

Green Mountain Transit (GMT)

**PURCHASING
POLICY & PROCEDURES**

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I. Purpose

The purpose of these policies and procedures is to establish guidelines and ensure that all expenditures relating to the use of FTA assistance for the purchase or sale of real and personal property, the granting of concessions, and the making of certain contracts by the Green Mountain Transit Authority (GMT) are made in an open and competitive manner, in accordance with U.S. Department of Transportation (U.S. DOT) Federal Transit Administration (FTA) documents, [FTA Circular 4220.1F, Title 49 of the Code of Federal Regulations (C.F.R.), 2 CFR Part 200, and the most current revisions of the FTA Master Agreement and Best Practices Procurement & Lessons Learned Manual.

II. Definitions

A&E – Architectural & Engineering Services, which include program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services performed in relationship to construction projects.

Abstract of Bids - document used to record the results of sealed bids for each bidder, which is subsequently made available for public inspection, after completion of the bid process.

Best-Value - a selection process in which proposals contain both price and qualitative components, and award is based on 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 most advantageous and of the greatest value to GMT

Board – will mean the Board of Commissioners of GMT.

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

Chairperson – will mean the Chairperson of the Board of Commissioners of GMT and will include the Vice-Chairperson when the Chairperson is unavailable.

Change Order - an order authorized by GMT directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.

Contract – means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the recipient to an expenditure and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include

(but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; written orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.*

Contract Administration - the post award administration of the contract to ensure compliance with the terms of the contract by both the contractor and GMT.

Contract Administration File Documentation - the documentation contained in the contract file maintained by, or on behalf of, the contract administrator. It reflects the actions taken by the contracting parties in accordance with the requirements of the contract and documents the decisions made, and the rationale therefore, of matters which may result (or have resulted) in controversy or dispute.

Design-Bid-Build Project - a construction project under which a recipient commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.

Design-Build Project - a construction project under which a recipient enters into a contract with a seller, firm, or consortium of firms both for design and construction of a project.

Electronic Commerce (E-Commerce) - consists of electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web internet technology, electronic bulletin boards, purchase cards, electronic funds transfer, electronic signatures, and electronic data interchange.

FTA - Federal Transit Administration – an operating administration of the U.S. Department of Transportation.

Joint Procurement - a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum or maximum.

Large Purchase - purchases greater than \$250,000, which are obtained through the use of formal, publicly-advertised competitive procurement methods such as Invitation for Bids (IFB) and Request for Proposals (RFP).

Local Government - includes a public transit authority as well as county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, or any agency or instrumentality thereof.

Micro-Purchase - purchases / contracts that do not exceed \$10,000. May be made with a determination that the price was fair and reasonable.

Modification - means any written change to the terms of a contract.

Noncompetitive Proposals (sole source) - procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4220.1F

Piggybacking - the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.

Purchase - will mean the procurement by purchase, lease, or otherwise of real or personal property by GMT, and awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to GMT.

Recipient - means GMT or any organization receiving funds directly from FTA.

Sale - will mean the sale, lease, or other disposition of any real or personal property by GMT.

Small Purchase - purchases / contracts between \$10,001 and \$250,000.

Statute of Frauds - generally, the Statute of Frauds dictates whether contracts should be oral or written. In order to be enforceable, the Statute of Frauds requires certain contracts to be written and signed by the party charged with performing the contract. For example, contracts for the sale of goods in excess of \$500 must be in writing in order to be enforceable.

Sub-recipient - any organization receiving FTA funds from GMT but does not include contractors or subcontractors.

Sub-agreement - the actual agreement between GMT and the sub-recipient.

Telephone quote - quote for micro-purchase obtained by calling vendor, verbally stating specifications for goods or services in order to solicit a quote.

Third party contract - any contract awarded by GMT to a vendor or contractor using Federal financial assistance awarded by FTA.

U.S. DOT - United States Department of Transportation

Written quote - document submitted by vendor to GMT in writing via fax, mail, or electronic means.

III. Ethics/Standards of Conduct

It is the policy of GMT to adopt an arm's length relationship in regard to all suppliers, vendors, service companies, and passengers, with whom GMT may have a relationship as part of its normal daily operations. It is important that GMT not only remain free from all conflict of interest situations, but that GMT must also remain free from the appearance of a conflict of interest.

A. Personal Conflicts of Interest

No employee, officer, board member, or agent of GMT may participate in such activities as contract specifications, solicitations, selection, or award, if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award: (1) an employee, officer, board member, or agent of GMT; (2) any member of their immediate family; (3) their partner; (4) an organization that currently employs, or intends to employ, any of the above.

No employee, board member, officer, or agent of GMT will make investments or act for personal gain based upon special knowledge obtained, whether directly or inadvertently, as a result of employment with GMT.

No employee, board member, officer, or agent of GMT will have any relationship or engage in any activity which might involve or lead to personal obligations which could impair the objectivity of such person's judgment, or imply to others that favoritism or obligations exist between such persons and third party contractors, or sub-recipients.

B. Proper Personal Conduct

No employee, board member, officer, or agent of GMT will solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Unsolicited gifts or items of nominal intrinsic value may be accepted. Entertainment in any form must not be accepted if either party might feel obligation or if third party might infer that an obligation exists.

C. Organizational Conflicts of Interest

When conducting business with third party contractors and sub-recipients, disclosing information that may give them an unfair competitive advantage, or that may impair its objectivity in performing contract work is prohibited.

Furnishing advice or services to a firm bidding on or planning to bid on a contract with GMT, or which is currently doing business with GMT is prohibited.

D. Special Exceptions

Any interest of an employee, officer, board member, or agent of GMT as an owner, partner, joint venture or stockholder of a third-party organization, in each case comprising one percent (1%) or less in any such organization, will not be deemed a "financial interest" prohibited hereunder. However, serving as a Director, Officer,

Consultant, or Employee of such organizations, or any other pecuniary capacity with such organization, will be deemed a “financial interest.”

E. Issuance of Standards of Conduct

GMT will issue these standards as a pre-employment orientation document to be read and signed by each employee involved in the procurement process, and placed into their personnel file. A copy of these standards will also be issued to each board member at the time of their appointment, or whenever an amendment is made.

F. Sanctions for Violation of Ethics / Standards of Conduct

Anyone violating the regulations for proper ethics and standards of conduct will receive appropriate disciplinary action (i.e. written warning, termination, dismissal from board).

IV. Disadvantaged Business Enterprises, Small and Minority Businesses, and Labor Surplus Area Firms

GMT maintains a Disadvantaged Business Enterprises program. The program is updated, in accordance with 49 C.F.R. Part 26, as amended.

GMT takes all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. The affirmative steps utilized include but are not limited to:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprise;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
6. Sharing competitive bidding opportunities with the Vermont Agency of Transportation Office of Civil Rights for inclusion in the Office’s outreach to registered DBEs; and
7. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

V. General Procurement Practices

A. Awards to Responsible Contractors

GMT will make every effort to ensure that all procurement activities be entered into with responsible businesses, persons, and contractors. A responsible contractor is one which:

- Has adequate financial resources, or the ability to obtain such resources as required during the performance of the contract, if adequate security is not otherwise furnished;
- Is able to comply with the required or proposed delivery or performance schedule;
- Has a satisfactory record of performance or the equivalent, and
- Has a satisfactory record of and reputation of integrity.

B. Review of Procurement Requests to Avoid Duplicate or Unnecessary Purchases

GMT has purchasing procedures for micro, small, and large purchases, respectively. As designated by the General Manager, staff members with budget responsibility may complete micro and small purchases. The General Manager and the Directors may conduct large purchases through IFB/RFP procedures in addition to micro and small purchases. The General Manager will sign all contracts, however contracts greater than \$250,000, at the discretion of the Board, will be reviewed by legal counsel prior to final Board approval and the General Manager's signature.

Large Purchases are performed through collaboration involving GMT Directors and GMT's Procurement Officer. At the very minimum, solicitations are reviewed by the Procurement Officer before publication. When required, solicitations are also sent to the Vermont Agency of Transportation for review prior to publication. Contract awards at the Large Purchase threshold can only be made by the General Manager after approval is received by the GMT Board of Commissioners. This comprehensive review process, along with the requirement for approval from multiple parties eliminates the occurrence of unnecessary or duplicative purchases at the Large Purchase threshold.

Budget compliance is the responsibility of each department manager. All requests for purchases or contracts for services must be reviewed and approved by each department head prior to purchase. The Department manager must review their budget to ensure that funds are available and that the purchase or contract is necessary. Additionally, for purchases greater than \$50,000, with the exception of capital purchases in a Board-Approved Capital Budget, the General Manager and the Director of Finance will need to sign off approving the funds are available for the procurement prior to any procurement work being started.

In compliance with 2 CFR Part 200.318(d), GMT seeks to make all reasonable efforts to avoid the acquisition of unnecessary or duplicative items. As GMT does not have a centralized purchasing department, purchases under the purview of each department are managed by Department Managers, with Manager Approval required for all purchases above the Micro Purchase threshold. Additionally, all Small Purchases are required to be reviewed by GMT's Procurement Officer.

Careful consideration is made to ensure that purchasing roles are clearly defined and that purchasing responsibility for certain goods and services does not live between departments to avoid any ambiguity in purchasing responsibility which could lead to duplicative purchases. Additionally, GMT staff will endeavor to perform the following whenever feasible to ensure that unnecessary and duplicative purchases are not made:

- Prior to initiating procurement processes, departments will conduct a needs assessment to determine whether a procurement is necessary. This assessment may include a review of current inventory, existing contracts, and other resources that may already fulfill the need. Depending on the size and scope of the procurement, Department Managers will share anticipated procurements with other Leadership staff to develop a consensus of the need for the procurement.
- Staff with purchasing authority will conduct appropriate market research to identify available products, services, or technology that meets the needs of GMT. Staff will prioritize opportunities for cost savings, collaboration with other transit agencies, and leveraging existing solutions in this effort.
- Where feasible, GMT staff will utilize existing state and/or cooperative contracts to avoid duplicative procurement work, reduce administrative burden, and leverage favorable pricing in large quantity contracts.
- Purchasing staff will review recent purchases and active GMT contracts to determine if Agency needs can be met through extension or modification of active contracts, in compliance with FTA requirements for such procurement actions.
- Whenever feasible, staff will utilize shared budget tracking spreadsheets to ensure budget compliance and visibility of purchases across team members, further minimizing the chance of unnecessary or duplicative purchases.
- When possible and in the best interest of GMT, purchases will be consolidated to reduce duplicative activities and to achieve economies of scale. Careful consideration will be made so that such consolidation does not inhibit participation by small businesses or DBEs.

C. Competition; Non-Collusive Bids and Proposals

All purchases and sales, whether by formal advertising or otherwise, will be made on a competitive basis to the maximum practicable extent.

In the event identical bids are submitted on any contract for the sale or purchase of property, the procuring manager shall report such fact to GMT's General Manager, who shall report such fact to GMT's General Counsel if there is any reason to suspect collusion.

D. Splitting Purchases

Purchases will not be split, so as to place them in a smaller procurement category for the purpose of circumventing the terms and conditions of this Policy. In the event a contract is entered into for an extended period (i.e. 3 years), or there are multiple

purchases of one or more items, the dollar amount for the entire length of the contract and the total cost of all items anticipated to be purchased (for multiple purchases), must be considered in determining whether it is a micro, small, or large purchase. For example, if a five-year service contract has a cost of \$3,000 per month, the total contract would be \$180,000. The contract would, therefore, be considered a large purchase and require a formally advertised procurement.

VI. Methods of Procurement

Purchases Under Grant Awards prior to June 20, 2018

Purchases funded by grants awarded prior to June 20, 2018 must follow the purchasing thresholds in place at the time of the grant award. These are:

Micro-purchases - up to \$3,000

Small Purchases - between \$3,001 and \$100,000

Large Purchases - Greater than \$100,000

At the time of this update, GMT has two (2) active FTA awards prior to June 20, 2018 with remaining funds. Whenever funding is programmed into GMT's capital budget from either of these grant sources, GMT's Procurement Officer must notify the Director of Grants and relevant purchasing staff that projects are subject to the older purchasing thresholds.

A. Micro-Purchases

Micro-purchases are purchases or contracts that do not exceed \$10,000. Purchases below that threshold may be made without obtaining competitive quotes, if GMT determines that the price is fair and reasonable. Minimum documentation requirements include determination that the price is fair and reasonable, and how this determination was made. The Davis-Bacon Act must be applied to construction contracts over \$2,000.

The following procedures apply to micro-purchases:

- (a) Competition. The recipient should distribute micro-purchases equitably among qualified suppliers.
- (b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
- (c) Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection. It is GMT's preference to obtain at least two telephone quotes, or obtain copies of at least two written quotes for such purchases (see definition of written quote).

Practices Deemed Restrictive of Competition, and therefore not allowable include:

- Organizational conflicts of interest;
- Restrictive use of brand names;
- Any arbitrary action in the procurement process;
- Geographic preferences (With the exception of Architectural and Engineering services).

Any and all procurement documentation must be retained by the procuring department, according to the record retention policy produced by the Finance department.

B. Small Purchases

1. General Requirements for all Small Purchases

Small purchases, as defined in U.S. DOT / FTA 4220.1F are purchases of services, supplies, or other property that exceed the micro-purchase amount but do not exceed the maximum FTA threshold of more than \$250,000. Small purchases must be made by obtaining at least two written quotes.

Written quotes are documents submitted by the vendor to GMT in writing via fax, mail, or electronic means. All procurement documentation must be retained by the procuring department, according to the record retention policy produced by the Finance Department. This procurement file will include the following documentation:

- Vendor Invoice
- Purchase Form (which includes the method of procurement, selection of contract type, reasons for the contractor selection, and basis for the contract type)
- No less than Two Quotes (or one quote accompanied by either a sole source justification form or single quote justification form).
- Cost or Price Analysis (Dependent on number of quotes received)
- Written record of procurement history documenting the selection of the method of procurement, the selection of contract type, responsibility determinations of the selected contractor, and the basis of the contract price.

2. Full and Open Competition

Full and open competition is an important part of public sector procurement practices as competition ensures that goods and services are provided at the best value to the Agency. While not a requirement for Small Purchases, staff should consider whether competition can be improved by publicly advertising solicitations at the small purchase level to increase visibility. See Section 3.D “Single Bids/Quotes” for guidance on determining whether an unadvertised small purchase resulting in a single quote should be publicly advertised before moving forward with a single quote justification.

Staff should avoid repetitive single quote justifications when there is a pattern of single quotes received from the same bidder despite no restrictive procurement

practices without first attempting a publicly advertised bidding opportunity to promote competition.

Staff are strongly encouraged to utilize more formal procurement practices such as a robust Request for Quotes/Proposals solicitation document and public advertising for small purchases greater than \$100,000.

Sole source purchases of items between \$10,001 and \$250,000 may be made once the sole source justification forms have been completed and signed off by the Procurement Officer and the General Manager.

Practices Deemed Restrictive of Competition, and therefore not allowable include:

- Organizational conflicts of interest;
- Restrictive use of brand names;
- Any arbitrary action in the procurement process;
- Geographic preferences (With the exception of Architectural and Engineering services).

3. Federally Required Contract Clauses

Contract clauses must be included in ALL purchases over \$10,000. All applicable clauses shall be included with any specifications or solicitations provided to vendors in the request for quotes. Any purchase, award letter, notice to proceed, or other authorization shall reference the applicable clauses. Federally required contract clauses can be found in General and Special Contract Provisions included in the Appendices.

4. System for Award Management (SAM) Database Search

For procurements over \$25,000, a search of the intended vendor must be made on the System for Award Management database at sam.gov. Search results shall be saved in the procurement documentation. Searches on the SAM database must occur prior to award.

C. Large Purchases

With the passage of 2 CFR Part 200, FTA has adopted the Simplified Acquisition Threshold of \$250,000 as the new threshold for Large Purchases. As such, purchases in excess of \$250,000 must provide for full and open competition. The Board of Commissioners will approve all Large Purchases prior to execution of the purchase. These contracts will be awarded by Sealed Bid or Request for Proposals, unless there is an explicit exception. **Independent cost estimates must be made before receiving bids or proposals.**

1. General Requirements for all Large Purchases

(a) Practices Deemed Restrictive of Competition, and therefore not allowable include:

- Unreasonable requirements placed on firms in order for them to qualify to do business;

- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Organizational conflicts of interest (also applies to micro and small purchases);
- Restrictive use of brand names (also applies to micro and small purchases);
- Any arbitrary action in the procurement process (also applies to micro and small purchases);
- Geographic preferences (With the exception of Architectural and Engineering services).
- Allowing a third-party contractor to assist in the preparation of design materials, specifications, cost estimating, or bidding documents and not precluding this contractor from bidding on the resulting work. For example, allowing a firm to develop specifications for an IFB for materials and allowing them to bid on the resulting IFB would be considered restrictive of competition and is **not** permissible.

- (b) Pre-qualification Criteria – Prequalification lists are generally used in procurements that require lengthy evaluations to determine whether the product is satisfactory to certain standards. GMT may prequalify people, firms, and property if:
- 1) GMT ensures that all prequalification lists it uses are current;
 - 2) GMT ensures that all prequalification lists it uses include enough qualified sources to provide for maximum full and open competition; and
 - 3) GMT permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date).
- (c) Specifications, Plans, and Drawings - Plans, drawings, or specifications will state only GMT's actual minimum needs and will describe the property or service to be acquired or sold, as the case may be, in a manner which will encourage maximum competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to relatively few bidders.

Where GMT's requirements for a commodity can only be estimated, and bids are to be submitted based upon that estimate, the specifications for the commodity may provide that GMT's requirements may vary within a given range from the estimate. Specifications and drawings with references to brand names, or items manufactured by a single company, will be used to the minimum extent feasible and the salient characteristics of the commodity shall be detailed in the specifications. GMT may not add quantities or options solely to allow them to be reassigned to another agency at a later date.

- (d) Purchase Description - A purchase description may be used in lieu of a specification where the use of a specification is not feasible. A purchase description should set forth the essential characteristics and functions of the items or materials required. Purchase descriptions will not be written so as to specify a product, or a particular feature of a product, explicit to one manufacturer, unless it is determined that the particular feature is essential to GMT's requirements, and that similar products of

other companies lacking the particular feature would not meet the minimum requirements of the item.

Generally, the minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words “or equal.” Where a “brand name or equal” purchase description is used, the “salient characteristics” of the brand name must be described so that bidders may offer an “or equal” product. Known, acceptable products should be listed.

If use of a brand name product is unavoidable and no equals are permitted, written justification shall be provided in the procurement file.

- (e) Contract Cost and Price – Pursuant to 2 CFR Part 200.324, GMT must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, GMT staff must make independent estimates before receiving bids or proposals.

An Independent Cost Estimate is a tool used to determine the fair value of goods or services prior to the request of bids or proposals. An ICE is required for all Large Purchases and may be prepared in-house by GMT staff or through the use of an outside vendor and must be independent from the bidding process. Methods for preparing an ICE include, but are not limited to, market research, past pricing of similar procurements, and estimates from outside vendors. If an outside vendor is solicited in the preparation of an ICE, they are ineligible to submit a quote in response to that particular procurement. To ensure full and open competition, a vendor should be notified of this preclusion prior to engaging in estimating work so that they may make an informed decision that is in the best interest of their firm. Estimating services should not be solicited from vendors who are willing and able to provide the goods or services that are being procured. For example, an ICE for a roof replacement should not be solicited from a roofing contractor but from a design engineer or a professional cost estimator.

- (f) Alternate Articles - Invitations for Bids and Requests for Proposals may provide for alternate bids or proposals on different articles or quantities of material (e.g., where two or more articles will be equally acceptable to GMT depending upon relative price); however, the alternate articles or quantities must be precisely described to assure that the same degree of competition is obtainable.
- (g) Formal Advertising - Formal advertising means purchases and sales by competitive bids and awards, and involves the following steps:
- Determining whether an Invitation for Bids, Request for Proposals, or an Architectural and Engineering services process is appropriate;

- Preparation of the Invitation for Bids, describing GMT's requirements clearly, accurately, and completely, but avoiding unnecessary restrictive specifications or requirements which might unduly limit the number of bidders;
- Publicizing the Invitation for Bids/Request for Proposals, through broad distribution to prospective bidders through an adequate number of sources, including GMT's website, the Vermont Bid Registry, and newspapers, or online and print trade journals;
- Sharing Invitation for Bids/Request for Proposals notices with the Vermont Agency of Transportation Office of Civil Rights for inclusion in the Office's outreach to registered DBEs;
- Issuing contract addendums to all bidders in response to questions/clarifications from any bidder;
- Submission of bids by prospective contractors; and
- Awarding the contract, after the bids are opened, to the responsible bidder whose bid is responsive, conforms with all material terms and conditions of the invitations for bids or Request for Proposals, and is the lowest in price, and;
- Where specified in the bidding documents, factors such as DBE participation, discounts, transportation costs, and life cycle costs will be considered in determining which bid is lowest.

(h) Written Record of Procurement History - Large purchases must be documented by written procurement selection procedures. Such documentation may include records of specifications, plans and drawings, purchase descriptions, and alternate articles, in addition to formal advertising.

Each contract file will contain documentation of actions taken with respect to the purchase, sale, or contract, including final disposition, sufficient to constitute a full history of the transaction in order to:

- Support actions taken by various employees of GMT in connection with the purchase, sale, or contract;
- Provide information for reviews conducted by the Board or others having the right to conduct such reviews; and
- Furnish essential facts in the event of legal proceedings. In the case of purchases, sales, or contracts in which formal advertising is required, each file will include the following documentation, in addition to such records as may be required by the above paragraph

The Contract file must include the following:

- Rationale for the method of procurement;
- Selection of contract type;
- Reason for contractor selection or rejection
- Independent Cost Estimate;
- Basis for contract price;
- A copy of valid approval or request for the purchase, sale, or request, or appropriate reference thereto;

- A list of the bidders solicited or a memorandum explaining why the list of bidders was limited;
- A copy of the Invitation for Bids or Request for Proposals, including any drawings and specifications, or a reference thereto, and applicable contract clauses including signed certifications from awarded contractor;
- One copy of each signed bid or proposal received;
- Documentation of search of SAM database, performed prior to award;
- A record of the abstract of bids (Section 2.e.);
- A document showing the reasons for the selection of the successful contractor;
- A copy of the contract or award;
- All pertinent correspondence;
- Copies of all amendments or supplements to the contract, with supporting documents; and
- Any additional documents reflecting actions peculiar to the specific purchase or sale; and
- Documentation of late bids.

(i) Capital project approval - Major Capital Projects, defined as contracts for construction, land purchase, equipment, consulting, or vehicles which do or could reasonably be anticipated to exceed \$250,000, shall require Board approval prior to entering into a contract with the vendor. The Chair and Treasurer of the Board of Commissioners are authorized to grant approval on behalf of the full Board of Commissioners so long as the award conforms to line item descriptions and budget amounts in a Board Approved capital budget, including adjustments authorized by the General Manager in compliance with GMT's Capital Budget Policy. Approval by the Chair and Treasurer shall be granted in writing and saved in the procurement file. The full Board of Commissioners shall be notified of the award results at a subsequent Board meeting following approval by the Chair and Treasurer.

After such approval, so long as all funds are included in a Board approved budget, the General Manager will have the authority to expend contingency amounts, CPI adjustments for multi-year purchases, change orders utilizing GMT's change order process, and, for multi-year capital procurements exceeding the \$250,000 threshold, the ability to contract with the vendor for additional goods or services contemplated in the initial procurement, which received board approval.

2. Invitation for Bid (IFB)

In order to ensure that the sealed bidding process is feasible, GMT will make every effort to ensure that:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business;
- The procurement lends itself to a firm fixed price contract when feasible, and the selection of the successful bidder can be made principally on the basis of price.

- No discussion with bidders is needed.
 - There is sufficient time to prepare the bids prior to the date set for opening the bids.
- (a) Contents of Invitation for Bid: Invitation for Bids will contain the applicable information described, and any other information required for a particular purchase or sale.

In the case of purchases, the Invitation for Bids will contain the following information, if applicable to the purchase involved:

- GMT's address and name of issuing activity;
- Date of issuance;
- Date, hour, and place of bid opening;
- Description of the supplies or services to be furnished by the bidder in sufficient detail to permit full and free competition;
- Time of delivery or performance requirements;
- Permission, if any, to submit alternate bids;
- Bid Guarantee, performance bond, and payment bond requirements, if any;
- When considered necessary, a requirement that all bids must allow a period for acceptance by GMT of not less than a minimum period stipulated in the Invitation for Bids, and that bids offering less than the minimum stipulated acceptance period will be rejected (the minimum period so stipulated should be no more than reasonably required for evaluation of bids);
- In cases where bidders are required to have special technical qualifications, a statement of such qualifications;
- Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference;
- A statement that GMT reserves the right to reject any or all bids; and
- A statement that GMT reserves the right to cancel the invitation to bids, at its sole discretion, without penalty.
- A statement that bids received after the exact time set for opening are "late bids," and will not be considered for award, except in certain circumstances, such as registered or certified mail that was not delivered on a timely basis, or it was determined that there was mishandling on GMT's part.
- A statement that any modifications or bid withdrawals must be received prior to the set time for bid opening.
- Standard contract provisions provided by the Federal Transit Administration, as applicable. GMT maintains a number of boilerplate instructions and conditions that contain general and special provisions for certain contract types. This boilerplate is constantly being updated through changes to the numerous federal documents that control it as well as occasional input from GMT staff and attorneys who work together on larger procurements, the result of which is used to improve our boilerplate incrementally.

- In the case of sales, the Invitation for Bids will contain a description of the property to be sold by GMT in sufficient detail to permit full and free competition.

(b) Methods for Soliciting Invitations for Bids - Specific methods used in solicitation of bids may include the following:

- A publicly visible posting advertising the IFB that is placed in an adequate number of sources to maximize participation from vendors with the desired expertise. This can include posting on GMT's website, the Vermont Bid Registry, trade publications and classifieds, or local newspapers.
- Direct outreach to firms that have shown interest in previous or similar procurements or who have requested addition to GMT's bidders list.

(c) Receipt and Safeguarding of Bids will be as follows:

- All bids (including modifications) received prior to the time of opening will be kept secure, and except as provided in the paragraph below, unopened.
- If an Invitation for Bids is canceled, or if a bidder effectively withdraws their bid in accordance with the specifications set forth, all bids, or the withdrawn bid, as the case may be, will be returned to the bidder(s).
- Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the General Manager.
- If a sealed bid is opened by mistake, the person who opens the bid will immediately write their signature and position on the envelope, along with the date and time opened, as well as an explanation of why/how it was opened. The envelope will then be delivered to the General Manager, and will be resealed.

(d) Opening of Bids - The following steps are taken in regard to the opening of bids: The General Manager or the designated procuring director will decide and set the time for bid opening, and will so declare to those present. The General Manager, procuring director, or a designated official of GMT will then personally and publicly open all bids received prior to that time, and when practicable, read them aloud to the persons present, and have the bids recorded. The original of each bid will be carefully safe-guarded until the Abstract of Bids has been made and its accuracy verified.

- Examination of bids by interested persons will be permitted if it does not interfere unduly with the performance of GMT's business. However, original bids will not be allowed to pass out of the hands of an official of GMT, unless a duplicate bid is not available for public inspection. In such cases, the original bid may be examined by the public only under the immediate supervision of an official of GMT, and under conditions which preclude possibility of a substitution, addition, deletion, or alteration in the bid.
- Bids will not be opened if a protest is received within the time limits specified in the protest procedures within this document.

- (e) Recording of Bids - All legitimate bids will be abstracted and recorded on the "Abstract of Bids" document. Information recorded will include:
- An identification of the Invitation for Bids;
 - Opening date
 - General description of the item/contract being purchased or sold
 - Names of each bidder
 - Prices bid
 - And any other information required by bid evaluation

When the items are too numerous to warrant the recording of all bids completely, entry should be made of the opening date, general description of the material, item number, and the price bid.

The abstract will be completed as soon as practicable after the bids have been opened. When all bids have been opened, the General Manager or the designated procuring director will so certify on the abstract.

- (f) Award of Bids - In the awarding of bids, GMT will execute the following actions: Unless all bids are rejected, award(s) will be made by the General Manager or the designated procuring director within the time for acceptance specified in the bid, or extension thereof, to the responsible bidder whose bid, conforming to the Invitation for Bids, is the lowest bidder. Awards given to the "other than lowest bidder" are addressed in a succeeding section in this document.

Where the bids sought are for the award of concessions, GMT will accept the bid of that responsible and responsive bidder whose base bid and other material terms, conforming to the Invitation for Bids will be most advantageous to GMT, price and other factors considered.

In the event identical low bids are received, the General Manager along with the Director of Finance will conduct either a coin flip or draw names out of a hat and award to the winner (See also section on Competition; Non-Collusive Bids and Proposals.)

Awards will be made by mailing, or presenting the bidder with a formal award. All made by a bidder in the bid will be clearly and accurately set forth (either expressly, or by reference in the formal award document), since the award is an acceptance of the bid, and the bid and award constitute the contract.

- (g) Amendment/Addenda of Invitation for Bids - If after issuance of an Invitation for Bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specification, delivery, schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes will be accomplished by issuance of an amendment to the Invitation for Bids.

The amendment will be sent to everyone to whom invitations have been furnished. The following actions will also be taken:

- Before issuing an amendment to an Invitation for Bids, the period of time remaining until bid opening, and the need for extending this period must be considered.
- Where only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by facsimile, telephone, or electronic mail. Such notification should be confirmed in the amendment.
- Acknowledgement of receipt of the amendment of invitation for bid should be received from each bidder.
- Any information given to a prospective bidder concerning an Invitation for Bids will be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to the bidders in submitting bids on the invitation, or if the lack of such information would be prejudicial to uninformed bidders.
- No award will be made on the invitation, unless such amendment has been issued in sufficient time, to permit all prospective bidders to consider such information in submitting, or modifying their bids.

(h) Cancellation of Invitations before Opening - GMT will include in all solicitations for invitations for bid a statement that GMT reserves that right to cancel the solicitation without penalty, at its sole discretion.

Since cancellations of an Invitation for Bids usually involves the loss of time, effort, and money spent by GMT and bidders in carrying the bidding process up to the point of cancellation,

- Invitations for bids should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the supplies or services, or where amendments to the invitation would be of such magnitude that a new invitation is desirable.
- When an invitation is canceled prior to bid opening, bids which have been received will be returned unopened to the bidders, and a notice of cancellation will be sent to all prospective bidders.
- The notice of cancellation will identify the invitation for bid, briefly explain the reason for cancellation, and where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any future requirements for the type of material or services involved.

(i) Modification or Withdrawal of Bids - Bids may be modified or withdrawn in writing, by telecommunication, by facsimile, or by electronic mail. Modifications or withdrawals must be received by GMT no later than the exact time set for opening of bids.

Acceptable procedures for modification or withdrawal of bids are as follows:

- Modifications received by facsimile transmission or by printed or electronic mail, will be sealed in an envelope by an official of GMT who will write thereon the date and time of receipt and by whom, the invitation for bid number and their signature. No information contained therein will be disclosed prior to the time set for bid opening.
- A bid may be withdrawn in person by a bidder or their authorized representative, provided their identity is made known, and they sign a receipt for the return of the bid, but only if the withdrawal is prior to the exact time set for opening of bids.

(j) Rejection of All Bids - GMT recognizes that the preservation of the integrity of the competitive bid system indicates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, or in the case of a sale, to that responsible bidder who made the highest responsive bid. Every effort will be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby preventing the unnecessary exposure of bid prices. Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where the General Manager determines in writing that:

- Inadequate or ambiguous specifications were given in the invitation;
- The supplies or services being purchased are no longer required;
- All otherwise acceptable bids received are at unreasonable prices;
- Reasonable evidence exists that bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- For other reasons, cancellation is clearly in the best interest of GMT.

(k) Rejection of Individual Bids - Any bid which fails to conform to the essential requirements or specifications of the Invitation for Bids will be rejected, unless the invitation authorized the submission of alternate bids. Alternate bids must meet the requirements specified in the invitation. Other reasons for rejection of individual bids may include:

- Any bid which fails to conform to the delivery schedule or permissible alternates thereto stated in the IFB may be rejected as non-responsive.
- Bids where the bidder attempts to impose conditions which would modify requirements of the IFB, or limit their liability to GMT, such practices may include:
 - Attempts to protect themselves against future changes in conditions, such as increased costs, or the total possible costs to GMT cannot be determined;
 - Failure to state a price and in lieu thereof, states that the price will be “price in effect at time of delivery” or equivalent; or
 - States a price but qualifies such price as being subject to “price in effect at time of delivery,” or equivalent. A low bidder may be requested to delete objectionable conditions from their bid, provided these conditions do not go to the substance, as distinguishable from the form of the bid, or work

an injustice on other bidders. A condition goes to the substance of a bid, where it affects price, quantity, quality, or delivery of the item offered.

- Any bid may be rejected if it is determined to be priced unreasonably.
- Low bids received for concerns determined to not be responsive, or from bidders determined to not be responsible, as stated in the section on Responsible Bidders, will be rejected.
- Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the IFB, the bid will be rejected, except as otherwise provided in FAR Part 28.101-4.

The originals of all rejected bids, and any written findings with respect to such rejection, will be preserved in the contract file.

- (l) Disposition of Late Bids - Late bids which are not considered for award will be held unopened until after award, and then returned to the bidder, unless other disposition is requested, or agreed to by the bidder. An unidentified bid however may be opened solely for the purpose of identification.

The following will, if available, be included in the contract file with respect to each late bid:

- The date and hour of mailing, filing, or delivery, as the case may be;
- The date and hour of receipt;
- The determination of whether or not the late bid was considered for award, with supporting facts;
- A statement of the disposition of the late bid; and
- The envelope or covering, if the late bid was considered for award.

- (m) Minor Informalities or Irregularities in Bids - A minor informality is one which is merely a matter of form, or is some immaterial variation from the exact requirements of the Invitation for Bids, having no effect or merely a trivial or negligible effect on the price, quantity, quality, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to other bidders. The General Manager or the designated procuring director will either give the bidder an opportunity to correct the deficiency, or waive any such deficiency, where it is to GMT's advantage.

- (n) Mistakes in Bids - After opening of bids, the General Manager or the designated procuring director will examine all bids for mistakes. In cases of apparent mistakes, and in cases where there is reason to believe that a mistake may have been made, they will request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter will be processed in the manner set forth below. Such actions will be taken prior to award:

Any clerical mistake apparent on the face of a bid may be corrected by the General Manager, if they have first obtained from the bidder, verification of the bid actually intended. Examples of such apparent mistakes are:

- Obvious error in placing decimal point;
- Obvious reversal of price f.o.b. destination and the price f.o.b. factory;
- Obvious error in destination of unit.

Correction will be reflected in the award document.

The General Manager is authorized to make the following administrative determination in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award:

- Where an official of GMT knows, or has reason to suspect, that a mistake in a bid has been made, a “Request for verification in bid” may be submitted to assure that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. In such case, a written request to the bidder that it verify its bid price will be prepared and submitted.
- Where the bidder requests permission to withdraw a bid, and clear and convincing evidence establishing the existence of a mistake, a determination permitting the bidder to withdraw their bid may be made;
- If the evidence is clear and convincing, as to the existence of a mistake, and as to the bid actually intended, and if the bid, (whether corrected or uncorrected) is the lowest bid received, a determination may be made to correct the bid and not permit its withdrawal.
- Where the bidder requests permission to correct a mistake in their bid, and clear and convincing evidence establishes the existence of a mistake, and as to the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, in the event such correction would not result in displacing one or more lower bids. If the evidence of the mistake, and the bid actually intended are not ascertainable substantially from the invitation and bid itself as opposed to evidence brought to GMT in response to a request for verification, correction will not be allowed.
- If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw their bid may be made.
- Where the evidence is not clear and convincing that the bid as submitted was not the bid intended, a determination may be made requiring that the bid be considered for award in the form submitted.

- (o) Change Order Policy - Changes to contract agreements after award will be approved by the General Manager or the designated procuring director in compliance with proper change order procedures contained in the contract conditions. All change orders must be documented in writing, be supported by a written justification, including a cost analysis of the individual cost elements, an analysis of whether the additional work was within the general scope of the original contract and whether the extension of time granted was reasonable, and signed and dated by the authorized officials.

Documentation of any change orders over \$100,000 must be provided to the Grants Director for inclusion in the federal quarterly reports.

(p) Concurrent Pre-Qualification and Invitation for Bid

When a concurrent prequalification and invitation for bid process is used, both the bids and qualification information will be submitted by the bid due date. First the prequalification information is evaluated through the objective qualification process, which is defined in advance of any bid procurement requiring qualifications. Then bids are opened only from contractors who meet the qualification criteria. Unopened bids are returned to bidders who do not meet the qualification criteria.

3. Request for Proposals (RFP)

Large purchases may be procured through competitive proposal/Request for Proposals, when conditions are not appropriate for the use of sealed bids. In such cases, either a fixed price, or cost reimbursement type contract is awarded.

(a) Publicizing the proposal: Proposals will be advertised in an adequate number of publicly visible sources to maximize participation from vendors with the desired expertise, as well as solicitation from an adequate number of qualified sources. Areas of advertisement can include posting on GMT's website, the Vermont Bid Registry, trade publications and classifieds (online or print), or local newspapers.

(b) Selection Criteria - GMT will list, in the Request for Proposals, the selection criteria. Price should always be a selection criterion. GMT may list selection criteria in the Request for Proposals, in order of priority with or without criteria weighting. If weights are not listed in the RFP, GMT must establish the priority, weights and scoring method on an internal document prior to the day the RFP becomes available to potential proposers. The standard practice at GMT is to include selection criteria weights in the solicitation.

(c) Evaluation of Proposals - Criteria for evaluation of proposals will be established prior to a Request for Proposals, and may include:

- Responsibility criteria, such as financial, human, and physical capacity to perform the contract (Refer to Best Practices Procurement & Lessons Learned Manual - Responsibility of Contractor), which may include but not be limited to technical design, technical approach, length of delivery schedules, quality of proposed personnel, and experience or past performance.
- Technical criteria - may include the technical experience of the proposer, the suitability of the products or methods proposed for GMT's needs, or objective performance criteria (fuel efficiency, percent savings guaranteed, proven ridership increases, etc.).

- Price criteria - price must be evaluated, unless the Brooks Act applies (where price is only considered after the most qualified proposer is identified for procurement of A&E services).
 - Awards will be made to the responsible firm whose proposal is most advantageous to GMT's program, with price and other factors considered.
 - Compliance criteria - will include responsiveness to proposal requirements.
 - Management criteria - may include the qualifications of the project managers, the budget and schedule performance proposed and recorded on past projects, and the projected effectiveness of the management plan proposed.
- (d) Award of Proposals - GMT will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed agreement.

Consideration will be given to such factors as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources and capacity. Additionally, as stated above, awards will be made to the responsible firm whose proposal is most advantageous to GMT's program with price and other factors considered.

- (e) Request for Revised Proposals - In the event GMT finds it necessary to revise an initial Proposal because of deficiencies, the decision to do so will be approved by the General Manager or the designated procuring director and the deficiencies must be listed and explained.
- A complete revised proposal, including price (except as applicable under the Brooks Act) will be requested from each offeror in the competitive range.
 - Unless explicitly stated otherwise, the revised offer extinguishes the prior offer.
 - The proposer should identify all changes in the revised offer.
 - GMT may exercise the right to request revised proposals as many times as necessary in order to obtain the most advantageous offer.
- (f) Discussions and Clarifications (Negotiations) - GMT will exercise its right to hold discussions for clarifications with all offerors in the competitive range. At such time, negotiations and bargaining may be made that do not result in substantive changes to the RFP criteria. At which time, the offeror will have an opportunity to revise or modify their proposal. The discussions and negotiations may initially be written or oral, with appropriate documentation following the discussions. Strict confidentiality in such cases will be maintained. Emphasis will be made known to the offeror that the name and number of proposals received is not normally considered a public record and need not be released to competitors or the public at large.

(g) Request for Best and Final Offer - A best and final offer (BAFO) may be requested from each offeror in the competitive range at the conclusion of discussions (negotiations) with those offerors. If an offeror does not respond to the request, GMT may consider the most recent offer to be the best and final offer. The request for best and final offer will include:

- Specific notice that discussions are concluded;
- Notice that this is the opportunity for the offeror to submit a best and final offer
- A definite, common cutoff date and time that allow a reasonable opportunity for the preparation and submission of the best and final offer, and Notice that the final offer must be received at the place designated by the time and date set in the request and is subject to any provisions dealing with the submissions, modifications, and withdrawals of proposals set forth in the solicitation.

Following receipt of the best and final offers, officials of GMT will evaluate them in accordance with terms of the solicitation and recommend award in accordance with those terms. GMT will make every attempt to submit only one request for best and final offer. However, in the event additional technical or price/cost related issues surface as a result of the offerors' final submissions or other factors that preclude a reasonable justification for contractor selection and award, GMT may submit request for subsequent best and final offers, as it may be clearly in the best interest of GMT.

(h) Award Based on Initial Proposals - GMT may accept one of the initial proposals if it can be demonstrated that acceptance of the most favorable initial proposal without discussion will result in a fair and reasonable price. Solicitations for proposals will contain a notice that award may be made without discussion of proposals received, and that proposals should be submitted initially on the most favorable terms possible, from a price and technical standpoint.

(i) Withdrawal of Proposal - In order to avoid frivolous offers, or offers submitted with the sole intention of casting light on other offers, the solicitation for the Request for Proposals will state a date and time by which offers must be submitted, and a period following that date during which offers remain firm. Proposers will be allowed to withdraw or modify their proposals up to the time due. However, it will also be stated that after that date all proposals are firm and cannot be withdrawn, regardless of whether the proposer has had second thoughts.

(j) Debriefing Unsuccessful Offerors - GMT will maintain complete records on its award decision, and how it came to that decision. GMT will remain as objective as possible in making that decision. In the event a proposer was

excluded from competitive range, and requests a debriefing, the General Manager, at their discretion will offer a candid explanation of the process. However, if GMT foresees that a dispute is probable, it is not required to notify or debrief unsuccessful offerors.

D. Other Procurement Methods

The following are unique procurement methods that may apply to small or large purchases.

1. Procurement of Architectural and Engineering Services (A&E) - For projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 ("Brooks Act" procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services. Provided a sufficient number of qualified firms are eligible to compete for the third party contract, the contractor's geographic location may be a selection criterion. The Brooks Act requires that:

- An offeror's qualifications be evaluated;
- Price be excluded as an evaluation factor;
- Negotiations be conducted with only the most qualified offeror; and
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to GMT.
- Geographic location of the A & E firm may be considered as a selection criterion. This is prohibited in all other types of procurement. This "qualification based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

2. Procurement by Noncompetitive Proposals (Sole Source)

Sole source procurements are procurements accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is also considered a sole source procurement that must comply with the guidelines below. Sole source procurements must be approved by the General Manager and the Procurement Officer.

(a) General Guidelines for Sole Source Procurements

Procurement by noncompetitive proposals may be used 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:

- The item is available only from a single source (i.e. utility services, checking prior procurements for the same or similar items, no identical or compatible parts or equipment available from any other source);
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (i.e. health and safety concerns); and
- FTA authorizes noncompetitive negotiations.

After solicitation of a number of sources, competition is determined inadequate, and after determining that the solicitation process was conducted appropriately, GMT may enter into negotiations with a single bidder.

(b) Sole Source Procurements of Preventive Maintenance Items - (Bus Parts) Over \$250,000

Preventive maintenance items such as bus parts may be procured under large purchases using:

- Cost analysis of the item(s) with appropriate documentation.
- GMT will certify in writing to FTA regional offices: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of the item is no higher than the price paid for such item by like customers.

(c) Sole Source Justifications

All sole source procurements, except bus parts covered above and micro purchases, must include a written cost analysis in accordance with FTA rules. In addition, the circumstances necessitating sole source procurement should be included in the written cost analysis.

3. Single Bids/Quotes

In the event GMT advertises through Invitation for Bid, Request for Proposals, or Request for Quotes, and receives only one bid, before award of such bid, the General Manager will re-evaluate and document the process to determine if the invitation or proposal inadvertently disqualifies some potential competitors. Other factors that will be taken into consideration include the market conditions during the period of procurement and comments from respective bidders regarding the requirements in the bid. If it is determined that the initial invitation or proposal inadvertently disqualified some potential competitors, the requirements will be revised, and re-advertised. If after evaluation it is determined that the process and requirements set forth were not unnecessarily restrictive, GMT may make a

decision to award the contract to the single bidder. In such a case, a price analysis will be performed, and determination that the price is fair and reasonable will be established, using the guidelines in the section on price analysis. Single bid procurements must still follow the rest of the procurement process including the evaluation of the single bidder in the case of RFPs. Documentation as to the reason for the single bid will be maintained.

The single bid process can also be used for small purchases if there is justification as to why competition was not obtained and a basis for determining that the price quoted is fair and reasonable. Staff must consider whether attempts to increase awareness of the procurement such as public advertisement of the opportunity should be exercised before moving forward with a single quote justification. Staff should consider whether a serious impediment exists (such as time delays during a brief construction window) which would prevent staff from publicly advertising the procurement opportunity to promote competition. If no such impediment exists, staff are recommended to publicly advertise the procurement opportunity as part of the procurement process. The vendor who provided the single quote shall be afforded the opportunity to participate in the open procurement process or have their previously submitted quote or proposal included as a submission in the advertised procurement opportunity, as long as the quote or proposal meets the requirements and sealed bidding practices are not required.

If multiple consecutive procurements of the same product or service result in single quotes received from the same vendor, staff must publicly advertise the next bidding opportunity to increase awareness and promote competition, unless such a procurement action poses a risk to GMT such as unnecessary time delays. Notwithstanding this risk, GMT staff shall always allow for as much time as necessary in its procurement actions.

4. Awards to Other than the Lowest Bidder
GMT may award a third party contract to other than lowest bidder, when such an award is in the best interest of GMT.
5. Acquisition of Real Property
GMT will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. and FTA Circular 5010.1D; when purchasing real property. In addition, it will reference 49 CFR 18.31 and 49 CFR 24 Subpart B, and FTA Circular 4220.1F.
6. Leasing Project Property to Another Party
In the event GMT chooses to lease property purchased with federal funds to another party, GMT agrees to retain ownership of the property, and assure that the lessee will use the property appropriately, either through a “Lease and Supervisory Agreement,” or another similar document. Upon request by FTA, GMT agrees to provide a copy of any relevant documents.

7. Procuring Equipment or Materials Using Option Clauses or Cooperative Contracts

(a) Definition of Option Contract

An option is a unilateral right in a contract by which, for a specified time, GMT may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.

(b) FTA Requirements for Option Contracts

If GMT elects to use option clauses in contracts, the FTA requires the following:

- Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement, and will be subject to a cost or price analysis before exercising.
- Exercise of Options. GMT will ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award. It will also be determined that the option price is fair and reasonable or better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised

(c) Purchasing Options on Other Grantee's Bus Procurement

In the event GMT elects to purchase options on another grantee's bus procurement GMT will follow the FTA guidelines related to this type of purchase which at a minimum would require that contracts have an assignability clause and meet all the requirements of GMT's purchasing policy. Further, it will be established that the original Purchaser's options are reduced by the same number that has been assigned to GMT, otherwise GMT understands that this may constitute a sole source procurement. A price analysis must also be performed before GMT exercises such an option.

(d) Utilizing State DOT and other Cooperative Purchasing Contracts

In compliance with Section 3019 of the FAST Act, GMT may utilize contracts held by State Departments of Transportation outside of Vermont and certain nonprofit cooperative purchasing organizations. Prior to purchasing goods or services from these contracts, GMT must:

- Obtain copies of all relevant contract documents, solicitation documents, and vendor proposal documents and carefully review for compliance with federal requirements.
- Review eligibility requirements for participation to ensure that GMT meets the requirements and, when necessary, joins consortiums prior to purchasing.

- Ensure that the item(s) being procured are substantially the same as the original item(s) in the contract to avoid a cardinal change.
- Document that the price of assignments is fair and reasonable.

GMT staff are required to engage in prior consultation with FTA when pursuing this contracting method to ensure that such contracts are eligible for use with FTA funds before purchases are executed. If possible, procurement materials should be sent to FTA for review and approval.

VII. Protest Procedures

Protests concerning GMT's purchasing policies, the contract requirements, the specifications, the bidding procedures, or the contract award, or any other request for explanation or clarification must be submitted in writing and must include the following information:

- The name and address of the protester.
- The name and telephone number of the protester's contact person having responsibility.
- A complete statement of the grounds of the protest with full documentation of the protester's claim.

A. Pre-award Protests

Pre-award protests must be received by GMT no less than ten (10) working days before the scheduled bid opening. GMT will respond to the protest in writing and render its final decision at least five (5) working days prior to bid opening. GMT will report such protests to the FTA regional office.

B. Post-award Protest

Post-award protests will be received no later than five (5) working days after notification of the award bid. GMT will have ten (10) working days after receipt of the formal protest package to evaluate, and issue a response, except in cases where the original bid has been awarded by the Board. In such cases, the decision to protest will be handled at the next regularly scheduled Board meeting, following completion of the staff review of the protests. GMT will report such protests to the FTA regional office.

C. Appeals to FTA

It is the responsibility of GMT to settle contract issues and disputes. GMT is committed to using good sound administrative practices and business judgments, as well as professional ethics. Reviews of protests by FTA will be limited to alleged failure by GMT to have followed proper protests procedures, or its failure to review a complaint or protest. Protesters dissatisfied with GMT's final decision may appeal to FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.

VIII. Contract Administration

A. General Contract Administration

GMT will actively manage all contracts. This is generally done by the person at GMT who requested the service or goods. For example, the project manager oversees fabrication of bus shelters through meetings with the fabricator, monitoring installation of shelters, and notifying the fabricator if any warranty work is necessary. Likewise, the Drug and Alcohol Officer manages the testing contract. Contracts will be managed by the person requesting the goods or services, or assigned to other staff by the person requesting the goods or services. Department Managers and the GMT Procurement Officer will track expiration dates of all contracts.

B. DBE Participation Monitoring and Enforcement Mechanisms

For all contracts and projects with DBE participation, GMT will implement appropriate mechanisms to ensure compliance with 49 CFR Part 26 as an essential part of the contract administration process. An appropriately detailed DBE monitoring and oversight plan capturing the elements outlined in this section shall be prepared for each project and/or contract with DBE participation. To ensure that compliance expectations between GMT and the prime contractor are fully aligned, GMT's monitoring and enforcement mechanisms shall be conveyed in bid solicitation materials in sufficient detail to provide potential Contractors with the understanding necessary to comply with program requirements.

Key elements of GMT's monitoring and enforcement mechanisms of DBE program compliance include, but may not be limited to, the following:

- Determination of Commercially Useful Function (CUF) in accordance with the requirements of 49 CFR Part 26.55.
- Oversight of Payments to DBE Subcontractors in accordance with the prompt payment requirements outlined in 49 CFR Part 26.29
- Oversight of DBE work performed, including the documentation of all DBE participation monitoring activities including, but not limited to, the following:
 - Including DBE participation as a required element of daily and weekly project site visit reports during construction. Such participation shall include days worked, number of workers on site, and actual work performed.
 - Verify DBE certified payroll reports in conjunction with Davis-Bacon compliance oversight and compares payroll records with daily and weekly site visit reports.
 - Inclusion of a written certification, signed by GMT staff managing project, as part of closeout documentation that contracting records have been reviewed and work sites have been monitored to ensure that DBE participation conforms to the work committed at contract

award or following any contract modifications which impact DBE commitments.

- Enforcing compliance with 49 CFR Part 26.53(f) for any requests by Contractor to terminate or replace DBE subcontractors on the project.

When necessary, GMT will ensure that enforcement actions of 49 CFR Part 26.107 are taken by bringing to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 § 26.107. GMT also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

IX. Contract Clauses

A. Required Contract Clauses

GMT maintains a current list of required contract clauses applicable to contract type as required by the FTA. When establishing contract agreements, all contracts will include provisions to define a sound and complete agreement. GMT will also refer to the most recent updates to the U.S. DOT FTA Master Agreement, 2 CFR Part 200, U.S. DOT FTA Third Party Procurement Manual, U.S. DOT FTA Comprehensive Oversight Review and Technical Assistance Program, and the U.S. DOT Best Practices Procurement & Lessons Learned Manual, and Appendix A.1, when establishing required contract clauses.

Contract clauses will be reviewed no less frequently than once per fiscal year by the Procurement Officer, in connection with annual revisions to the FTA Master Agreement and annual publications of the FTA Certifications & Assurances. Contract clause documents may be updated by the Procurement Officer without Board approval, and revisions to federal contract clauses will be incorporated into this purchasing policy through revisions to “XVI. Appendices” at the earliest practicable date following the federal contract clause change.

When appropriate, GMT staff will work with the FTA Regional Office and/or GMT’s Legal Counsel on specific wording of federal and non-federal contract clauses.

B. General Contract Clauses

GMT maintains a boilerplate of general contract clauses that apply to many types of purchases (see the Appendices for an example of the general contract clauses).

C. Special Contract Clauses and Additional Special Contract Clauses

Special contract clauses may be applied selectively to purchases based on contract type or some other variable criteria. In the case of special contract clauses, GMT may consult FTA rules and regulations and/or GMT General Counsel, before such clauses

are incorporated into any contract agreement (see the Appendices for an example of the special contract clauses).

X. Contract Guidance

A. Maximum Length of Service and/or Supply Contracts

Contract term for bus rolling stock should not exceed five years.

Contracts for services and or supplies may exceed five years so long as there is a written documentation of the term and a rationale for the time period of the contract.

B. Purchasing Extended Warranties with Capital Grant Funds

GMT will not purchase any extended warranties with capital grant funds, unless it can be determined that such warranties do not exceed industry accepted standards, and service agreements will extend the life of equipment or increase its value. For the most part, warranties and service agreements will be treated as a normal expense of operations.

In the case of warranty provisions for bus procurements, GMT will adopt the American Public Transit Association's (APTA) Standard Bus Procurement Guidelines, which have been accepted as industry standard by FTA, and are summarized as follows for 12 year buses:

- Complete Bus - 1 year or 50,000 miles
- Body and Chassis (structural integrity) - 3 years or 150,000 miles
- Body and Chassis (corrosion/fatigue) - 12 years or 500,000 miles
- Propulsion System (i.e. engine, transmission, axles) - 5 years or 300,000 miles
- Major Subsystems (i.e. brakes, signs, heat, A/C, doors, air compressor/dryer, W/C lifts, ramps, starter, alternator) - 3 years or 150,000 miles

All RFPs, IFBs, and other solicitation documents and contracts will be maintained in the procurement files for purchase of such warranties or extended services.

C. Payment Provisions in Contracts

1. Using Advance Payments

GMT will not enter into any contractual agreement to pay any or part of the payments prior to costs incurred by the contractor, unless prior written concurrence is obtained from the FTA Administrator.

2. Using Progress Payments

The two major types of progress payments are payments based on costs, and payments based on completion of work. FTA considers both types as contract

financing methods. Instances GMT may use progress payments in accordance with FTA guidelines are:

- When payments are only made to the contractor for costs incurred in the performance of the contract, and
- When GMT is allowed to obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. In lieu of obtaining a title, GMT may require an irrevocable letter of credit or equivalent means to protect its interest.

Additional guidelines may be adopted on a case by case basis from U.S. DOT FTA Best Practices Procurement & Lessons Learned Manual, which asserts that progress payments may be appropriate if:

- The contractor will not be able to bill for the first-delivery of products, or other performance milestones, for a substantial time after work begins. The usual time period for using progress payments is four months or more for small businesses, and six months or more for others, and
- The contractor's expenditures prior to delivery of the first items will have a significant impact on their working capital.

(a) Progress Payments Based on Costs – The Federal Government's customary progress payment rate is 80% of contract costs for large businesses and 85% of contract costs for small businesses. The total amount of progress payments may not exceed 80% of the total contract price.

(b) Progress Payments Based on Percentage of Completion – The Federal government authorizes progress payments on its contracts based on a percentage stage of completion of the work. This type of progress payment is standard for construction contracts for all Federal agencies. 49 CFR Part 18.21(d) allows the use of percentage of completion method to pay construction contractors.

3. Withholding and Final Payment

GMT will refer to specific contract provisions that expressly authorize the withholding of payments, such as the Davis Bacon Act Clause, or the Contract Work Hours and Safety Standards Act Clause. GMT may also establish payment withholding based on the standard Federal government clause for the payment of fixed fee on Cost Plus Fixed Fee contracts, which call for a 15% withholding of the fixed fee until the contractor submits a certified final indirect cost rate proposal and otherwise complies with the final deliverable documentation requirements of the contract.

In the event GMT decides to withhold payments on a contract, it will ensure that the amount of money withheld bears a reasonable relationship to the unsatisfactory work (e.g. the amount withheld will represent a reasonable

estimate of the contractor's potential liability). The amount withheld will not be so great however, such that it impairs the contractor's ability to perform.

Final payment will be made to the contractor when it has satisfied all of the deliverable requirements called for by all provisions of the contract, including all required documentation. Before making final payment, GMT may obtain a signed release from the contractor releasing it from further claims by the contractor.

XI. Specific Contract Types

A. Revenue Contracts

A revenue contract is any contract whose primary purpose is to either generate revenues in connection with a transit-related activity or to create business opportunities using an FTA-funded asset. Examples may include advertising, concessions (food and news stands), use of right-of-ways, licenses, and land and property leasing. GMT will adhere to the following conditions regarding such contracts:

- Contract time limits or written justifications for exceeding limits as noted earlier in this document.
- GMT will use competitive selection procedures for award of such contracts; and
- GMT will not exclude Disadvantaged Business Enterprises (DBEs) from participating in business opportunities by entering into long-term, exclusive agreements with non-DBEs for the operation of major transportation-related activities or major activities for the provision of goods and services.

B. Use of Time and Materials Type Contracts

GMT will use time and materials type contracts only:

- After a determination that no other type contract is suitable; and
- If the contract specifies a ceiling price that the contractor will not exceed except at its own risk.

XII. Methods for Performing Cost and Price Analyses

GMT will conduct a cost or price analysis in connection with every large procurement action, including contract modifications. For small and micro purchases, refer to the appropriate sections.

A price analysis may be used in all other instances to determine the reasonableness of the proposed contract.

A. Cost Analysis

1. When to Perform a Cost Analysis

A cost analysis will be performed when:

- The offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under architectural and engineering services contracts; or
- Adequate price competition (2 or more bids or proposals) is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public, or on the basis of prices set by law or regulation.

A price analysis may be used in all other instances to determine the reasonableness of the proposed contract.

2. Cost Analysis Process

Some common elements in performing cost analysis may include the following:

- Making an estimate based on inspection of the product itself (with technical guidance), review of drawings, specifications, and prior data (such as cost data from prior procurements);
- Review of each element of cost to determine whether the offeror's estimate contains an accurate and reasonable prediction of the cost incurred during performance; and/or
- Adding a rate of profit to the cost that has been determined to be fair.

All reasonable costs of performance can be considered, however, the cost will be consistent with Federal cost principles found in Federal Acquisition Regulation Part 31.

B. Price Analysis

Some common price analysis techniques that may be considered may include:

- Comparison of proposed prices received in response to the solicitation;
- Comparison with competitive, published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements;
- Comparison of proposed prices with the cost estimate performed prior to solicitation, if it can be performed such that it can render a reasonable determination that the price is reasonable; and
- Comparison of proposed prices received with prior procurement actions for the same or similar end items, with consideration given to:
 - Changes in economic conditions between the times of the two procurements;
 - Differences in quantities; and

- Inclusion of nonrecurring cost in the prices, such as design, capital equipment, production facilities, etc. To make a fair comparison, nonrecurring costs may be removed from both prices.

C. Profit

GMT will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

D. Federal Cost Principles

GMT will make every effort to ensure that all cost estimates included in negotiated prices are consistent with Federal cost principles. In doing so, GMT will reference past and current cost principles that comply with applicable Federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

XIII. Rental/Leasing in Lieu of Purchase

In certain situations, GMT's equipment requirements may be more economically filled by rental/lease than by purchase. The decision to rent rather than purchase must be made on a case-by-case basis, and should only be used when it is in GMT's best interest. The Director of Finance should perform a lease versus purchase analysis to support the decision to rent or lease for amounts over \$100,000.

Decisions to rent/lease may be made for short-term leases of equipment which is required for a short time or for a unique task, or when it can be determined that it is easier to have equipment maintained if it is leased. Conversely, long term leases and leases for items that should be purchased and capitalized but cannot be because of budget constraints are not considered economically prudent.

A lease versus purchase analysis should be appropriate to the size and complexity of the procurement. In determining whether the lease of equipment is feasible, the following factors must be considered:

- Estimated length of the period the equipment is required and the amount of time of actual equipment usage;
- Financial and operating advantages of alternative types and makes of equipment;
- Total rental/lease cost for the estimated period of use;
- Net purchase price, if acquired by purchase;
- Transportation and installation costs;
- Maintenance and other service costs;
- Trade-in or salvage value;

- Imputed interest costs; and
- Availability of a servicing facility especially for highly complex equipment (can GMT service the equipment if it is purchased?)

For description of other leases and requirements such as Capital leases, leases involving Certificates of Participation, and Cross-Border leases, refer to U.S. DOT FTA Master Agreement.

XIV. Purchasing / Leasing Buses with FTA Funds (Bus Testing)

To the extent applicable, GMT agrees to comply with the requirements of 49 U.S.C. FTA regulations, “Bus Testing,” and any revision thereto, for buses purchased or leased with FTA funds. GMT will certify to FTA that any new bus model required to be tested has been tested at the FTA-sponsored test facility in Altoona, Pennsylvania.

A new bus model is a bus design variation of a bus design (usually designated by the manufacturer by a specific name and/or model number) that has not been in use in U.S. mass transit service prior to October 1, 1988, or that has been in service prior to that date, but is being procured with a major change in configuration or components. A new bus model must be tested.

Bus testing requirements apply to different mass transit vehicles including vans, other small vehicles, medium-light-duty mid-size buses, and heavy-duty small and large buses. Bus testing does not apply to unmodified mass-produced vans, bus prototypes, some electric buses, or trolley buses (meaning genuine trolleys, not the replica trolleys popular today).

GMT will maintain documentation in the procurement files to demonstrate how this requirement has been implemented. This documentation will indicate whether a bus model has been tested and whether testing is required. For buses that require testing, a copy of the test report must be obtained prior to acceptance of the buses and expenditure of Federal funds.

Refer to the website www.altoonabustest.psu.edu for the updated list of buses tested.

XV. Disposition of Surplus and Scrap

A. Premature Withdrawal of Property from Use

GMT will notify FTA immediately when any Project real property, equipment, or supplies are prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

Unless otherwise approved by the FTA, GMT will remit to FTA its share of the fair market value of real property, equipment, or supplies prematurely withdrawn from appropriate use. The amount of Federal share in the property will be determined on the basis of the ratio of the Federal assistance awarded by the Federal Government for the property to the actual cost of the property.

GMT agrees that the fair market value of the property prematurely withdrawn from use will be calculated as outlined in the U.S. DOT FTA Master Agreement.

B. Capital Inventory

GMT will conduct a physical inventory of equipment and reconcile the results with the equipment records every two years. Documentation of the inventory and any reconciliation with equipment records will be kept until a triennial review of that inventory.

C. Identification of Surplus and Scrap

The identification of surplus and scrap will be the responsibility of the Maintenance Supervisor. The following justifications may apply:

- Equipment will be surplus when it becomes obsolete to GMT either because it has been replaced by more cost-efficient equipment, or because it serves equipment no longer in the GMT fleet.
- Parts are surplus when stock on hand exceeds a maximum, as established or revised due to use history, and are not expected to be used. This includes useful parts for vehicles no longer in the GMT fleet.
- Parts will be scrapped when they are not useful to GMT and other operators contracted, and they cannot be returned to the supplier.
- Equipment will be scrapped when it is non-functional and non-repairable, or when it is obsolete to GMT and all other operators GMT has contracted.

D. Disposition of Surplus Stock

Surplus stock uses both inventory space and working capital. It is the policy of GMT to dispose of surplus and scrap in the most effective manner available. Steps to be followed include, but are not necessarily limited to:

- Returning to vendor for credit
- Sale to other operators.

Surplus stock which cannot be returned or sold to another operator will not be sold as scrap while it is still applicable to vehicles in the GMT fleet. All sales over \$5,000 will be by cashier's check.

E. Disposition of Scrap

Parts or equipment identified as scrap will be sold to the highest bidder of at least two (2) scrap dealers willing to make bids, or to the highest bidder in a publicly advertised sale. Disposition of equipment identified as scrap will be coordinated with the Director of Finance and the Maintenance Supervisor, since its disposition may have grant or property record implications. All sales over \$5,000 will be by cashier's check.

F. Specific Procedures for Disposition of Surplus and Scrap

Specific procedures may include:

- Direct or third party competitive bidding procedures for all material offered for sale.
- Development of specifications for the surplus items and preparation of a solicitation and advertising of the items being offered for sale.
- Analysis of bids by the Maintenance Supervisor or the Director of Finance, with a written recommendation for award.

XVI. Appendices

Contract Clauses and provisions for procurements