

**Access Services**

**Procurement  
Policy**

April 2017

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Access Services

Procurement Policy Manual

Procurement Policy

## **PROCUREMENT POLICY**

### **A. PURPOSE**

To define the Procurement Department’s mission and to issue policy directives to establish overall Procurement Department responsibility in managing the interface between company divisions, supplier resources in the marketplace and Access customers.

### **B. DEFINITIONS**

**Access** - Access Services is a state mandated local governmental agency created by Los Angeles County’s public transit agencies to administer and manage the delivery of ADA paratransit service. Access Services is organized as a California public benefit corporation and is a “governmental” agency within the meaning of the California Fair Political Practices Act and the Open Meetings and Records Act (Brown Act).

**BOARD** - The governing body of Access Services is the Access Board of Directors.

**EXECUTIVE DIRECTOR** - The head of Access Services.

### **C. POLICY**

#### **1.0 Mission and Core Competencies**

a. As an integral element of the Access team, the Procurement Department’s Mission reflects the overall mission of Access:

- **Mission:** Access Services is committed to facilitate and provide the highest quality, safe, reliable and cost effective transportation services to our constituents. Our constituents are our member agencies, funding partners, our riders, their families and care givers as well as the social and community organizations which support them.

The Procurement Department is dedicated to identifying the optimum resources available in the marketplace and managing the interface between Access divisions, the suppliers of those resources and our customers. The Procurement Department will ensure that Access obtains the best products and services available, delivered on time and at fair and reasonable prices, in a manner that fosters full and open competition.

b. The Core Competencies of the Procurement Department include:

- Knowledge in Acquisition and Material Management
- Supplier and Resource Base Management
- Procurement System Responsibility and Oversight
- Maintaining Fair and Equitable Acquisition Procedures

These Core Competencies drive all Procurement Department activities and provide the focus for ensuring that the department's business services are aligned with the overall strategic direction of Access.

## 2.0 Program Responsibilities

The Executive Director is responsible for ensuring that the Access procurement process functions in accordance with various legal and regulatory requirements, as interpreted by Corporate Counsel, Access Policy and Board directives. Access must follow sound business and policy principles in the procurement and distribution of goods and services so that procurement functions foster full and open competition, while obtaining the best products and services available, at fair and reasonable prices, in the best interest of Access customers and stakeholders.

- a. The Board shall review and approve all procurement policies;
- b. The Executive Director shall implement and maintain Access procurement policies;
- c. The Executive Director shall establish and implement instructions concerning the storage, distribution, utilization and disposal of goods and services;
- d. All Access divisions, employees and consultants are instructed to follow procurement policies and instructions regarding the storage, distribution, utilization and disposal of goods and services;
- e. The Executive Director, or designee, shall execute contracts, purchase orders, modification and supplemental agreements in accordance with established thresholds.

### 3.0 General Policy

Procurement Policy requirements affecting the conduct of Access procurements, in accordance with State, Local and Federal laws are as follows:

- a. Access' funding sources whether Federal, State or local may dictate the manner in which certain purchases are made. Access is obliged to and shall follow any and all procurement procedures mandated by Federal, State and local statutes, and rules and regulations whose procedure or requirements would take precedence over those contained in this Policy Manual and the subordinate Procurement Procedures Manuals.
- b. The Deputy Executive Director, Finance, must ensure that procurement activities are fiscally sound, remain within funding and budgetary guidelines and adhere to the authorized limits as outlined in this Policy Manual.
- c. The Manager, Procurement and Contract Administration will organize and maintain a system for ensuring most efficient and economic purchase by reviewing items requested by the using departments to determine the most efficient and economic means of satisfying requirements, combining like orders to reduce overall costs, and reviewing Federal surplus property in lieu of purchasing new equipment or property whenever feasible.
- d. Pursuant to Access policy and applicable governing statutes, full and open competition is required for all procurement actions over \$3,000;
- e. All Procurement transactions, except as noted above, regardless of manner of bid, negotiation method, or dollar amount, will be conducted using a process that provides the maximum levels of competition;
- f. Purchases above \$75,000 require prior authorization of the Board of Directors and must be acquired in accordance with established procurement procedures;
- g. All procurement contracts for goods or services above \$25,000 require legal review as to form.
- h. Purchases estimated to cost less than \$25,000 shall follow the procedures as outlined in the Systems Integrity and Control sections of this manual;
- i. Modifications, additional work orders or work directions/task orders shall follow the appropriate negotiation procedures as described in the Contract Management and Administration Procedures sections of the Access Procurement Procedures Manual;

- j. Any procurement actions that are defined as non-competitive procurements shall follow the non-competitive policy requirements and be executed in accordance with the processes contained in the Access Procurement Procedures Manual.

For all major procurements, full and open competition shall be accomplished by publication in a manner reasonably likely to attract prospective “bidders or offerors”. Publication shall be made at least ten (10) days before bids are received and in at least one (1) newspaper of general circulation in the Los Angeles Metropolitan area, or as required by the nature of the procurement, publication in one or more industry specific periodicals that target the vendor market for Access services.

The Board may reject any and all bids and re-advertise at its discretion. If, after rejecting bids, the Board determines and resolves that, in accordance with California law, the supplies, equipment, materials and services may be purchased at a lower price in the open market, the Board may direct the Executive Director to do so, without further observance of the provisions requiring bids or notices.

The Board may suspend and waive the provisions requiring competitive bids whenever:

- a. The purchase is to be made from Federal or any State government or any agency or political subdivision thereof or pursuant to any open-end bulk-purchase contract with any of the above;
- b. An operational exigency, or immediate remedial measures require the immediate delivery of goods or services;
- c. Only one source of supply is available;
- d. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts; or goods or equipment that are for testing or experimental purposes.

#### **4.0 Procurement Standards**

The procurement policies and procedures of Access are designed to formalize the standards used for acquiring, awarding and administering all contracts. These standards are set forth to ensure the procurement processes incorporate sound business practices, free competition and administrative organization and control. The following standards are applicable:

- a. Access will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
- b. All Access employees, Board of Directors, Community Advisory Committee members, Transportation Professional Advisory Committee members, and consultants must adhere to the Access Standards of Conduct as it relates to identifying and reporting conflicts of interest pertaining to Access procurements.
- c. Access procedures will provide for a review of proposed procurements to avoid the purchase of unnecessary or duplicative items. Consideration will be conducted relative to consolidating, itemizing or breaking out a procurement in order to obtain more economical pricing or increased value. When appropriate, an analysis will be made of lease versus purchase alternatives or any other appropriate analysis to determine the most economical approach.
- d. To the extent possible, all proposed procurements will be analyzed for and structured to meet the spirit and intent of the Access Disadvantaged Business Enterprise (DBE) Program.
- e. Access will solicit offers, award contracts and consent to subcontracts only with responsible contractors. Responsible contractors are those contractors considered to possess the ability to perform successfully under the terms and conditions of a proposed contract. Consideration will be given to each contractor's integrity, compliance with policy, regulation and law, record of past performance and financial and technical resource capacity.
- f. Access will prepare and maintain written records detailing the history of each procurement in excess of the micro procurement threshold as follows:
  - i. Procurement Method: to provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive
  - ii. Contract Type: Access must state the reasons for selecting the contract type it used (fixed price, cost reimbursement, etc)
  - iii. Contract Selection: Access must state its reasons for contractor selection or rejection. Justification must be made for each noncompetitive award including a written responsibility determination for the successful contractor; and

- iv. Cost or Price: Access will evaluate and state its justifications for the contract cost or price
  - v. Exact documentation of procurement history will commensurate with the size and complexity of the procurement itself.
- g. Time and materials contracts will be used only after a determination that no other type of contract is suitable.
- h. The Access Procurement Department will be responsible for the settlement of all contractual and administrative issues arising out of procurements. These issues may include, but are not limited to, source evaluations, protests, disputes and claims.
- i. Procedures for processing claims and resolving issues shall be conducted in accordance with the directives contained in the Access Procurement Procedures Manual.
- j. Procedures for receiving and processing contractor protests shall be conducted in accordance with the directives contained in the Access Procurement Procedures Manual.
- k. Competition – All procurement transactions will be conducted in a manner providing full and open competition consistent with these procurement standards. Restrictions on competition are prohibited. Examples of what is considered to be restrictive of competition include, but are not limited to:
  - i) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - ii) Noncompetitive pricing practices between firms or between affiliated companies;
  - iii) Noncompetitive awards to professionals and other consultants that are on Access retainer contracts;
  - iv) Organizational conflicts of interest; may be actual or apparent and arises where, because of other activities, financial interests, relationships, or contracts-a contractor is unable, or potentially unable, to render impartial assistance or advice to Access leading to bias or unfair competitive advantage
  - vi) Specifying only a "brand name" product instead of allowing "an equal " product to be offered and describing the performance or other salient characteristics of the brand name product; and
  - vii) Any arbitrary action; determined or founded on individual discretion, opinion, judgement, or prejudice rather than on fixed rules, procedures, or law in the procurement process; and

- viii) Development of specification requirements and evaluation criteria which unnecessarily favor a specific or an incumbent contractor.
- l. Procurement transactions will be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.
- m. Access will have written selection procedures for procurement transactions that ensure fair, unbiased evaluation of competing proposals by an independent evaluation panel appointed by the Procurement Department.

## 5.0 **Methods of Procurement**

The following methods of procurement may be used, as appropriate. Access will not under any circumstance accept cost plus a percentage of cost as a method of procurement as prohibited by the FTA (A detailed implementation process is included in the Procurement Procedures Manual for each method of procurement.)

- a. **Micro-Purchases.** Micro-purchases are those purchases of \$3,000 or less. If permitted by regulatory agencies (State and local law) these purchases may be made without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon wage requirements will apply to construction contracts exceeding \$2,000. Access will not divide or reduce the size of its procurement in order to come within micro-purchase limit (splitting). Documentation is required that shows that the price is fair and reasonable and a description of this determination in accordance with FTA regulations.
- b. **Small purchase procedures.** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number (at least three (3)) of qualified sources.
- c. **Sealed bids (formal advertising).** Bids containing complete, adequate, precise, and realistic specifications are publicly solicited from adequate sources and advertised in a general circulation newspaper. Bidders are allowed sufficient time to prepare bids before the date of bid opening. A firm-fixed-price contract (lump sum or unit price) is awarded to the lowest responsible bidder whose bid, conforms with all the material terms and conditions of the invitation for bids. Sealed bids may be publicly opened at the time and place

prescribed in the invitation for bids. Access will not engage in unnecessary discussions with one or more bidders after bids have been submitted because award of contract will be made based on price and price-related factors only.

- d. Two-step sealed bidding. Two-step sealed bidding is a procurement method requiring offerors to submit technical proposals for evaluation and subsequently requesting sealed bids from those initial offerors who were determined to have submitted acceptable technical proposals.
- e. Competitive proposals, subject to negotiations. The technique of competitive negotiation is normally conducted with more than one source submitting a proposal, and either a fixed price or cost reimbursement type contract is awarded. Proposals in excess of \$75,000 must be advertised and publicized on the Agency website. Price must be included as an evaluation factor for all competitive proposals with the exception of Architect and Engineering Services directly related to construction activities. The competitive negotiations process includes in the solicitation the relative importance of priced and non-priced factors that will be considered by Access as a basis for the award of a contract. Discussions and clarifications are allowed during the evaluation process. Noncompetitive negotiation (sole source) - Sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract is a noncompetitive negotiation that must also comply with the directives of this section.

Procurement by noncompetitive negotiation may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive negotiation and at least one of the following circumstances applies:

- i) The item is available only from a single source.
- ii) The operational exigency, emergency or an immediate remedial necessity for the requirement will not permit a delay resulting from competitive solicitation;
- iii) Federal Transit Administration (FTA) authorizes noncompetitive negotiations;
- iv) After solicitation of a number of sources, competition is determined inadequate; or
- v) The item is an associated capital maintenance item as defined in 49 USC 5307(a) (1) that is procured directly from the original manufacturer or supplier of the item to be replaced. Access must first certify in writing to the FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is no higher than the price paid for such item by like customers.

A detailed cost analysis (i.e., verifying the proposed cost data submitted, the projections of the data, and the evaluation of the specific elements of costs and profit), is generally required for noncompetitive negotiated procurement actions.

- f. Intergovernmental Agreements – In order to foster greater economy and efficiency, Access will seek to enter into or participate in State and local governmental agreements for procurement or use of common goods and services.

## 6.0 Contract Type Selection

- a. Compensation Arrangements

Contracts are divided into specific types of compensation arrangements reflecting Access's varying responsibility, as the buyer, to pay the allowable cost incurred by the contractor, as the seller. The following list includes the most commonly used compensation arrangements. It is up to the Contracting Officer to decide which compensation arrangement is most appropriate for a specific procurement.

Access's adopted procurement policy prohibits use of a cost-plus-a- percentage-of-cost contract. The following are definitions of allowable compensation arrangements:

- i. Purchase Orders

A purchase order is a simplified ordering mechanism which allows Access to order standard items by simply referencing a part number or by a generally accepted stock reference. A purchase order must contain or incorporate by reference those minimal terms and conditions that govern the transaction. Access may reference these terms and conditions as being available on the Access Website. Purchase Orders are not to be used as a substitute for a contract for non-standard services or parts in excess of \$3,000. Purchase Orders must include warranty, shipping, acceptance, and payment information.

- ii. Purchasing Cards

Subject to approval by the Executive Director, the Finance Department may implement a Purchasing Card payment system. Purchasing cards shall be used on non-repetitive transactions of \$3,000 or less. The Finance Department will assign a program administrator to review monthly charges to ensure that purchases are consistent with Finance Department usage procedures.

iii. Firm Fixed-Price

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. This type of arrangement should be used for commercial items where competition is present and reasonable estimates of costs may be obtained.

iv. Fixed Price Incentive

This type of arrangement is similar to a Firm Fixed Price contract but it is characterized by an adjustment formula in the contract, which relates to the efficiency of the contractor. A target profit and target cost is negotiated, along with a profit formula. The contractor's profit increases or decreases according to the formula, as the actual costs are less or more, respectively, than the target cost. The fixed-price incentive arrangement is distinguished from the cost incentive arrangement by the inclusion of a ceiling price. Costs in excess of the ceiling price are borne entirely by the contractor.

v. Fixed Price with Price Determination

This is essentially a Fixed Price arrangement with adjustments within specified limits negotiated, as actual costs become known. As in fixed-price escalation arrangements, Access assumes the risk of contingencies, which may occur. The price re-determination may be made either at specified times during performance or after completion of performance. This type of arrangement should be used in limited instances only.

vi. Cost-Sharing

The contractor receives no fee and is reimbursed for only a portion of his/her costs. This type of contract is used where the benefits of a research and development contract accrue to both parties.

vii. Cost-Plus-Incentive-Fee

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type is used to place incentives on certain performance areas where the benefits justify the expenditure.

viii. Cost-Plus-A-Fixed-Fee

The contractor receives a set fee negotiated at the inception of the contract and is reimbursed for all costs allowable under established cost principles. This type of contract is used when research and developmental work is required and the contractor shares some responsibility for the proposed cost of the work effort.

ix. Time-And-Materials-Labor-Hour

These are contracts provided for supplies or services on the basis of direct-labor hours at specified fixed hourly rates and materials at cost. This type of contract should be used with caution. It is the least preferred method of contracting.

If this contracting method is used, the contract must include a ceiling that the contractor exceeds at their own risk. Also, the Contracting Officer must document their determination that no other contract type is suitable

## **7.0 Disadvantaged Business Enterprises (DBE)**

Access is committed to fulfilling the spirit and intent of the Federal Disadvantaged Business Enterprise (DBE) Affirmative Action Program regulations published under U.S. Department of Transportation (U.S. DOT) 49 CFR Part 26, by ensuring that DBE's have equitable access to participate in all federally funded Access Service Provider contracting opportunities.

It is Access policy to ensure that minority, women, and other disadvantaged small businesses can fairly compete for and perform Access contracts and subcontracts financed in whole, or in part with federal funds. This Policy, which has been developed pursuant to 49 CFR Part 26, outlines specific actions which will be taken by Access to create a level playing field and foster equal opportunity in all federally funded Access Service Provider contracting opportunities.

Specific directives affecting the Access DBE Program are contained in a separate Policies and Procedures manual specifically dedicated to the DBE Program. All aspects of the Access DBE Program are by reference incorporated into procurement policy and the associated procurement procedures.

## **8.0 Recycling/Energy Programs/EPA**

To the extent possible, Access will take all necessary steps to ensure procurement activities incorporate both the spirit and intent of laws and programs affecting recycling, energy conservation/utilization and environmental protection.

Where applicable, specific contract clauses will be included to ensure compliance with these issues.

## **9.0 Contract Cost and Price**

Cost or price analysis must be performed in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the nature and details surrounding a particular procurement situation, but as a minimum, Access will make independent estimates before receiving bids or proposals.

## **10.0 Bonding and Bid Guarantee**

For non-construction contracts Access may, at the discretion of the Executive Director, require a bid guarantee from each bidder equivalent to a certain dollar amount or a fixed percentage of the bid price. The bid guarantee requirement will be promulgated as part of the proposal documentation. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within the time specified.

## **11.0 Contract Period of Performance**

Access will analyze each contract period of performance to evaluate the possibility of using multi-year or multiple year contracts. With the exception of FTA-funded contracts for rolling stock or replacement parts, which are limited to a period of performance not to exceed five (5) years, the period of performance for all other FTA-funded contracts (supply, service, leases of real property, revenue and construction, etc.) shall be for a period of up to ten (10) years, inclusive of options, without the prior written approval of the FTA.

## **12.0 Options**

An option means a unilateral right in a contract by which, for a specified time, Access may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. Within the guidelines of the Contract Period of Performance section above, Access will evaluate bids or offers for any option quantities or

periods contained in a solicitation if it intends to exercise those options after the contract is awarded. Otherwise, those option quantities shall be considered sole source procurements.

Access may contract only for its current and reasonably expected public transportation needs, and may not add quantities or options to contracts solely to permit assignment to another party at a later date.

### **13.0 Advance Payments**

It is the express policy of Access not to make advance payments on any contract, except for contracts for the payment of rents, tuition, insurance premiums, subscriptions to publications and extension or connection of public utilities for Access property. For Federally funded contracts, FTA does not allow and will not participate in funding payments made by a grantee to a contractor prior to the incurrence of costs by the contractor, unless said payment is verified as customary in the industry or commodity area.

### **14.0 Progress Payments**

In appropriate circumstances, Access may include a contract clause allowing the use of progress payments to the contractor prior to full delivery or contract completion. If used, progress payments will be made to the contractor for only costs incurred in the performance of the contract.

When progress payments are in effect, Access must obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect Access's interests in the progress payment may be used in lieu of obtaining title.

Progress payments for construction contracts may be made on a percentage of completion method. Access, however, may not make progress payments for anything other than construction contracts based on this percentage method.

### **15.0 Liquidated Damages Provisions**

Access shall determine whether or not the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable to compensate for possible damages and not be so large as to be construed as a penalty.

## **16.0 Statutory and Regulatory Requirements**

For Federally funded contracts, Access shall at all times comply with applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including those listed directly or by reference in the Agreement (Form FTA MA (7) dated October, 2000) as amended and promulgated.

Access contract provisions shall also include certain Standard Terms and Conditions required by DOT. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are incorporated by reference into Federally funded Access contracts. These FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in an Access contract. Access Contractors will be specifically instructed that they shall not perform any act, fail to perform any act, or refuse to comply with any Access requests, which would cause Access to be in violation of the FTA terms, conditions and directives.

Depending upon contract type, Federally funded contracts require the inclusion of specific contract clauses, with their associated subcontract flow down directives, to be included in the terms and conditions of the contract. Examples of such contract provisions include debarment, lobbying, Buy-America, Civil Rights and a number of employment laws including Davis-Bacon, Copeland etc. Access will include the appropriate contract clauses in these contracts as required. Specific directives concerning these clauses are contained in the Access Procurement Procedures Manual.

## **17.0 Contracting Authority**

Authority and responsibility to enter into contracts for Access is vested in the Executive Director. The Executive Director may delegate contracting authority to qualified Access employees and may authorize the re-delegation of this authority to other qualified Access employees. Only those officially designated with contracting authority may enter into contracts or execute modifications thereto. These delegations shall be in writing.

## **18.0 Contract Approval Requirements**

The Board has delegated approval authority to the Executive Director for certain activities and reserves to itself approval authority over the activities identified in the Systems Integrity and Control section of this manual. The Executive Director is authorized to delegate the approval of procurement initiation and award activities that the Board has delegated to the Executive Director to subordinate divisions or employees of Access. The Executive Director will establish procedures that will provide for timely review and processing of all procurement actions.

## 19.0 Implementation

The Executive Director shall implement the policies as set forth in this manual. Procedural guidance shall be provided in the Access Procurement Procedures Manual. The Access Procurement Procedures Manual provides the functional means and accepted processes through which Access procurement policy is executed and maintained. It is anticipated that all procurement procedures will be included. As new processes or procedures are identified, they will be evaluated, approved, incorporated and promulgated.

## 20.0 Protests

The notice below is to be included as an instruction in all solicitations, except for small purchases:

- a. Access policy and procedure for the administrative resolution of protests is set forth in the appropriate section of the Access Procurement Procedures Manual. The manual contains strict rules for filing a timely protest, responding to a notice that a protest has been filed, and other procedural matters. A copy of the manual's section on protests can be furnished upon request.
- b. Protests or appeals of Access decisions regarding solicitation specifications, addenda, dates or any other issue relative to this procurement shall be filed in writing no later than five (5) business days prior to the scheduled proposal due date. Access shall have no obligation to consider pre-award protests or appeals received later than five business days prior to the scheduled proposal due date.
- c. For protests concerning award decisions, the initial protest submission must be received by Access not later than five (5) business days after issuance of Access's recommendation for award notice.
- d. The date of submission for any protest shall be the date of receipt of protests or appeals by Access.
- e. Initial protest submissions received by Access after the time periods specified above shall be deemed by the Procurement Administrator to be untimely, and may be denied on that basis, unless the Procurement Administrator concludes that the issue(s) raised by the protest involve(s) fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement process.
- f. If the procurement action is funded by the Federal Transit Administration, the protester may file an appeal with the FTA after receiving the final administrative response from

Access. FTA will only review protests regarding the alleged failure of Access to have a written protest procedure or an alleged failure to follow such procedures, and only when submitted by an interested party. FTA may also review protests that involve a failure to comply with Federal, State, or Local laws. The term "interested party" is defined in the Access Procurement Procedures Manual.

- g. Alleged violations on other grounds must be submitted to the Access Procurement and Contracts office. This office will decide the protest.

#### **21.0 Award to Responsible Bidder or Offeror**

Access shall only award contractors that demonstrate affirmatively that they are responsible. A responsible contractor is one that is qualified and eligible to receive the contract award. A responsible contractor is also one that:

- Has satisfactory record on integrity and business ethics
- Is neither debarred nor suspended from Federal or State contracting programs
- Is in compliance with required DBE or Affirmative Action Programs
- Is in compliance with public policies
- Has the necessary organization, experience, accounting, operational controls, and technical skills, or the ability to obtain them
- Is in compliance with applicable licensing and tax laws and regulations
- Has adequate financial resources and controls
- Has or can obtain the necessary production, construction and technical equipment and facilities
- Has a satisfactory current and past performance history

Access Services

Procurement Policy Manual

Procurement System Integrity and Control

**SYSTEM INTEGRITY AND CONTROL**

**A. PURPOSE**

To define the Procurement system integrity and control mechanisms set forth to ensure all aspects of procurement policy are enacted and enforced.

**B. DEFINITIONS**

**Access Services** - Access Services (“Access”) is a state mandated local governmental agency created by Los Angeles County’s public transit agencies to administer and manage the delivery of ADA paratransit service. Access Services is organized as a California public benefit corporation and is a “governmental” agency within the meaning of the California Fair Political Practices Act and the Open Meetings and Records Act (Brown Act).

**BOARD** - The governing body of Access Services is the Access Board of Directors.

**EXECUTIVE DIRECTOR** - The Executive Director/President of Access Services. The Executive Director is established as the Contracting Officer for Access Services.

**DEPUTY EXECUTIVE DIRECTOR, FINANCE** - The Deputy Executive Director, Finance oversees the financial activities of Access and exercises aggregate fiduciary control for the company. In an administrative capacity, the Deputy Executive Director, Finance coordinates and manages direct support services including: Accounting, Finance and other similar support activities. The Deputy Executive Director, Finance reports to the Executive Director.

**DEPUTY EXECUTIVE DIRECTOR AND DIRECTOR** - An executive in charge of the management, operation and control of a Division inside Access Services.

**MANAGER, PROCUREMENT AND CONTRACT ADMINISTRATION** – An individual, who by delegated authority, is authorized to obligate Access and enter into contracts on behalf of Access and to make determinations and findings with respect to the contracts. The Manager, Procurement and Contract Administration reports to the Deputy Executive Director, Finance.

**SENIOR PROCUREMENT SPECIALIST/PROCUREMENT SPECIALIST/ASSISTANT PROCUREMENT**

**SPECIALIST** – A duly appointed individual who is subordinate to Access’s Manager, Procurement and Contract Administration and is responsible for all contractual actions except those specified elsewhere in Access procedures.

**PROJECT ADMINISTRATOR** – A duly appointed Access employee who will be directly responsible for the daily technical administration of a contract including monitoring the contractor in its performance of the contract and performing other additional functions as specified by Access procedures.

**C. PROCUREMENT INTEGRITY AND CONTROL**

**1.0 State, Local and Federal Controls**

The policies set forth in this manual have been developed in conformance with the standards and limitations established in State, Federal and local law. Applicable State laws, policies and other sources of guidance governing Access procurement practices include:

- California Public Contract Code
- Public Utilities Code.
- California Government Code
- California Civil Code
- Access Policies and Instructions
- Board of Directors' Resolutions
- Ordinances and regulations of regional and local agencies which have subject matter jurisdiction

Federal laws and regulations affecting the procurement practices of Access include, but are not limited to, the following:

- 49 USC 5301 ET SEQ Federal Transit law
- 49 CFR Part 18, Section 18.36
- 2 CFR 200
- 49 CFR Part 23 Participation by Disadvantaged Business in Department of Transportation program
- Intermodal Surface Transportation Efficiency Act, as amended
- Federal Acquisition Streamlining Act of 1994, 41 USC 403 (11) and 40 USC 481(b), respectfully

- Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94)
- Executive Order 12612 "Federalism" dated 10-26-87
- FTA Master Agreement
- FTA Circular 4220.1F, Third Party Contracting Requirements
- OMB Circular A-87, Cost Principles for State and Local Governments
- Applicable decisions of the Courts and the Comptroller General of the United States

To the extent that both federal and state laws and regulations apply to a procurement, Access is required to act within the limits of the more restricted requirements. When Federal funds are used in a procurement, Federal procurement requirements must be met or exceeded.

Local ordinances and regulations that are made applicable to Access by state law, that limit or restrict the procurement practices and the development of technical specifications, are incorporated herein.

## **2.0 Procurement Controls and Limitations**

Final authority for procurement actions and decisions are to be made by the Board of Directors except as delegated to the Executive Director. The Executive Director may delegate contracting authority and authorize the re-delegation of contracting authority at subordinate levels as required.

Notwithstanding the contracting authorities delegated to the Executive Director, the Board of Directors retains review and approval authority for procurement contracts and modifications/amendments exceeding \$75,000.

Any change order or modification to a contract resulting in an overall increase in contract price shall be treated as a separate contract subject to the review and approval parameters contained in this manual.

## **3.0 Amendments and Deviations**

The Executive Director is responsible to ensure that amendments to the Access procurement policies and procedures that represent a major policy shift or are dictated by changes in Federal or State law or regulation, are developed and incorporated into Access procurement practices. All amendments, regardless of source, may require review by Corporate Counsel to ascertain legal sufficiency.

Individual deviations from the manual that are not prohibited by law or governing Federal regulations, and which affect only one contracting action may be approved by the Executive

Director. The Executive Director may approve a class deviation if such deviation is not prohibited by law, or governing Federal regulations. The Executive Director must specifically evaluate policy or procedural deviations to determine if the deviation represents a permanent change to existing guidelines. Deviations may require review by Corporate Counsel to determine legal sufficiency.

#### **4.0 Procurement Policy and Procurement Procedures Manuals**

The Access Procurement Department shall develop and maintain the Procurement Policy Manual and the Access Procurement Procedures Manual. The Access Procurement Procedures Manual shall include procurement procedures and guidelines needed to implement Access procurement policy. If a conflict surfaces between this manual (the Access Procurement Policy Manual) and the Access Procurement Procedures Manual, the Policy Manual will override the directives of the Procedures Manual.

The Access Procurement Procedures Manual will set forth the standards and procedural guidelines for all procurement activity governing contracts and purchase orders. Elements must be included to ensure that materials, goods and services are obtained in a timely manner, efficiently and economically, adhering to Access policy and while using sound business judgment. The manual should be organized to allow the user maximum flexibility to initiate, develop, execute and administer contracts within the parameters of Federal, State, local and corporate requirements.

#### **5.0 Delegation of Authority**

As required by law, Board directives specifying the delegated procurement authority of the Executive Director must be executed, duly published and retained on file.

#### **6.0 Approval-In-Concept, Ongoing and Aggregate Procurements**

##### **Approval-In-Concept**

All major procurements must receive Approval-in-Concept from the Executive Director or designee prior to commencement of procurement activity. Major procurements consist of the following:

- a. All consultants.
- b. All capital funded projects.
- c. Significant computer hardware and software purchases/projects.

Procurements that when implemented will significantly alter current Access methods of operation or which anticipate the significant alteration of Access methods of operation shall be presented to the Access Board of Directors for Approval-In-Concept prior to commencement of procurement activity. This process requires the Board's consent to proceed with the procurement prior to the issuance of requests for proposal.

#### **Ongoing Procurements**

Where the purchase of materials, supplies, equipment, consumable items and/or services has previously been authorized, and may be recurring in nature, additional quantities may be purchased for a period of three (3) months from the date of the original purchase provided that:

- a. The additional cost thereof does not exceed 25% of the amount originally authorized;
- b. It is deemed to be in the best interest of Access to do so; and
- c. It is within the approved budget constraints of Access.

#### **Aggregate Procurements**

At such time as the aggregate purchase from a single vendor exceed the total amount of \$75,000 in the fiscal year, any additional purchases from that vendor (during the same fiscal year) must be approved by the Board of Directors, notwithstanding the amount of the purchase.

### **7.0 Purchase Requisitions**

A Purchase Requisition (PR) is a requisition for material, supplies, equipment, or services that is issued by an Access department to the Procurement Department. All PR's, regardless of size, will be evaluated by the Procurement Department for adherence to the policies and procedures contained herein. Authority to approve a PR under \$25,000, or at subordinate dollar thresholds, or management levels (as required to support operations), may be delegated by the Executive Director.

### **8.0 Rejection of Bids**

Access has the right to reject a bid or bids if it is determined to be in the best interest of Access to do so. The reason for rejection of a bid shall be stated, for example the item/service is no longer needed, the user's needs have changed in such a manner as to require changes to the

technical specifications, the solicitation was flawed in a material manner, or the low bidder is found to be not responsible nor responsive.

The Executive Director, subject to review by Corporate Counsel when appropriate, shall make the final determination with respect to responsiveness, responsibility and the rejection of any and all bids.

#### **9.0 Approval to Withdraw Mistake in Bid/Proposal**

A bidder, under the sealed bid procurement method may not be permitted to change its bid because of a mistake. However, a bidder may seek to be relieved of its bid due to a mistake (i.e., rescind its bid) by notice to Access in writing within the manner and time period specified by applicable law.

The final determination with respect to allowing a bidder to rescind its bid due to a mistake shall be made in accordance with the terms and conditions of the Invitation for Bids (IFB) by the Executive Director, subject to review by Corporate Counsel, when appropriate.

#### **10.0 Contract Approval, Execution and Termination**

The table below outlines the authority structure in force as it applies to contract approval, contract execution, contract changes/modifications and contract terminations.

RESPONSIBLE PARTY	ACTION	LIMITATIONS
Executive Director, Deputy Executive Director, Director, Manager, Procurement and Contract Administration	Approves & Executes	Procurement Requests, Purchase Orders and Modifications, and Amendments up to <b>\$3,000</b>
Executive Director, Deputy Executive Director, Director  Manager, Procurement and Contract Administration	Approves  Executes	Procurement Requests, Contracts, Purchase Orders and Modifications, and Amendments above <b>\$3,000 to \$25,000</b>
Executive Director <i>(or designee)</i>  Access Legal Counsel  Manager, Procurement and Contract Administration	Approves & Executes  Approves as for form and legality  Administers & Monitors Compliance	Procurement Requests, Contracts, Modifications and Amendments above <b>\$25,000 to \$75,000</b> (aggregate authority for changes, modifications, and amendments shall not exceed \$75,000 per contract)
Board of Directors  Executive Director  Access Legal Counsel  Manager, Procurement and Contract Administration	Approves  Executes  Approves as for form and legality  Administers & Monitors Compliance	Contracts, Modifications and Amendments exceeding \$75,000

## 11.0 Contracting Responsibilities

The following section defines the various roles and responsibilities affecting implementation of procurement policy and procedures:

**Contracting Officer** - The Executive Director is designated as the Access Contracting Officer by resolution of the Board of Directors. As outlined in this Procurement Policy Manual and the Access Procurement Procedures Manual, contracting authority is delegated to the Procurement and Contracts Manager.

**Manager, Procurement and Contract Administration** - An Individual, who by delegated authority, is authorized to obligate Access and enter into contracts on behalf of Access and to make determinations and findings with respect to the contracts. The Procurement and Contracts Manager:

- a. Is authorized to enter into, administer, and terminate contracts up to the limits of authority as delegated by the Executive Director.
- b. Shall not enter into a contract unless he or she has ensured that all applicable requirements of State and Federal law, regulations, associated circulars, and all other applicable Access procedures (including contract approvals) have been met.
- c. Shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the provisions specified herein.
- d. Shall ensure that sufficient unencumbered funds are available for obligation for each contract.
- e. Shall be the primary Access employee to determine that contract prices are fair and reasonable prior to signing the contract or any changes to the contract.
- f. Shall not make any purchase or enter into any contract for an amount that exceeds his or her specifically delegated contracting authority as stipulated by the Executive Director, Board of Directors or any other regulatory directive.
- g. Is, within the limits of policy, authorized to delegate and administer procurement authority as required in order to implement and maintain a standardized, fair and effective procurement process.

**Senior Procurement Specialist/Procurement Specialist/Assistant Procurement Specialist** - A duly appointed individual who is subordinate to the Access Procurement and Contracts Manager. The individual(s) acts as the business representative of the Manager, Procurement

and Contract Administration, is responsible for soliciting bids and proposals; for serving as the chairperson of pre-bid and pre-proposal conferences, qualification hearings and proposal evaluation meetings; for conducting contract negotiation sessions; for managing the non-technical aspects of post award contract administration including negotiation of modifications, claims, and supplemental agreements; and for maintaining all official contract files.

The Senior Procurement Specialist/Procurement Specialist/Assistant Procurement Specialist is also responsible for such tasks as writing, preparing and assembling contract documents; obtaining necessary pre-solicitation approvals; advertising RFP's and IFB's, issuing amendments, obtaining post-bid opening approvals for award, conducting investigations of proposed contractor's past performance, conducting consultant selection meetings for negotiated contracts and conducting negotiations, consulting with Project Administrators to monitor contractor's performance, and managing termination for default or convenience procedures whenever the need arises.

**Project Administrator** - A duly appointed Access employee who will be directly responsible for the daily technical administration of a contract including monitoring the contractor in its performance of the contract and performing those functions as specified by Access policy and procedures. The Project Administrator should be a responsible individual assigned to and familiar with the procedures and requirements of the user department. As such, the Project Administrator is the Manager, Procurement and Contract Administration's technical expert and is at his/her disposal to assist in insuring contractor compliance with technical requirements of the contract.

The Project Administrator approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the contractor for payment and is also the person to whom reports of warranted equipment malfunctions, failures or any problems with the contractor's performance are submitted.

The Project Administrator makes the initial request for contractor remedial action. The Project Administrator enters a record of the incident and actions taken in his files; the Senior Procurement Specialist/Procurement Specialist/Assistant Procurement Specialist becomes involved when and if the lapse constitutes a serious, i.e., life-threatening, repetitive, or unresolved, breach of contractor's civil or contractual responsibility. The Project Administrator issues directions to correct or replace defective items of work.

Should the contractor fail to respond in a timely or adequate manner to rectify any problem, the Project Administrator notifies the a Procurement Department representative that an

apparent breach of the contract exists. After investigating the situation, the Procurement Department and the Project Administrator shall take any steps necessary and available to enforce Access' rights under the contract. Project Administrators may not make unilateral decisions concerning contract actions.

The Project Administrator also attends pre-bid and pre-proposal conferences as the technical expert, conducts investigations of proposed contractor's technical past performance, questions prospective contractors at the qualification hearing or consultant interview as to their technical capability to perform the contract.

The Project Administrator assists in contract negotiations, and ascertains the availability of funds prior to initiating the negotiation and approval process for change orders, contract modifications or supplemental agreements.

#### **12.0 Contracting Authority Delegation System**

The Executive Director shall establish and maintain a system for the delegation of Access contracting authority. The system shall include procedures for:

- a. The review and selection of authorized individuals; and
- b. Modification and termination of contracting authority.

When selecting persons who will retain contracting authority, the Executive Director shall consider the following criteria:

- a. The complexity and dollar value of the procurements to be assigned;
- b. General experience, training, education, business acumen, judgment, character, and reputation;
- c. Experience in contracting and administration, commercial purchasing, or related fields;
- d. Education or special training in business administration, law, accounting, engineering, or related fields;
- e. Knowledge of applicable procurement laws, rules, and procedures, including the provisions of this regulation and applicable Federal, State and local laws and regulations;
- f. Specialized knowledge in particular contracting areas, such as construction, information services and equipment, and other specialties; and
- g. Satisfactory completion of Access procurement training.

The written appointment implementing contracting authority shall include the following:

- a. The limitations on the scope of delegated authority to be exercised (or the revised limitations in any modification of the authority);
- b. The limitation on the authority set forth in applicable laws and regulations;
- c. The signature of the Executive Director or the person authorized by him/her to re-delegate authority; and
- d. The effective date.

Termination of contracting authority shall be in writing unless the written delegation or modification of authority contains a provision for automatic termination or expiration. No termination shall operate retroactively.

If authorized by the Executive Director, delegated authority may be given to qualified subordinates and/or technical representatives to assist in the administration and management of specific aspects of a contract or procurement function. Delegated authority must be implemented using the written appointment process outlined above and signed by the person who delegates such authority.

### **13.0 Unauthorized Procurements**

Access will not recognize any procurement activity that operates outside the policies contained in this manual or the policy implementation procedures contained in the Access Procurement Procedures Manual. All procurement activities and commitments must adhere to company policy and standard procedures and be in strict compliance with the approval process.

### **14.0 Standards of Conduct/Conflicts of Interest**

Access strongly discourages the appearance of any conflicts of interest between Access employees, the Access Board, the Community Advisory Committee, the Transportation Professional Advisory Committee, vendors, potential proposers, evaluation panel members, and Access interested parties. To ensure high ethical standards in all procurement practices, the following guidelines are established to avoid situations that create an actual or potential conflict between the individual's personal interests and the interests of Access.

A conflict of interest exists when the individual's loyalties or actions are divided between Access' interests and those of another, such as a competitor, supplier, or customer. Both the fact and the appearance of a conflict of interest should be avoided.

The following are examples of potential conflicts of interest, which are prohibited by Access. The guideline does not attempt to describe all possible conflicts of interest that could develop.

Some of the more common conflicts from which individuals should refrain, however, include the following related to vendors, proposers, or others dealing with Access business:

- Offering personal gifts (monetary or non-monetary) or entertainment to employees or members of the Board, the Community Advisory Committee, the Transportation Professional Advisory Committee, evaluation panel members or other Access interested parties.
- All personal gifts in excess of a total of \$50.00 per year may not be accepted without notification or authorization from authorized senior level management. In addition, no gifts or entertainment of any value may be accepted during the proposal process or immediately thereafter.
- Hiring an Access employee (who had a significant influence as to a contract award) to work for the contractor/awardee of a significant contractor within a one-year period.
- Using proprietary or confidential Access information for personal gain or to Access' detriment.
- Having a direct or indirect financial interest in or relationship with Access employees, members of the Board, the Community Advisory Committee, the Transportation Professional Advisory Committee, evaluation panel members or other Access interested parties.
- Selling, buying or accepting bids from any business owned in whole or in part by an employee or their spouse, or contract for business services of any kind to be performed by an employee or their spouse, unless full disclosure is made to the Board of Directors. Employees may not have any kind of financial interest in any contract, sale or transaction which may come before you and in the course of your duties.

If conflicts of interest exist, both the vendor/proposer, employee, members of the Board, members of the Community Advisory Committee, members of the Transportation Professional Advisory Committee, evaluation panel member or Access interested individuals must complete a conflict of interest statement to identify the potential conflict of interest and parties involved. Depending on the conflict identified, employees may be excluded from the evaluation/procurement process. All conflicts must be identified to the Board of Directors.

If conflicts of interest exist and are not immediately identified in writing to appropriate Access management prior to award, Access may reject the bid from the proposers, immediately terminate vendor/contractor relationship, and discipline employee, up to and including

termination of employment. For all Access employees, members of the Board, the Community Advisory Committee, or the Transportation Professional Advisory Committee, the above conflict of interest policy does not supersede or replace the more detailed conflict of interest policy included in the Access Employee Policies and Employee Handbook Manuals.

In order to assure that contractors receive proper notice concerning these standards of conflict, all procurement documents will contain a general provisions article pertaining to this issue and as required by State, Federal and local laws and regulation.

#### **15.0 Non-Conference with Proposers or Subcontractors During Proposal Period**

In order to ensure full and open competition, after expiration of the time to submit questions pertaining to a formal solicitation (i.e. Request for Proposal, Request for Qualification, etc.) and continuing until a Notice of Intent to Award has been published to the public, Access employees are not to hold any meetings, conferences or technical discussions with any proposer or subcontractor pertaining to the solicitation, the Scope of Work, proposals or other related documents pertaining to the solicitation.

Proposers and subcontractors shall not communicate in any manner with Access employees regarding the solicitation, the Scope of Work, proposals or other related documents pertaining to the solicitation during this period, unless authorized, in writing, by Access Management or the RFP evaluation panel. Failure to comply with this requirement may terminate from further consideration the bidder's proposal.

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

Any Access employee who has knowledge of potential or actual violations of the spirit and intent of the Access Procurement Policies and Procedures directives, or any State, Federal or local law, or regulation pertaining to the procurement process, shall report such information directly to their supervisor or appropriate management representative as required.

In the event such report is received, the Executive Director, or duly authorized representative will take appropriate action to ensure a full and proper analysis is completed of an alleged deviation. As required, Corporate Counsel should be involved to determine if a legal basis exists.

Each procurement solicitation issued by Access will identify Access' Point of Contact for that solicitation. Under most circumstances, that Point of Contact will be the Access Procurement and Contracts Manager and his or her staff. Once the Point of Contact is established, neither

the Vendor nor any person or entity acting on the Vendor's behalf, including, without limitation, those providing compensated or uncompensated lobbying, advocacy, consulting or other service, may make contact with the Access Board of Directors, Access Staff - other than the Point of Contact - members of the Community Advisory Committee or the Transportation Professional Advisory Committee without the express permission of the Access Point of Contract. This prohibition on communication between the vendor and its agents (as described above) begins with the issuance of the solicitation and ends on the date of the Board award of the contract to a vendor. Non-compliance with this regulation could lead to disqualification.

#### **17.0 Prohibition Against Contingent Fees**

Each Access solicitation shall contain language that gives notice to prospective contractors of the prohibition against contingent fee arrangements and requiring contractor's covenant against contingent fees.

Access will not award any contract to a contractor that has made arrangements to pay a contingent fee or other consideration for soliciting or obtaining the contract unless the contingent fee arrangement is between contractors and bona fide employees or bona fide agencies, and has been properly disclosed.

If it is determined that a prohibited contingent fee has been paid or that a contractor has entered into an arrangement to pay a prohibited contingent fee under an existing contract, Access shall terminate such existing contract or take any other appropriate remedial action.

#### **18.0 Pre-Solicitation Contact**

To avoid misunderstandings between Access and potential or existing contractors prior to or during the solicitation process, it is imperative that each meeting, telephone conversation, email or any other means of written or verbal of communication clearly define the boundaries related to a fair and impartial procurement process.

Access employees who work directly with existing contractors, but who are not specifically involved in procurement activities, must be cognizant of the general status of such activity at Access. During these periods, employees must be cautious to ensure that they do not inadvertently disclose or reveal information that may jeopardize the fair competition processes of Access.

The following guidelines shall govern all Access staff contacts, but are specifically targeted at Access employees directly involved with the solicitation process.

a. Contact prior to issuance of a solicitation (IFB or RFP)

Informational and market research contact with prospective contractors and vendors is an extremely valuable source of data to Access. These contacts are clearly necessary but should be guided by the exercise of good judgment in all cases. It is imperative that in the process of gathering this market data, that a number of contractors be visited to ensure the data truly reflects a broader market and that no contractor has undue advantage due to over-concentration.

In addition to a balanced analysis, Access must avoid the possibility that through this contact, the contractor could get the impression that there was a commitment, real or implied, from Access. The primary pitfalls to be avoided are promises or implications of future contracts, or requests for complimentary services or supplies, which may create the impression of an obligation on the part of the Access. Some examples of specific services or assistance that should be avoided are:

- testing services;
- custom drawings;
- special investigations;
- major demonstrations;
- providing significant samples;
- vendor supplied trips for specific employees to view products.

If any of the above is deemed necessary for the solicitation, direct coordination with the Procurement Department is mandated. If such items are a part of the solicitation, a balanced approach to allow all vendors to supply such items will be developed and instituted.

b. Contact During Solicitation, Evaluation, Negotiation and Award

All contacts with contractors/vendors that relate to a procurement that is in the solicitation, evaluation, negotiation or award phase must be conducted through the Procurement Department. Technical questions, such as those relating to "approved substitutes", will be directed to the Access Project Administrator for evaluation.

Under no circumstances may an Access employee provide legal, business or technical guidance, interpretations or advice to the prospective contractor/vendor without such information being coordinated through the Procurement Department. Depending upon the specific phase of the process, the information may be promulgated in writing to all prospective bidders/proposers as an addendum to the solicitation.

It is Access policy that pricing history will not be provided to vendors once the procurement process of obtaining the goods or services has begun, i.e., from the date the solicitation is issued, through award.

#### **19.0 Prequalification**

Access will organize and maintain a list of pre-qualified persons, firms, or products that are used in acquiring goods and services. Lists will include enough qualified sources to ensure open and free competition and will not preclude potential bidders from qualifying during the solicitation period.

#### **20.0 California Public Records Act Requests**

Provisions will be placed in applicable contracts to ensure the contractors are put on notice that Access' use, and disclosure, of company records is governed by the provisions of the California Public Records Act (Government Code §§ 6250 et. seq.). Contractors and responders shall be informed of the following provisions:

- a. All records, documents, drawings, plans, specifications and other materials relating to Access 's business, including materials submitted by a contractor in a proposal, a bid response, or during the course of performing the services as contracted by Access, shall become the exclusive property of Access and may be deemed public records. As a result, these materials are subject to the provisions of the California Public Records Act (Government Code sections 6250 et. seq.).
- b. Access will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined and so marked by the contractor. However, Access will not advise contractors or responders as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of "TRADE SECRET".
- c. To the best of their ability, Access will endeavor to notify the contractor of any request for the disclosure of such materials. Under no circumstances, however will Access be liable or responsible for the disclosure of any such labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistakes or negligence on the part of Access or its officers, employees, and/or contractors.
- d. In the event of litigation concerning the disclosure of any material submitted by a contractor, Access' sole involvement will be as a stakeholder, retaining the material until otherwise ordered by a court. The contractor, at its sole expense and risk, shall be

responsible for prosecuting or defending any action concerning the materials, and shall indemnify and hold Access harmless from all costs and expenses including attorneys' fees, in connection with such action.

#### **21.0 Program Review and Certification**

On an annual basis, the Access procurement program will be subject to an internal review. At a time agreed upon, the Deputy Executive Director, Finance will assemble a team with representatives from Finance, Operations, Procurement, and outside consultants if required, to conduct a review of the procurement process at Access. The team will analyze the directives in this policy manual, the Access Procurement Procedures Manual, evaluate current and new procedures, and review and apply all applicable State, Federal and local laws, regulations and directives. Modifications, if required, will be developed and presented to the Board of Directors. Once approved, changes will be promulgated and the appropriate Access manuals will be updated. A written certification as to the completion of the annual review process will be published.

Access Services

Procurement Policy Manual

Procurement Department

## **PROCUREMENT DEPARTMENT**

### **A. PURPOSE**

To define the Procurement Department's function, autonomy and service offerings.

### **B. DEFINITIONS**

See Glossary Section for definitions.

### **C. PROCUREMENT DEPARTMENT**

#### **1.0 Procurement Relationships**

- a. Systems Autonomy – In order to ensure that standards of fairness and balance are maintained in Access procurement and acquisition events, the process of procurement is considered an autonomous function even though the Procurement Department is subordinate to the Access Department of Finance. The Executive Director is responsible to ensure that the procurement function is not subject to any undue influence from operational or financial pressures affecting Access.
- b. Internal Relationships - The procurement process is a team based approach through which the operational, financial and procurement functions operate in unison to effect a fair and balanced procurement process. The operational element is considered a programmatic function while the financial and procurement functions are considered to be process driven functions. The following applies:
  - i) The operational activity, represented by a Department Deputy Executive Director, Director, Manager, Project Administrator or similar operational position, is responsible for determining the requirement, preparing the specifications and then acting as the technical representative or advisor during contract performance.
  - ii) The procurement activity, represented by the Procurement Department, is responsible for ensuring specifications are not restrictive, preparing the solicitation document in accordance with the law and rules and regulations, soliciting the requirement, awarding the contract, administering the contract in accordance the

terms, approving payment, accepting goods and services, and closing out the contract.

- iii) The financial activity is represented by the Finance Department which ensures that all approvals are obtained and that payments are within the dollar amount of the contract.

## **2.0 Procurement Department Service Offerings**

As an integral member of the Access team, the Procurement Department will provide the following services to all Access divisions:

- a. Acquisition Services – The Procurement Department will provide a full range of acquisition services including:
  - i) Knowledge in acquisition and material management laws and regulations;
  - ii) Acquisition project management;
  - iii) Assistance in requirements definition;
  - iv) Assistance in the identification and location of viable sources;
  - v) Determining optimum acquisition methods;
  - vi) Selecting the appropriate solicitation process;
  - vii) Crafting the solicitation;
  - viii) Proposal evaluation;
  - ix) Source selection;
  - x) Source justifications;
  - xi) Dispute resolution;
  - xii) Contract language preparation and management;
  - xiii) Delivery and acceptance;
  - xiv) Material management.
- b. Major Acquisition Management and Oversight – At the discretion of the Executive Director, the Procurement Department will directly participate in all large-scale procurements. Based on factors of size, complexity and duration, the Procurement Department may be designated to directly manage a procurement to ensure standardization, fairness and efficiency.
- c. Purchasing – The Procurement Department will provide purchasing services as required by Access for all large and small purchases.

- d. Integrated/Master Agreement Acquisitions – The Procurement Department will identify and utilize integrated or cost advantaged master agreements that are in place with various Federal, State, and local governments or agencies as required.
- e. Material Management Services – The Procurement Department will provide materials management expertise to Access divisions as required in areas affecting inventory management, warehousing, distribution and surplus property.
- f. Procurement Records Management – The Procurement Department will establish and maintain the Access master records management process. The Procurement Department is responsible to ensure all required information affecting any stage of a procurement, including the development, advertising, acceptance, analysis, negotiation, award, execution and close out activities are maintained as required by applicable law, regulation and acceptable business practice.
- g. Supplier Base Management – The Procurement Department will provide the following supplier based functions including:
  - i) Identifying potential sources of supply and, as required, performing capabilities surveys to determine if the potential sources of supply are qualified and responsible;
  - ii) Classifying suppliers in according with their capabilities and products;
  - iii) Evaluating existing suppliers, and working with suppliers when appropriate or required to assist them in improving their performance;
  - iv) Managing the supplier database, an up-to-date listing of suppliers that have proven quality and reliability and that consistently deliver on-time performance at fair prices;
- h. Technical Support – The Procurement Department will provide technical support to other Access divisions as required in the procurement, including:
  - i) Assistance in establishing minimum product standards and specifications;
  - ii) Assistance in creating product specifications for solicitations;
- i. Training/Education – The Procurement Department will provide professional development and training courses for Access employees involved in the solicitation, procurement and management of products and services acquired by Access. As required by their assignment, new Access employees will be instructed in the policies and procedures surrounding Access procurements.

Working directly with the Access Human Resources Department, at a minimum, each employee will be instructed on the spirit and intent of the Access Standards of Conduct program and how this program relates to the procurement of goods and services at Access.

## **ARCHITECTURE AND ENGINEERING SERVICES**

### **A. PURPOSE**

Procurement of professional consultants for engineering, architectural, land surveying or other support services, such as program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services as it relates to research, planning, development, design, construction, alteration, or repair of real property.

### **B. DEFINITIONS**

See Glossary Section for definitions.

### **C. POLICY**

#### **1.0 Special Procedures for Architect and Engineering**

FTA Circular 4220.1F and Government Code 4526 requires that Access Services use competitive negotiation procedures for qualification-based procurement of architectural and engineering (“A/E”) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. Price is not used as a factor in determining the most qualified proposer.

Following this method, competitor’s qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Under this method, the competitors meeting the minimum requirements of the solicitation are ranked. The highest ranked proposer is then invited to enter into negotiations. The objective of the negotiations is to agree on a fair and reasonable price for the proposed work. The Independent Estimate supported by a price or cost analysis will determine the basis of the pricing target for Access. Indirect rates are subject to validation by audit either by another governmental entity

or by Access for applicable fiscal years. Access may require an audit of the contractor's proposal prior to final payment.

The steps to be used for proposal evaluation and contract negotiations for A/E contractors are as follows:

The Evaluation team is assigned by the Contracting Officer after consultation with the Using Department and/or Executive Director to review eligible firms and all responses to RFP.

The Team evaluates the firms based on criteria such as:

- Professional qualifications for performance of the required services,
  - Specialized experience and technical competence in the type of work required,
  - Capacity to accomplish the work in the required time,
  - Work Plan developed to demonstrate understanding of the Scope of Work,
  - Past performance in terms of cost control, quality of work and compliance with performance schedules;
- a. The evaluation criteria shall be stated in the solicitation in order of relative importance. Numeric scoring can be used to establish relative importance;
  - b. The detailed independent estimate and cost analysis shall be used to establish what Access considers a fair and reasonable price target;
  - c. A scoring sheet shall be developed by the Contracting Officer to help reviewers with consistency in scoring;
  - d. If the procurement action includes federal funding the Architect and Engineering Firms shall be made aware of the federal requirement through the solicitation including the requirements of Buy America;
  - e. The Evaluation team may hold discussions with firms ("short list") to obtain clarity on particular aspects of their proposal;
  - f. The Evaluation team prepares a selection report for the Contracting Officer recommending, in ranked order, those firms that are considered to be the most highly qualified to perform the required services;
  - g. The Contracting Officer shall make the final selection from a list of the most highly qualified firms prepared by the evaluation team;
  - h. After the final selection has taken place, the Contracting Officer may release information identifying the rankings and the firm with whom negotiations will be attempted. If negotiations are terminated without awarding a contract to the

highest rated firm, Access may release information that negotiations will take place with the next highest rated firm. Notice shall be provided to firms when negotiations have been terminated;

- i. The Contracting Officer authorizes negotiations to begin with the most qualified firm, which includes fees and cost estimates;
- j. The solicitation shall include the requirement for negotiations of indirect rates to ensure compliance with FAR 31.2 by Access or another governmental agency for applicable fiscal years for FTA funded procurements;
- k. The solicitation shall also include the requirement for professional liability insurance including errors and omissions insurance;
- l. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment;
- m. In determining the amount of compensation and the method of payment, consideration shall be given to:
  - i. Scope and complexity of designs, surveys and other work and the skills necessary for these services,
  - ii. Quality and quantity of data provided to the A/E by Access,
  - iii. Location of, and conditions under which, the services will be performed,
  - iv. Date services to begin and time allowed for performance;
- n. Costs should be negotiated taking into consideration:
  - i. Direct labor,
  - ii. Overhead,
  - iii. General and administrative expenses,
  - iv. Materials,
  - v. Other direct costs, and
  - vi. Profit, which is further influenced by:
    - Degree of A/E's risk,
    - Level of effort,
    - Level of talent or expertise the A/E must furnish
    - Amount of subcontracting,

- Amount of top level A/E management involved,
  - Subcontracts, and
  - Contractors investment;
- o. When the contract is negotiated and signed, the negotiations are documented and placed in the file;
- p. The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract;
- q. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to Access for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

Access Services

Procurement Policy Manual

Public Works / Construction

## **PUBLIC WORKS / CONSTRUCTION**

### **A. PURPOSE**

To describe the policies and process used to procure Public Works at Access.

### **B. DEFINITIONS**

See Glossary Section for definitions.

### **C. SPECIAL PROVISIONS FOR PUBLIC WORKS / CONSTRUCTION CONTRACTS**

#### **1.0 Overview**

"Public works contract," means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

Bidding procedures for public works and for construction contracts can be complex and require reference to both Federal and State law, depending upon the source of funding used for the project, the type of project and varying price thresholds. The provisions of this manual are intended to be general in nature and the Contracting Officer is responsible to ensure that particular requirements are met and to consult with legal counsel, when appropriate. In general, the following categories of requirements may apply, depending upon the nature of the Project.

#### **2.0 Public Contract Code and California Law**

In most cases, the California Public Contract Code will be applicable to a particular contract action. The Public Contract Code covers a variety of topics including prompt payment of Construction Progress Payments, Disputes Resolution, and Bid Shopping for Subcontractors and other provisions. The following is a general (non-exhaustive) list of provisions that may apply:

- a. PCC §3300 – Contractor License Designation

- b. PCC §6109 – Prohibition Debarred Contractors
- c. PCC §4104.5 – Bid Notification Requirements
- d. PCC §20171 – Bid Security Requirements
- e. PCC §22300 -- Substitution of Retainage
- f. PCC §3400 – Brand Name or Equal Requirements
- g. PCC §20101 – Contractor Pre-Qualification
- h. PCC §20103.8 – Additive or Deductive Items for Construction
- i. PCC §20104 – Procedure for Resolution of Construction Claims under \$375,000
- j. PCC §22160 – Design Build Contracting
- k. PCC §20216 – Disclosure of Bid Information
- l. PCC §20104.50 -- Prompt Payment Requirements
- m. PCC §4104 – Bid Shopping
- n. PCC §7106 - Non-collusion affidavit
- o. PCC §20103.5 -- Federal Funding and License Requirements
- p. PCC §9203 -- Progress Payment Requirements
- q. Civil Code §3247 – Payment Bond Requirements (>\$25,000)
- r. Civil Code §§8000 through 9566 – Mechanics Lien Provisions
- s. Labor Code §1771 – State Prevailing Wage Requirements (all contracts in excess of \$1,000)
- t. Labor Code §1771.1 – Contractor Registration Requirements
- u. Federal Davis Bacon – Federal Prevailing Wage Requirements (all contracts in excess of \$2,000)
- v. Federal Seismic Safety Requirements
- w. Federal Bonding Requirements
- x. Federal ADA Requirements
- y. Federal Buy America Requirements

For public works bidding instructions the Contracting Officer shall follow the guidance in the Procurement by Sealed Bid section of the Access Procurement Procedures. The threshold for formal bidding of Public Works shall be the Simplified Acquisition Threshold established by the Federal Transit Administration which is currently \$150,000. Bids above this threshold shall be formally advertised in a newspaper of general circulation, contain the typical bid package sections cited below, and be publicly opened.

### 3.0 Bonding Requirements

Bidders are required to obtain and include with their bids a bid security payable to Access. (Pub. Cont. Code §20170.) Bid security is used as an assurance that the bidder in fact will enter into the proposed construction contract in accordance with its bid if the bid is accepted by Access. A bidder's security may include cash, a cashier's check, certified check, or a bid bond in an amount equal to at least 10 percent of the amount the bid. Absent the proper bid security, a bid may not be accepted. In the event a bidder fails to execute a contract in accordance with its bid, the amount of the bidder's security is forfeited to Access. (Pub Cont. Code §20172.) In such cases,

Access may award the contract to the second lowest bidder and the amount of the security forfeited will be applied to the difference between the two contract prices.

A performance bond is one provided by the contractor to guarantee the complete and faithful performance of the construction contract by the contractor. The primary purpose of a performance bond is to protect Access against the risk of the Contractors default on the construction contract. Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. The project threshold for Federal bonding requirements is \$150,000.

Bidders must also provide a payment bond in connection with their bid for any contract in excess of \$25,000. Civ. Code § 3247. A payment bond must be in an amount equal to the contract price. Civ. Code § 3248. The purpose of the payment bond is to both protect the public entity from a defaulting contractor and to provide a distinct remedy to public works subcontractors and suppliers of labor or materials to public works projects.

#### **4.0 Project Delivery Methods**

Design-Bid-Build is the typical project delivery method for public works projects. Utilizing this project delivery method, Access will provide a complete set of design documents to competitors for the bidding process.

Design/Build is a project delivery method that requires Access to prepare schematic or roughly 30 percent plans and then allows competitors to compete for the opportunity to complete the design work and construction work.

Eligible Design/Build construction projects shall be procured in a method consistent with FTA Requirements as well as Public Contract Code §22160 et seq. The Contracting Officer shall follow the guidance in Public Contract Code §22160 when utilizing the Design/Build construction project delivery method. Utilization of the Design/Build project delivery method requires approval from the Access Board of Directors.

Access may employ a prequalification process on public works procurements. Standard form questionnaires are issued and must be submitted by each bidder along with financial statements, both of which must be verified under oath. Access must require all bidders to comply with the prequalification submission requirements. Questionnaires and financial statements submitted by

prospective bidders are confidential and are not considered public records, nor open for public inspection. In evaluating whether or not a prospective bidder is sufficiently qualified to bid for a particular contract, the Contracting Officer must adopt and apply a uniform system of rating bidders, on the basis of the standard questionnaires and financial statements. Then, bidders who have been prequalified are eligible to obtain and submit the standard proposal forms for the subject contract.

#### **5.0 Notice to Department of Industrial Relations**

In accordance with Labor Code 1773.3. The Contracting Officer shall provide notice to the Department of Industrial Relations of any public works contract subject to the registration requirements, within five days of the award. The notice shall be transmitted electronically in a format specified by the department and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the department specifies that aids in the administration and enforcement of contractor Registration and Prevailing Wage requirements.

#### **6.0 Bid Documents**

Both Federal and California law impose prevailing wage requirements on contractors under certain circumstances. The Contracting Officer is responsible to ensure compliance with any Federal requirements under the Davis Bacon Act and with California Labor Code sections 1700 et seq. For clarity sake, the solicitations shall state that the highest rate between the state and federal requirements shall apply.

In accordance with Public Contract Code §6610, notice inviting formal bids for projects by Access that include a requirement for any type of mandatory pre-bid conference, site visit, or meeting shall include the time, date, and location of the mandatory pre-bid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory pre-bid site visit, conference or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice.

Typically, a bid package includes the following:

1. Notice Inviting Bids – sets forth the date, time, and place for the opening of bids, and describes the contract.

2. Instructions to Bidders – often identifying the contract documents to be considered, the availability of information, any scheduled prebid meetings, bid protest procedures, and any other processes to be followed for bids to be considered.

3. Payment and Performance Bond Forms

4. Bid Compliance Forms – Bid compliance forms may include the following, or additional forms required by the procuring agency:

a. DBE forms – Federal 49 CFR 26

b. Drug Free Work Place Certification – Gov. Code § 8355

c. Non-collusion Affidavit – Pub. Cont. Code § 7106

d. Workers' Comp. Certification – See Pub. Cont. Code § 10128

e. Assignment of Antitrust Claims – Pub. Cont. Code § 7103.5

f. "Social issues" certifications, such as certifications as to recycled content or certifications that the contractor does not do business in disfavored regions (e.g., Darfur or Iran)

g. "Responsibility" certifications, such as those requiring a bidder to certify that it has not been debarred or suspended or terminated for cause

5. Bid Price Form

6. Subcontractors Form – for compliance with the Subletting & Subcontracting Fair Practices Act (Pub. Cont. Code §§ 4100 et seq.).

7. Form of Contract

8. General and Special Conditions

9. Plans (Drawings) – May be made available electronically.

10. Form of Escrow Agreement in Lieu of Retention – Pub. Cont. Code §§ 6106.5, 10263, and 22300

11. Technical Specifications

Bids received after the Public Works bid due date shall be returned unopened to the bidder. The Contracting Officer shall oversee the public bid opening and allow all interested parties to attend. The results of the bids shall be read out-loud and recorded on a bid abstract. The bid shall be awarded to the lowest responsible and responsive bidder unless a Request for Proposals is used for Design/Build as authorized by Public Contract Code §22160.

Access Services

Procurement Policy Manual

Real Estate / Real Property

**REAL ESTATE / REAL PROPERTY**

**A. PURPOSE**

Procurement of land, including affixed land improvements, structures, and appurtenances.

**B. DEFINITIONS**

See Glossary Section for additional definitions.

**C. POLICY**

**1.0 Overview**

a. Real Estate / Real property must be acquired, managed, and used in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (PL 91–646) and 49 CFR part 24, the implementing regulation. The following requirements govern the acquisition, use, or disposition of real property purchased with Federal funds. All regulatory references in this Section are to 49 CFR part 24, unless specified otherwise. When purchasing real estate with state or local funds, Access must follow the rules associated with the funding. We utilizing non-federal funds, and absent any state or local requirements to the contrary, Access must utilize the federal rules stated herein as guidance.

b. If Access is using Federal funds to acquire real property or provide relocation assistance necessary to secure property for a project, then Access must comply with the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA), as amended. The Uniform Act is implemented by regulation (49 CFR part 24).

c. The requirements and processes for conducting appraisals, review appraisals, providing relocation assistance, and requesting FTA's concurrence are described as follows:

To ensure eligibility for federal funding, Access should follow the typical process sequence when acquiring real property for a project:

- i. National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) Approval
  - ii. Environmental Site Assessment
  - iii. Title Search
  - iv. Appraisal
  - v. Appraisal Review
  - vi. Just Compensation Determination
  - vii. FTA Concurrence (if required)
  - viii. Offer to Owner
  - ix. Settlement
- d. If Access is considering leasing real property, whether facilities or equipment, rather than outright purchase of the same, and such lease is a capital not operating lease, then Access must comply with FTA Circular 5010.E and 49 CFR part 639.

## 2.0 Appraisal of Real Estate

Appraisers must be certified or licensed with a State Appraisal Board as required by the URA regulations at Section 24.103(d) (2).

- a. Requirements
  - i. Appraisals must be fully compliant with all of the appraisal requirements as cited in 49 CFR Section 24.103(a). This includes compliance with the Scope of Work, i.e., defining the appraisal requirements and, as appropriate, a realty/personality report. The appraiser will also appropriately address the requirements of Section 24.103 (b) and (c) in the report concerning the effects of project influence and owner retention of improvements.

- ii. When valuing properties that contain contamination or hazardous material, the appraiser must consider the effect, if any, the contamination's or material's presence has on the market value.
- iii. Access should update appraisals over six months old in an active real estate market before fair market value is determined and submit to the FTA Regional Office for review and concurrence, when required. If the documents are not updated, the letter of transmittal to FTA shall provide adequate justification explaining why the appraisal was not updated.

### **3.0 Appraisal Review of Real Estate.**

- a. All appraisals for acquisition of real property are to be reviewed in accordance with the Uniform Act and 49 CFR 24.104. The review appraisal should determine the soundness of the report's value estimate. A qualified review appraiser (see 49 CFR Section 24.103(d)(1) and Appendix C thereof, and Section 24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of an appraisal found in 49 CFR Section 24.2(a)(3), as well as other appraisal requirements found in 49 CFR Section 24.103 and other applicable State and local requirements.

- b. Requirements.

In accordance with 49 CFR Section 24.104(a), the review appraiser shall prepare a written report identifying each appraisal report as:

- i. Recommended (as the basis for the establishment of the amount believed to be just compensation), or
- ii. Accepted (meets all requirements, but not selected as recommended or approved), or
- iii. Not accepted.

### **4.0 Establishment of Just Compensation**

- a. If authorized by Access, a staff review appraiser may also establish the approved appraisal amount as the offer of just compensation. Under no circumstances can the establishment of the just compensation amount be delegated to a contractor (i.e., a fee review appraiser) who is not a governmental official of the agency.

- b. If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with 49 CFR Section 24.103 to support a recommended (or approved) value.
- c. Review appraisers who are not staff employees must be State certified appraisers.

## 5.0 Appraisal Concurrence Process

- a. Prior FTA concurrence is required when Access's recommended offer of just compensation exceeds \$500,000, or when a property appraised at \$500,000 or more must be condemned. Appraisals under \$500,000, not requiring FTA concurrence, must follow the applicable appraisal standards. Access is required to maintain a parcel file with the proper support and documentation. Appraisals and Review Appraisals must be submitted to FTA for review and concurrence for acquisitions over \$500,000 or in-kind contribution of any value before Federal funds are expended, or the value is used as local match.

## 6.0 Acquisition of Real Estate and Concurrence Requirements

- a. In accordance with URA requirements every effort should be made to acquire real property by negotiation based on the approved just compensation amount that has been determined by the acquiring agency and considering the requirements described in the following:
  - i. Market Value. Before making an offer to the property owner, Access must first establish market value of the parcel to be purchased. Property acquisition activities will be conducted in compliance with the requirements of 49 CFR Section 24.101 and 102. Market value is to be established through a current appraisal and appraisal review accomplished in accordance with the requirements of Section 24.103 and 104 respectively. Once the appraisal and the appraisal review are complete, a determination of just compensation must be made by Access in accordance with Section 24.102(d).
  - ii. Making an Offer. After the just compensation determination has been made by the agency, with FTA concurrence, if required, an offer can be made to the

owner. No owner shall be required to surrender possession of real property without either payment of the agreed purchase price to the owners or deposit of the established just compensation amount in condemnation court as set out in Section 24.102(j). The full amount of the deposit must be made available to the owner without prejudice pending the ultimate determination of just compensation by the judicial process. Access must expeditiously reimburse property owners for actual, reasonable, and necessary expenses incidental to transfer of title pursuant to 49 CFR Section 24.106.

- iii. Uneconomic remnant. If the acquisition leaves the owner with an uneconomic remnant, Access must offer to acquire that remnant; and its value will be presented as an element of the written offer that is made (see 49 CFR Section 24.102(k)).
- iv. Filing Condemnation. Additionally, FTA concurrence is required before filing for Any settlement in excess of Access's approved just compensation must be addressed as an administrative settlement (see definition, condemnation if the appraised amount exceeds \$500,000.
- v. Administrative Settlements. The term "administrative settlements" encompasses both negotiated settlements and legal settlements. Legal settlements are those arrived at prior to a trial on the merits.

b. Requirements

- i. Administrative settlements in excess of \$50,000 more than the current fair market value require prior FTA concurrence. Instead of using its power of eminent domain when a property cannot be purchased at appraised value, Access may propose acquisition through negotiated settlement.
- ii. Access must document that reasonable efforts to purchase the property at the appraised amount have failed and prepare written justification supporting why the settlement is reasonable, prudent, and in the public interest. Such a settlement will be handled in accordance with administrative settlement requirements at Section 24.102(i). If the settlement request represents a significant increase over the just compensation and if trial risks are a key factor in the settlement justification, a litigation attorney for the agency must be consulted to provide advice in this regard. The decision to recommend a settlement

should evaluate among other relevant matters, the risks of settling for the proposed amount versus the risks of trying the condemnation in court.

Note: Any global settlements of a property acquisition that involve the inclusion of relocation payments based on other than relocation costs that are actual, reasonable, and necessary are not eligible for FTA reimbursement in accordance with 49 CFR Section 24.207(f) of the URA regulations.

c. Settlement Concurrence Process

All settlements must be justified in writing and be available in the project files. The justification shall be thorough, document the entire settlement process, demonstrate the logic and reason supporting the settlement, and be able to withstand the scrutiny of an independent review. If either type of settlement exceeds FTA's threshold for approval, it must be submitted to FTA for advance concurrence before the settlement is consummated.

## 7.0 Contaminated Property (including Brownfields)

Appropriate due diligence for contamination is conducted as a part of the NEPA process and discussed in the NEPA document before selection of a contaminated property in a capital project. Appraisals should consider the effect, if any, contamination has on the market value of the property being valued. The terms, "contamination" and "hazardous material" should be interpreted broadly to include all contaminants that can affect property value.

- a. The legal responsibility for hazardous material clean up and disposal rests with parties within the property title chain and with parties responsible for the placement of the material on the property. Access must attempt to identify and seek legal recourse from those potentially responsible parties or substantiate the basis for not seeking reimbursement.
- b. During the NEPA process, the grant applicant will have considered not only the estimated project cost of appropriate remediation (remediation being any action, developed in consultation with appropriate regulatory agencies, to reduce, remove, or contain contamination), the applicant will also have considered and taken action regarding the short and long-term liabilities associated with Brownfields, if applicable.

- c. To encourage the complete assessment of contamination prior to project decision making, FTA generally will not participate in the remediation of contamination discovered during construction.
- d. Access should contact FTA for technical assistance regarding contaminated property.

## 8.0 Real Estate Acquisition Management Plan (RAMP)

A RAMP is required for all major capital projects as a part of the Project Management Plan (PMP) under 49 CFR 633.25 and in accordance with 49 CFR part 24. A full RAMP is not required for other capital projects with real estate acquisition; however, all capital projects must be in compliance with 49 CFR part 24, if real estate acquisition or relocation assistance is involved. The RAMP is a planning document for the acquiring agency and is a control document for FTA that includes real estate goals and methodology from the perspective of timing, staffing, statutory, and policy issues. The RAMP should be periodically reviewed for needed changes.

## 9.0 Real Estate Disposition

- a. Excess Real Property Inventory and Utilization Plan  
Access shall prepare and keep up to date an excess property inventory and utilization plan for all property that is no longer needed to carry out any transit purpose. The inventory list should include such things as property location; summary of any conditions on the title, original acquisition cost, and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed.
- b. Access is also required to notify FTA when property is removed from the service originally intended at grant approval and if property is put to additional or substitute uses. Access's plan should identify and explain the reason for excess property. Such reasons may include one or more of the following:
  - i. The parcel, when purchased, exceeded Access's need (uneconomic remnant, purchased to logical boundary, part of administrative settlement, etc.);
  - ii. The property was purchased for construction staging purposes such as access, storage or underpinning, and construction is completed;
  - iii. The intended use of the parcel is no longer possible because of system

changes, such as alignment, or amendments to the project Grant Agreement;

- iv. Improvements to real property were damaged or destroyed, and therefore the property is not being used for project purposes, but it is still needed for the project. If so, the improvements may be renovated or replaced. In this case, applicable cost principles must be observed; and/or
- v. A portion of the parcel remains unused, will not be used for project purposes in the foreseeable future, and can be sold or otherwise disposed.

- c. Unless FTA and Access agree otherwise, the excess real property inventory and updated excess property utilization plan is to be retained by Access.