactured in multiple stages (such as body-on-chassis buses), the resident inspector is required to visit the final-stage manufacturer's final assembly location only.

The resident inspector's report must include, at a minimum:

- Accurate records of all bus construction activities (such as component manufacturing processes, final assembly activities, and quality control data collected)
- A description of how the construction and operation of the bus(es) fulfills the contract specifications (the report should reference the above cited manufacturing processes, final assembly activities, and quality control data).

After the resident inspector has completed the report, KCAPTA, or its analyst, must review the report and conduct the visual inspections and road tests.

Once the steps described above have been completed, KCAPTA must:

- Complete a post-delivery purchaser's requirements certification
- File the purchaser's requirements certification for future FTA reviews.

The resident inspector's report, visual inspection sheets, and road test sheets should be included in the file with the purchaser's requirements certification.

4.16.15 Ten or Fewer Buses or Modified Vans, or any Number of Unmodified Vans.

When procuring ten or fewer buses, ten or fewer modified vans, or any number of unmodified vans, KCAPTA is **not** required to send a resident inspector to the manufacturing site. However, to demonstrate compliance with the post-delivery purchaser's requirements certification requirement, KCAPTA, or its analyst, must:

- Visually inspect and road test the buses before delivery

The visual inspections and road tests are required to verify that the buses meet the contract specifications. Once they have been concluded, KCAPTA must:

- Complete a post-delivery purchaser's requirements certification

- File the purchaser's requirements certification for future FTA reviews.

The data sheets for the visual inspection and the road tests should be kept in the file with the purchaser's requirements certification.

4.16.16 Post-Delivery FMVSS Certification Requirement

This subsection discusses procedures that KCAPTA may follow to demonstrate compliance with the post-delivery FMVSS certification requirement. The process for complying with the post-delivery FMVSS certification requirement is similar to the process completed during the pre-award review for this requirement. The difference is that KCAPTA is now certifying the actual rolling stock rather than the proposed rolling stock.

As with the pre-award review, most rolling stock must comply with the FMVSS regulations, although the standards may not apply to every bus procurement.

4.16.17 FMVSS-Compliant Rolling Stock

As indicated, most rolling stock must comply with the FMVSS regulations. If the rolling stock is subject to the FMVSS regulations, KCAPTA must:

- Check that the manufacturer's FMVSS sticker is affixed to each bus
- Complete an FMVSS certification
- File the FMVSS certification for future FTA reviews.

4.16.18 FMVSS-Exempt Rolling Stock

Although most rolling stock is subject to the FMVSS regulations, some rolling stock may be exempt from the regulations. Details of FMVSS exemptions are explained in Title 49 of the Code of Federal Regulations Part 555, "Temporary Exemption from Motor Vehicle Safety Standards." If the rolling stock is not subject to the FMVSS regulations, KCAPTA must:

- Request and receive a manufacturer's certified statement indicating that the rolling stock is not subject to FMVSS
- Complete a post-delivery FMVSS exemption certification
- File the FMVSS certification for future FTA reviews.

KCAPTA should keep the manufacturer's post-delivery statement with the FMVSS certification in the file.

CHAPTER 5

Guidelines and Requirements

CHAPTER 5 GUIDELINES AND REQUIREMENTS

5.1 CONTRACT ADMINISTRATION GUIDELINES

1. KCAPTA will originate the agreement.
2. Once a contract has been fully executed, A Notice to Proceed will be issued to initiate contract work.
3. All agreements will be assigned a contract number, which must be referred to on all orders and the contractor's invoices.
4. The Executive Director **or designee** and Project Manager will approve all invoices before payment is issued.
5. For each contract over \$100,000 a contracting administrator will be assigned to monitor contract terms and conditions.
6. A contract amendment is necessary for a change in scope of work, term or compensation and must be completed before additional work or payment is authorized.
7. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.
8. The Executive Director **or designee** and the Project Manager will prepare a letter of completion for the KCAPTA Board of Director's approval and recorded with the Kings County Recorder's Office.

5.2 FEDERAL PROCUREMENT REQUIREMENTS

FTA procurement requirements are set forth in FTA Circular 4220.1(F) and its successors. KCAPTA will comply with all requirements and use the Circular as a supplement to these procedures.

When FTA issues new requirements, they will be incorporated into KCAPTA's procurement procedures. Additionally, each year when KCAPTA signs its Annual Certification and Assurances, it will review the FTA website to determine if changes need to be made to any of the procurement policies or procedures. Also, KCAPTA will review FTA's list of required clauses, which should be in the triennial review handbook on the web site, to update the clauses used by KCAPTA. A list of clauses as of **January 18, 2017** are pulled from the **FTA Master Agreement and current Triannual Review Handbook** are included in Appendix A.

5.3 BONDING REQUIREMENTS

5.3.1 *Purpose*

To ensure uniform and equitable application of bonding requirements in compliance with state and federal regulations, protect the interests of KCAPTA.

5.3.2 Responsibility

It shall be the responsibility of the Procurement Officer to ensure that these guidelines are followed and applied impartially.

5.3.3 Types of Bonds

1. **Bid Guarantee:** This shall consist of a firm commitment, such as a bid bond, certified or cashier's check, or other negotiable instrument accompanying a bid as assurance the bidder will, upon acceptance of the bid by KCAPTA, execute such contractual documents as may be required within the time specified. KCAPTA will require bid bonds for all public works/construction projects, for any equipment or services contract of a critical nature to the operations of KCAPTA, or for any equipment contract in which the equipment is specifically manufactured for KCAPTA. Public works/construction projects require a bid bond of ten (10) percent of the amount bid. Equipment purchases and service projects requiring a bid bond will have a bond requirement of up to ten (10) percent of the amount bid. KCAPTA will require proposal bonds for any equipment or services contract of a critical nature to the operations of KCAPTA. Service projects requiring a proposal bond will have a bond requirement of up to ten (10) percent of the amount bid. Failure of bidders to comply with these requirements will result in a determination by the Procurement Officer that the bid is nonresponsive.
2. **Performance:** This is a bond executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract. Performance bonds shall be written by a corporate surety registered in the State of California. KCAPTA will require performance bonds for all public works construction projects, for any equipment or services contract of a critical nature to the operations of KCAPTA, or for any equipment contract in which the equipment is specifically manufactured for KCAPTA. Public works construction projects require a performance bond of 100 percent of the amount of the contract. Equipment purchases requiring a bond will have a bond requirement of up to twenty (20) percent of the amount of the contract. Service projects requiring a bond will have a bond requirement of up to 100 percent of the amount of the contract.
3. **Payment:** This is a bond execute in connection with a Contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Payment bonds shall be written by a corporate surety registered in the State of California. KCAPTA will require a bond for public works/construction contract over \$25,000. The required payment bond will be 100 percent of the amount of the contract.

5.3.4 Procedures

Bid guarantees and performance bonds are required by the State of California for all public works/construction projects in excess of \$6,500. Payment bonds are required by the State of California for all public works/construction projects in excess of \$25,000.

Bid guarantees and/or performance bonds are not required unless the procurement involves equipment or services of a critical nature to the operations of the agency and/or is specifically manufactured for the agency thereby making procurement from another source difficult or time consuming. Payment bonds are not required under these circumstances.

Bonding levels are:

Type of Project	Type of Bond		
	Bid	Performance	Payment
Public Works/Construction (as applicable)	10%	100%	100%

Materials and Equipment (as applicable)	Up to 10%	Up to 20%	Up to 100%
Services (except for personal or professional)	Up to 10%	Up to 100%	Up to 100%

1. **Forfeiting of Bonds.** All contracts that contain bonding requirements shall contain a clause allowing termination on default of the contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, KCAPTA will claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

5.4 INSURANCE REQUIREMENTS

Insurance requirements vary depending on the project type. They may include provisions for personal injury, environmental liability and other areas. The insurance requirements for each project are established by KCAPTA.

In assessing risk management, KCAPTA will consider the following project information:

- Scope of work
- Contract amount
- Whether the project requires the contractor to operate on KCAPTA property
- The ultimate use of the good or service provided by the contractor
- Previous experience associated with similar or related projects

Once the insurance requirements are defined, they must be included in the procurement document.

Prior to issuing the final contract, the Executive Director or designee shall approve the insurance certificate. A copy of the insurance certificate is to be kept in the project file.

The Procurement Officer shall not allow any contract to continue without proper insurance in effect after notification of the lapse of requisite insurance

5.5 LIQUIDATED DAMAGES

The Procurement Officer and the Project Manager will determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable, shall be set at a specific rate for each day of overrun in contract time for a public works/construction contract or for delivery of goods, or for each instance of an incident giving rise to imposition of liquidated damages in a service contract, and the rate must be specified in the contract. A liquidated damage clause may be used if it is determined that:

- The time of delivery of goods or services to KCAPTA is critical, and KCAPTA can expect to suffer damage if the delivery is delinquent.
- The extent or amount of such damage would be difficult or impossible to determine

5.6 INDEMNIFICATION

All contracts shall provide that the contractor shall indemnify and save harmless KCAPTA, its officers, agents and employees from any injuries or damages received by any person during any operations connected with the Contract, by use of any improper materials, or by any act or omission of the Contractor or his subcontractor, agents, servants or employees. The contract provision reads as follows:

"The Contractor (or Consultant) agrees to protect, defend, indemnify and hold KCAPTA, its members, KCAPTA Council members, management consulting staff, officers, and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or

other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character including Worker's Compensation suits, liability or expenses (hereinafter collectively "claims") in connection with or arising directly or indirectly out of the Contract or the performance hereof by the Consultant (or Contractor) or any sub-consultant (or sub-contractor). Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Consultant (or Contractor) further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense and agrees to bear all other costs and expenses related thereto, whether or not it is alleged or determined that the Consultant (or Contractor) was negligent, and without regard to whether such claim is groundless, false, or fraudulent."

5.7 TERMINATION

5.7.1 *Termination for Convenience*

All contracts shall contain a provision allowing for the termination of the contract for convenience by KCAPTA and prescribe methods in which the contractor may calculate cost of work already performed, and termination settlement costs. All contracts supported by federal grants that exceed \$10,000 are to include provisions that allow KCAPTA to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. The contract provisions read as follows:

- The performance of work (or professional services) under the Contract may be terminated by KCAPTA in accordance with this Section in whole, or from time to time in part, whenever KCAPTA determines that such termination is in the best interest of KCAPTA. Any such termination shall be effected by delivery to the Consultant (or Contractor) of a notice of termination specifying the extent to which performance of professional services under the Contract is terminated and the date upon which such termination becomes effective.
- Upon receipt of a notice of termination, and except as otherwise directed by KCAPTA, the Consultant (or Contractor) shall (1) stop work under the Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work (or professional services) to be provided under the Contract as are not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of professional services terminated by the notice of termination; (4) assign to KCAPTA in the manner, at the times, and to the extent directed by KCAPTA, all of the right, title and interest of the Consultant (or Contractor) under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of KCAPTA, to the extent that KCAPTA may require, which approval or ratification shall be final for all the purposes of this Section; (6) transfer title to KCAPTA and deliver in the manner, at the times, and to the extent, if any, directed by KCAPTA, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, work (or professional services) terminated, and any information and other property which, if the Contract had been completed, would have been required to be furnished to KCAPTA; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as KCAPTA may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Consultant (or Contractor) and in which KCAPTA has or may acquire an interest. Payments by KCAPTA to the Consultant (or Contractor) shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Consultant (or Contractor) under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time."

5.7.2 *Termination for Default*

All contracts shall contain a provision allowing for the termination of the contract for default by KCAPTA. All contracts supported by federal grants that exceed \$10,000 are to include provisions that allow KCAPTA to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. The contract provisions read as follows:

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

5.8 DISPUTE RESOLUTION

All contracts shall contain provisions providing that any dispute between the contractor and KCAPTA relating to the implementation or administration of the contract in question be resolved in accordance with a dispute resolution process set out in the contract. The contract provisions read as follows:

- Any dispute between the Consultant (or Contractor) and KCAPTA relating to the implementation or administration of the Contract shall be resolved in accordance with this Section.
- The parties shall first attempt to resolve the dispute informally in meetings or communications between the Consultant (or Contractor) and the Contracting Officer (for each individual contract). If the dispute remains unresolved 15 days after it first arises, the Consultant (or Contractor) may request that the Contracting Officer issue a recommended decision on the matter in dispute. The Contracting Officer shall issue the recommended decision in writing and provide a copy to the Consultant.
- The recommended decision of the Contracting Officer shall become final unless, within 15 days of receipt of such recommended decision, the Consultant (or Contractor) submits a written request for review to the Executive Director **or designee**. In connection with any such review, the Consultant (or Contractor) and the Contracting Officer shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Executive Director **or designee**, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.
- Pending final resolution of a dispute under this Section, the Consultant (or Contractor) shall proceed diligently with performance in accordance with the Contract and the Contracting Officer's recommended decision."

5.9 FINAL CONTRACT APPROVAL AND DISTRIBUTION

5.9.1 *Contract Approval*

Certain approval levels may be required as outlined in this policy. If Board approval is required, the Project Manager should draft the Agenda Report in such a manner as to authorize the Executive Director or designee to negotiate and execute the final contract terms. All contracts requiring Board approval must be approved by the Executive Director **or designee**.

The process for final contract approval is as follows:

- Draft contract is developed and approved by the Executive Director **or designee**, legal counsel and the contractor.
- Board authorization (if required) is received
- Final contract is signed by all parties and distributed

5.9.2 *Contract Distribution*

The Procurement Manager has the responsibility for final contract distribution and issuance of the Notice-to-Proceed. Copies of the final contract are sent to the following:

- Project Manager
- Contractor
- Clerk to the Board

5.10 WRITTEN RECORD OF PROCUREMENT HISTORY

The project control file shall be maintained by the Procurement Manager during the procurement process, throughout the term of the contract and for three years following completion of all work.

The control file consists of the following sections:

- Vendor list
- Rationale for type of procurement used
- Rationale for selection of contract type
- Independent Cost Estimate
- List of all vendors responding to the procurement
- All documentation relating to the selection process, including, but not limited to: evaluation score sheets, bids, rationale for selection and/or rejection of respondents, the basis for the contract price and the source selection plan
- Notice to proceed
- Final contract
- Board report, if required
- Purchase Requisition
- All correspondence
- Proof of insurance
- Bond documents
- Notice of Solicitation
- Legal advertisement
- Original procurement document and all addenda
- Original responses to the procurement
- DBE information
- Returned mail

CHAPTER 6

TYPES OF CONTRACTS

CHAPTER 6 TYPES OF CONTRACTS

Except as provided in this section, any type of contract that will promote the best interest of KCAPTA may be used.

6.1. FIXED PRICE CONTRACTS

6.1.1 *Firm-Fixed Price*

A firm-fixed price contract establishes a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

6.1.2 *Fixed Price Contracts with Economic Price Adjustment*

Fixed-price contracts may provide for price adjustments (upward or downward) when specified contingencies occur. These contracts are typically used when there is serious doubt about the stability of selected costs or prices over an extended period of contract performance.

6.2 COST REIMBURSEMENT CONTRACTS

A cost-reimbursement contract is one in which the contractor is paid its reasonable, allocable and allowable costs of performance regardless of whether the work is completed.

1. Procurement Officer shall use a cost-reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.
2. The Procurement Officer may use cost-reimbursement contracts only when the following circumstances apply:
 - The contractor's accounting system is adequate for determining costs applicable to the contract;
 - Appropriate KCAPTA oversight during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and
 - The Procurement Officer determines, based upon discussions with the Project Manager that the lack of precision of the statement of work or the difficulty of accurately estimating the costs make the use of a fixed-price contract impractical.
3. Each cost-reimbursement contract shall contain the following:
 - A clause, approved by the Procurement Officer indicating that only those costs determined to be reasonable and allocable will be reimbursable; and
 - A clause, approved by Procurement Officer, establishing a stated limitation of cost.

4. Cost plus percentage of cost contracts are prohibited.

6.3 INDEFINITE DELIVERY CONTRACTS AND TASK ORDERS CONTRACTS

1. The Procurement Officer may use an Indefinite Delivery type of contract (either a requirements contract or an indefinite quantity contract/Task order) when the exact quantities of supplies or services are not known at the time of contract award. The contract may also specify maximum or minimum quantities that KCAPTA may order under each individual order and the maximum that KCAPTA may order during a specified period of time.
2. There are several types of indefinite delivery contracts:
 - Definite-quantity contracts
 - Requirements contracts, and
 - Indefinite quantity (IQ) contracts (commodities)
 - Task order contracts (services).
3. Indefinite Delivery type contract are used when the Procurement Officer anticipates recurring requirements but cannot predetermine the precise quantities for supplies or services. The Procurement Officer shall include the following in each contract and solicitation for a requirements contract:
 4. A realistic estimate of the total quantity or Dollar amount that will be ordered, based on the most current information available; and
 5. A clause approved by the Procurement Officer, stating that the estimate is not a representation to a bidder, offeror, or contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.
 6. If feasible, a requirements type contract shall state the maximum limit of the contractor's obligation to deliver and KCAPTA's obligation to order.
 7. The Procurement Officer or his or her authorized designee executing orders under a requirements type contract shall obligate funds when each individual order is issued and may order from a requirements type contract within the limits of the user department's budget authority for the items or services covered by the contract.
 8. The Procurement Officer may use an Indefinite Quantity type of contract when the Procurement Officer cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the Procurement Officer determines that it is inadvisable to commit KCAPTA for more than a minimum quantity.
 9. An Indefinite Quantity type contract shall require KCAPTA to order and the contractor to furnish at least the stated minimum quantity of supplies. The contractor shall also be required to furnish if and as ordered, any additional quantities, not to exceed a stated maximum. The Procurement Officer shall ensure that the contract obligates the amount of budget authority needed to cover KCAPTA's minimum required order under the contract.
 10. The Procurement Officer shall include in the schedule of each requirements and Indefinite Quantity type of contract the names of KCAPTA departments authorized to issue orders under the contract. When determined appropriate by the Procurement Officer, authorization for placing facsimile orders may be included in the contract; provided, that KCAPTA shall establish procedures for obligating funds and confirming all such orders.
 11. Each Indefinite Delivery contract issued must include a fixed dollar ceiling that represents the target "not to exceed" cost authorizations for the work specified.

12. In cases where multiple suppliers are awarded contracts, the file shall include Task Order/Delivery Order source selection and price justification to document negotiations, price reasonableness, and/or source selection decision.

13. Each order placed under an Indefinite Delivery/Task Order contract shall contain required minimum information needed for a contract.

6.4 TIME AND MATERIAL CONTRACTS

A time and material contract can be used only:

1. After a determination by the Procurement Officer that no other type of contract is suitable; and

2. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

6.5 LABOR HOUR CONTRACTS

Labor hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

6.6 REVENUE CONTRACTS

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. In accordance with FTA Circular 4220.1E section 7(n), the extent of and type of competition required is within the discretionary judgment of the Procurement Officer.

6.7 CONTRACT TERM LIMITS

Contract term limits are specified below:

1. A contract for rolling stock or replacement parts funded with FTA funds may be entered into for any time period not to exceed five (5) years.

2. Contracts for supplies and services may be entered into for any time period considering that the time period is based on sound business practices and is consistent with the "full and open competition" principle expressed in FTA [Circular 4220.1F](#) [Circular 4220.1G](#).

3. Revenue contracts may have a period of performance beyond five (5) years if KCAPTA believes it is in KCAPTA best interest, including options.

4. Options are permitted provided the extensions, if any, are included in the solicitation.

Appendix LIST