

Roaring Fork Transportation Authority
(RFTA)

PROCUREMENT MANUAL

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TABLE OF CONTENTS

Table of Contents 1-5

Introduction

RFTA 6
Policy Statement 6
Purpose 6
Singular-Plural and Gender Rules 6
Contacts 7
Revisions 7

Section 1

1.1 Overview 7
1.1.2 What Does This Manual Apply To 7
1.1.3 What Does This Manual Not Apply To 8
1.1.4 Good Faith 8
1.1.5 Severability 8
1.1.6 Effective Date 8
1.1.7 Public Access 8

Section 2

2.1 What Is RFTA’s Role in the Procurement Process 9
2.1.1 RFTA Board of Directors 9
2.1.2 Chief Executive Officer (CEO) 9
2.1.3 Legal Counsel 10
2.1.4 Department Heads 10
2.1.5 Procurement Department 11
2.1.6 Finance Department 12
2.2 Ethics in Public Contracting 12
2.2.1 Statement of Policy 12
2.2.2 General Ethical Standards for Employees 13
2.2.3 General Ethical Standards for Non-Employees ... 13
2.2.4 Employee Conflict of Interest 13
2.3 Employee Disclosure Requirements 14
2.3.1 Disclosure of Benefit Received from Contract 14
2.3.2 Failure to Disclose Benefit Received 14
2.3.3 Notice 14
2.3.4 Gratuities 14
2.3.5 Kickbacks 14
2.3.6 Contract Clause 14
2.4 Prohibition Against Contingent Fees 15
2.4.1 Contingent Fees 15
2.4.2 Representation of Contractor 15
2.4.3 Contract Clause 15
2.5 Restrictions on Employment of Present and Former
Employees 15
2.5.1 Contemporaneous Employment Prohibited 15

2.5.2	Restrictions on Former Employees in Matters Connected with their Former Duties	15
2.5.3	Disqualification of Business When an Employee Has a Financial Interest	15
2.6	Use of Confidential Information	16
2.6.1	16
2.7	Civil and Administrative Remedies against Employees Who Breach Ethical Standards	16
2.7.1	Existing Remedies not Impaired	16
2.7.2	Supplemental Remedies	16
2.7.3	Right to Recover from Employee Value Received In Breach of Ethical Standards	16
2.7.4	Due Process	16
2.8	Civil and Administrative Remedies against Non-employees Who Breach Ethical Standards	17
2.8.1	Existing Remedies Not Impaired	17
2.8.2	Supplemental Remedies	17
2.8.3	Right to Recover from Non-employee Value Transferred in Breach of Ethical Standards	17
2.8.4	Right of the RFTA to Debar or Suspend	17
2.8.5	Due Process	17
2.9	Recovery of Value Transferred or Received in Breach of Ethical Standards	17
2.9.1	General Provisions	17
2.9.2	Recovery of Kickbacks by the RFTA	18
2.10	When Must The Procurement Process Be Used	18
2.10.1	Micro-Purchases - \$3,000 or Less	18
2.10.2	Small Purchases - \$3,000 - \$99,999	18
2.10.3	Large Purchases - \$100,000 or more	18
2.10.4	Revenue Contracts Involving FTA – Funded Facilities or Assets	19
2.10.5	Sole Source – Procurement by Noncompetitive Proposals	19
2.10.6	Architectural and Engineering Services (A&E) ..	19
2.10.7	Design-Build	20
2.10.8	Design-Bid-Build Services	20
2.10.9	Emergency Procurements	20
2.10.10	Lease Versus Purchase	20
 <u>Section 3</u>		
3.1	Methods of Procurement	21
3.1.1	Invitation for Bid (IFB)	21
3.1.2	Request for Proposal (RFP)	21
3.1.3	Request for Qualifications (RFQ)/Multi-Step Sealed Proposals	21
3.1.4	Request for Quotes (RFQ)	21
3.1.5	Piggybacking	22

3.2	General Procurement Requirements	22
	Federal Cost Principles	23
	Evaluation of Options	23
	Exercise of Options	23
	Prohibitions	23
	Payment Provisions	25
	3.2.1 Grantee Procurement Process Checklist	26
	3.2.2 Cancellation of Requests For Proposals	26
3.3	Methods of Source Selection	26
	3.3.1 Methods of Source Selection	26
	3.3.2 Competitive Sealed Proposals	27
	3.3.3 Multi-Step Sealed Proposals	28
	3.3.4 Small Purchases	29
	3.3.5 Sole Source Procurement	30
	3.3.6 Emergency Procurements	30
	3.3.7 State Bid	30
	3.3.8 Design-Build	30
3.4	Types of Contracts	30
	3.4.1 Multi-Term Contracts	31
	3.4.2 Task Order Contracts	31
	3.4.3 Five-Year Limitation	31
3.5	Contract Clauses and Their Administration	32
	3.5.1 Terms and Conditions	32
	3.5.2 Price Adjustments	32
	3.5.3 Additional Contract Clauses	33
	3.5.4 Modification of Terms and Conditions	33
3.6	Fiscal Responsibility	34
3.7	Right to Inspect Plant	34
3.8	Rights to Audit Records	34
	3.8.1 Audit of Cost or Pricing Data	34
	3.8.2 Contract Audit	34
3.9	Responsibility and Responsiveness of Proposers	34
	3.9.1 Determination of Non-responsibility and Non-responsiveness	34
	3.9.2 Right of Nondisclosure	34
	3.9.3 Pre-qualification of Suppliers	35
3.10	Bid Security	35
	3.10.1 Requirement for Bid Security	35
	3.10.2 Rejection of Proposals for Noncompliance with Bid Security Requirements	35
	3.10.3 Withdrawal of Proposals	35
3.11	Contract Performance and Payment Bonds	35
	3.11.1 When Required – Amounts	35
	3.11.2 To Require Additional Bonds	35
3.12	Bond Forms and Copies	36
	3.12.1 Bond Forms	36

3.12.2	Certified Copies of Bonds	36
3.12.3	Bond Location	36
3.13	Legal and Contractual Remedies	36
3.13.1	Authority to Resolve Protested Solicitation And Awards	36
3.14	Authority to Resolve Contract and Breach of Contract Controversies	37
3.14.1	Applicability	37
3.14.2	Authority	37
3.14.3	Decision	37
3.14.4	Notice of Decision	37
3.14.5	Finality of Decision	37
3.14.6	Failure to Render Timely Decisions	37
3.15	Authority to Debar or Suspend	38
3.15.1	Authority	38
3.15.2	Causes for Debarment or Suspension	38
3.15.3	Decision	39
3.15.4	Notice to Decision	39
3.15.5	Finality of Decision	39
3.16	Solicitation of Award in Violation of Law	39
3.16.1	39
3.16.2	Remedies Prior to an Award	39
3.16.3	Remedies after an Award	39
3.16.4	Interest	40
3.17	Creation of the Procurement Appeals Board	40
3.17.1	The RFTA Board of Directors shall act as the Procurement Appeals Board	40
3.17.2	Acting by one or more of its members	40
3.17.3	Jurisdiction of the Procurement Appeals Board ..	40
3.17.4	Appeal of Solicitations or Awards	40
3.17.5	Decision	41
3.17.6	Finality of Decision	41
3.18	Suspension or Debarment Proceedings	41
3.18.1	Scope	41
3.18.2	Time Limitation on Filing an Appeal	41
3.18.3	Decision	41
3.18.4	Finality of Decision	41
3.19	Contract and Breach of Contract Controversies	41
3.19.1	Scope	41
3.19.2	Time Limitation on Filing an Appeal	41
3.19.3	Decision	41
3.19.4	Finality of Decision	41
3.19.5	Appeal and Review of Procurement Appeals Board Decision	42
3.20	Discontinuance of Contractor's Appeal	42
3.20.1	After Notice of an Appeal	42

3.21	Opinion and Waivers	42
3.21.1	Advisory Opinions	42
3.21.2	Waiver	42
<u>Glossary of Terms</u>	43-46

INTRODUCTION

RFTA:

RFTA is a body corporate and political subdivision of the State of Colorado created pursuant to the Regional Transportation Authority Law, Title 43, Article 4, Part 6 of the Colorado Revised Statutes. RFTA is a recipient of state and federal grant funds.

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Policy Statement:

It is the policy of RFTA to ensure that there be full and open competition in its procurement process, and that awards resulting from its procurement process be based on sound costing principles and ensure fair and reasonable prices and or best value to the authority.

Purpose:

The purpose of this Procurement Manual (the “Manual”) is to guide RFTA personnel in fulfilling their obligations to the public, grantors, vendors, and contractors in the expenditure of public funds. This Manual is a comprehensive reference book for RFTA personnel and outside parties having an interest in RFTA’s procurement and contracting processes. It is intended as a guide to good procurement practices and is to be used as a supplement to sound business judgment in procurement and contracting.

This Manual reflects applicable state and local laws and regulations and provides a process that ensures competitive procurement and procedures that conform to applicable federal laws.

Sources utilized in the preparation of this Manual include:

- Third Party Contracting Guidance (FTA Circular 4220.1F)
- Uniform Administrative Requirements For Grants And Cooperative to State and Local Governments (49 CFR Part 18)
- FTA Master Agreement
- Best Practices Procurement Manual
- November 2009 FTA/CDOT Procurement Handbook
- RFTA’s Governing Policy Manual adopted by its Board of Directors
- Pitkin County, Colorado Procurement Manual
- State of Colorado Procurement Rules dated August 1, 2005

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Singular-Plural and Gender Rules. In this manual, unless the context requires otherwise:

- (a) words in the singular number include the plural, and those in the plural include the singular; and
- (b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

This Manual is broken up into four sections.

- The first section is an overview of the process and answer basic questions that grantees may have about the procurement process.
- The second section includes more detailed information on the procurement process and ethics.
- The third section addresses components all grantees should include in their procurements, regardless of the dollar amount.
- The last section is the Appendices, which includes a Glossary of Terms.

Contacts:

Questions and comments about the application and implementation of this Manual and specific contract(s) shall be directed to:

RFTA Procurement Department
2307 Wulfsohn Road
Glenwood Springs, Colorado 81601
970-384-4974
procurement@rfta.com

Revisions:

Only the [Chief Executive Officer \(CEO\)](#), as described in [Section 2.1.2 below](#), may authorize revisions to this Manual and only the Procurement Manager have the authority to publish the approved revisions.

SECTION 1

1.1 OVERVIEW

This section describes when this Manual does and does not need to be utilized and provides fundamental guidance about its application.

1.1.2 WHAT DOES THIS MANUAL APPLY TO:

This Manual applies to:

1. All Third-Party Contracts solicited by RFTA on or after the Effective Date of this Manual, regardless of whether RFTA is paying or receiving funds;
2. Every expenditure of public funds by RFTA, irrespective of the source of such funds on or after the Effective Date of this Manual [set forth in Section 1.1.6 below](#);

3. The acquisition/disposal of any RFTA property, including rights in real estate such as leases, and permits on or after the Effective Date of this Manual; and
4. The right to use RFTA property for commercial purposes on or after the Effective Date of this Manual.

Comment [MSOffice1]: What about acquisition of property?

1.1.3 WHAT DOES THIS MANUAL NOT APPLY TO:

This Manual does not apply to:

1. Grant applications and awards;
2. Intergovernmental agreements;
3. Service Contracts pursuant to which RFTA provides transit services to any other entity; or
4. Interests in real estate for a period of one year or less provided that:
 - i. such term is not set in order to evade the procurement requirements of this Manual, and
 - ii. the Responsible Director provides a prior written determination that the acquisition is in RFTA's best interest.

1.1.4 GOOD FAITH:

This Manual requires that all parties involved in the solicitation, negotiation, performance or administration of RFTA contracts act in good faith.

1.1.5 SEVERABILITY:

If any provision of this Manual or its application to any person or circumstances is found to be invalid, outdated, or inapplicable by RFTA's CEO, Procurement Manager, Legal Counsel or by a Court of Law, such invalidity or applicability shall be noted in writing and shall not affect any other provision of this Manual that can be given effect without the invalid or inapplicable provision.

1.1.6 EFFECTIVE DATE:

This Manual is effective as of January 1, 2010.

1.1.7 PUBLIC ACCESS:

Procurement information shall be a public record to the extent provided by law and shall be available to the public as provided by law.

SECTION 2

2.1 WHAT IS RFTA'S ROLE IN THE PROCUREMENT PROCESS:

2.1.1 RFTA BOARD OF DIRECTORS

RFTA's Board of Directors serves as the Procurement Appeals Board. The RFTA Board of Directors shall not exercise any authority over the award or administration of any specific contract. As provided by C.R.S. § 43-4-604, the Board has the power to: (1) approve final roadway alignments; (2) ratify acquisition of land by negotiated sale; (3) institute eminent domain actions (which may be at a public hearing or in executive session); initiate or continual legal action except traffic or toll violations, and (4) establish fee policies.

Per the Board's Governing Policies (Board Policies), Policy 4.0, the RFTA Board of Directors is required to ensure that RFTA achieves appropriate results at an appropriate cost and avoids unacceptable actions and situations.

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2.1.2 CHIEF EXECUTIVE OFFICER (CEO)

RFTA's CEO is responsible for determining RFTA's procurement policies, approving all purchases over \$50,000, protecting RFTA's assets, resolving disputes from and challenges to RFTA's Procurement practices and signing all contracts under \$100,000 or otherwise approved by the Board of Directors. As a result, his participation in the Procurement process needs to take into consideration his varied roles and demonstrate the measures taken to avoid any conflict of interest or appearance thereof.

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It is the CEO's responsibility to:

1. Promulgate all policies concerning the procurement, management, control, and disposal of all goods, services and construction projects undertaken by RFTA. This responsibility is consistent with the Board of Directors' Governing Policy Manual (2007), and in particular Board Policies 2.4, 2.5, 2.6, 2.7, 2.8, 2.9 and 3.3.
2. Consider and decide matters of policy within the provisions of this Manual including those referred by Department Heads.
3. Authorize all expenditures over \$50,000, as stated in the Board Policy 2.3.
4. Sign all contracts in amounts over \$50,000 up to and including \$99,999 and any other contracts that are identified in an approved budget or otherwise authorized by the Board of Directors.
5. Recognize that he is prohibited from exercising any authority over the award or administration of a contract unless prior to solicitation he designates in writing that he will be doing so and identifies will be responsible for that role.

6. Shall promulgate regulations governing:
 - a. the management of property during its entire life cycle;
 - b. the sale, lease, or disposal of surplus property by public auction; competitive sealed proposals, or other appropriate method designated by regulation;
 - c. the transfer of property;
 - d. the donation of property to non-profit or other governmental organizations for public benefit as approved by the RFTA Board.

2.1.3 LEGAL COUNSEL

As of January 1, 2010, RFTA will require approval from RFTA's Legal Counsel of all procurement and contracting templates, final bid packages, and contract terms before any contract over \$50,000 up to and including \$99,999 is signed.

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2.1.4 DEPARTMENT HEADS

As of 2010, RFTA is organized into departments that are managed by one or more directors who report directly to RFTA's Chief Executive Officer (CEO). Each department director, referred to in this Manual as the "Department Head", is responsible for ensuring that RFTA's "program" needs are met and thus for the goods and services purchased by on behalf of the department.

It is therefore the Department Head's responsibility to:

1. Follow the requirements for micro-purchases for expenditures of \$3,000 or less as set forth in Section 2.10.1 below.
2. Commence the Procurement process for all expenditures over \$3,000 by submitting a written summary of the goods or services required to the Procurement Manager. This written summary shall include the following mandatory information.
 - a. The Technical Specifications or Scope of Work for all goods, supplies, services, construction projects, property, and/or leases required by the department.
 - b. An Independent Cost Estimate for the expenditure.
 - c. The source of funding (federal grant, state grant, or existing fund) and whether the purchase is reflected in the current budget or has been approved through other appropriate means.
 - d. All appropriate signatures approving the purchase.
3. Sell, trade, or otherwise dispose of surplus supplies belonging to RFTA by notifying the Procurement Manager in writing of the surplus and obtaining

guidance and support in planning, completing and documenting the sale, trade or disposal.

4. Coordinate with the Procurement Manager to:
 - a. Provide additional information as needed for the purchase or sale
 - b. Determine source selection methodology and criteria
 - c. Determine contract type
 - d. Determine appropriate publication sources
 - e. Select successful bidder
 - f. Negotiate terms of final contract

5. Sign all contracts up to ~~\$50,000~~ and obtain the signature of the CEO on all contracts over that amount.

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6. Conclude the procurement of goods or services exceeding \$3,000 or the disposal of assets by preparing a written summary of the selection and award process, an example of which is reflected in Template 1.

2.1.5 PROCUREMENT DEPARTMENT

RFTA's Procurement Department Manager is responsible for ensuring that the process of all RFTA's procurement activity is followed. Plans, organizes, directs, and controls activities related to the procurement process, documentation, and retention.

It is therefore the Procurement Manager's responsibility to:

1. Ensure that RFTA's solicitation and contract templates remain up to date and properly reflect all applicable laws and regulations and to submit any proposed changes to any template to Legal Counsel for review prior to adoption.
2. Facilitate the Procurement process of all expenditures commenced upon receipt of the written summary submitted by any Department Head by:
 - a. Follow the established protocols and flowcharts that will ensure prompt response to the Department Head with the following information:
 - i. Requirement of cost estimate, budget review, and scope of work for the project;
 - ii. A timeline of events through contract award;
 - iii. Publication of advertisement;
 - iv. The recommended Method of Source Selection;
 - v. The recommended Contract Type;
 - vi. Selection Committee process;
 - vii. Ensures that the applicable requirements are properly followed;
 - viii. Finalizing the procurement documentation process for the final review of the RFTA attorney if applicable.

- b. Ensure that the applicable requirements set forth in Section 3 of this Manual are properly followed.
3. Facilitate the sale, trade, or other disposal of surplus supplies belonging to the RFTA when notified in writing by a Department Head by preparing the appropriate documentation, coordinating appropriate publication and solicitation.
4. Establish and maintain a system for ensuring complete and proper documentation of the history of each procurement.
5. Maintain signed acknowledgements of RFTA's Code of Ethics and Standards of Conduct (Template 4) by all RFTA Department Heads, Managers, CEO, Board of Directors and anyone else who may have authority or apparent authority to make expenditures on RFTA's behalf.
6. Ensure that any procurement approval required from the FTA, CDOT, or other grant provider is timely and properly obtained.
7. Retain and dispose of all procurement records in accordance with record retention guidelines and schedules approved by the law. All retained records shall be made available for audit upon request.
8. If for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the RFTA Attorney.

2.1.6 FINANCE DEPARTMENT

- 1. Contents of Record.** The Finance Department shall maintain a record listing all contracts made under Section 2.10.5 (Sole Source Procurement) or Section 2.10.9 (Emergency Procurements) for a minimum of three years. The record shall contain:
 - a. each contractor's name
 - b. the amount and type of each contract; and
 - c. a listing of the supplies, services, or construction procured under each contract.
- 2. Submission to the RFTA Board.** A copy of such record shall be submitted to the RFTA Board on an annual basis. The record shall be available for public inspection.

2.2 ETHICS IN PUBLIC CONTRACTING

2.2.1 Statement of Policy- Public employment is a public trust. It is the policy of the RFTA to promote and balance the objective of protecting government integrity and the

objective of facilitating the recruitment and retention of personnel needed by the RFTA. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees and RFTA Board members must discharge their duties impartially so as to assure fair, competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the RFTA procurement organization. To achieve the purpose of this Article, it is essential that those doing business with the RFTA also observe the ethical standards prescribed herein.

2.2.2 General Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the Employee's duties is a breach of a public trust. In order to fulfill this general prescribed standard, Employees must also meet the specific standards set forth in: Subsection 2.2.4 (Employee Conflict of Interest); Section 2.3 (Employee Disclosure Requirements); Subsection 2.3.4 and 2.3.5 (Gratuities and Kickbacks); Section 2.4 (Prohibition Against Contingent Fees); Section 2.5 (Restrictions on Employment of Present and Former Employees); and Section 2.6 (Use of Confidential Information).

2.2.3 General Ethical Standards for Non-employees. Any effort to influence any public Employee to breach the standards of ethical conduct set forth in this Section and Section 2.3 through Section 2.9 of this Manual is also a breach of ethical standards.

2.2.4 Employee Conflict of Interest. It shall be a breach of ethical standards for any Employee to participate directly or indirectly in procurement when the employee knows that:

1. The Employee or any member of the Employee's immediate family has a financial interest pertaining to the procurement;
2. A business or organization in which the Employee, or any member of the Employee's immediate family, has a financial interest pertaining to the procurement; or
3. Any other person, business, or organization with whom the Employee or any member of the Employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
4. Financial Interest in a Blind Trust. Where an Employee or any member of the Employee's immediate family holds a financial interest in a blind trust, the Employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the RFTA Attorney.

5. Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon the discovery of an actual or potential conflict of interest, an Employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The Employee may, at the same time, apply to the RFTA Board in accordance with Subsection 3.19.5(1) for an advisory opinion as to what further participation, if any, the Employee may have in the transaction.

2.3 **EMPLOYEE DISCLOSURE REQUIREMENTS**

2.3.1 Disclosure of Benefit Received from Contract. Any Employee who has, or obtains, any benefit from, any RFTA contract with a business in which the Employee or member of an Employee's immediate family has a financial interest shall report such benefit to the RFTA Attorney and Procurement Manager; provided, however, this Section shall not apply to a contract with a business where the Employee's interest in the business has been placed in a disclosed blind trust.

2.3.2 Failure to Disclose Benefit Received. Any Employee who knows or should have known of such benefit, and fails to report such benefit to the RFTA Attorney and Procurement Manager, is in breach of the ethical standards of this Section.

2.3.3 Notice. Notice of this requirement shall be provided in the Personnel Policy and Procedures Manual.

2.3.4 Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any Employee or former Employee, or for any Employee or former Employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore

2.3.5 Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

2.3.6 Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

2.4 **PROHIBITION AGAINST CONTINGENT FEES**

2.4.1 Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a RFTA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of a bona fide employee or bona fide established commercial selling agencies for the purpose of securing business.

2.4.2 Representation of Contractor. Every person, before being awarded a RFTA contract, shall represent in writing, that such person has not retained anyone in violation of Subsection 2.4.1 of this Section. Failure to do so constitutes a breach of ethical standards.

2.4.3 Contract Clause. The representation prescribed in Subsection 2.4.2 of this Section shall be conspicuously set forth in every contract and solicitation therefore.

2.5 **RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES**

2.5.1 Contemporaneous Employment Prohibited. Except as may be permitted by regulations or rulings of the RFTA Board, it shall be a breach of ethical standards for any Employee who is participating directly or indirectly in the procurement process to become or be, while such an Employee, the Employee of any person contracting with the governmental body by whom the Employee is employed.

2.5.2 Restrictions on Former Employees in Matters Connected with Their Former Duties.

1. **Six Months Representation Restriction Regarding Matters in Which a Former Employee Was Directly Involved.** It shall be a breach of ethical standards for any former employee, within six months after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the RFTA, in connection with any:

- a. judicial or other proceeding, application, request for a ruling, or other determination;
- b. contract;
- c. claim; or
- d. charge or controversy, in matters in the former employee was directly involved.

2.5.3 Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an Employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the RFTA, in connection with any:

1. judicial or other proceeding, application, request for a ruling, or other determination;
2. contract;
3. claim; or
4. charge or controversy, in which the Employee or a member of the employee's immediate family either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise under the provisions of this Manual, or which is the subject of the Employee's official responsibility under the provisions of this Manual, where the RFTA is a party or has direct or substantial interest.

2.6 USE OF CONFIDENTIAL INFORMATION

2.6.1 It shall be a breach of ethical standards for any Employee or former Employee, or RFTA Board member knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of another person.

2.7 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST EMPLOYEES WHO BREACH ETHICAL STANDARDS

2.7.1 Existing Remedies Not Impaired. Civil and administrative remedies against employees, which are in existence on the effective date of this Manual, shall not be impaired.

2.7.2 Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, the RFTA Board may impose any one or more of the following:

1. oral or written warnings or reprimands;
2. suspension with or without pay for a specified period or time; and
3. termination of employment.

2.7.3 Right to Recover from Employee Value Received in Breach of Ethical Standards. The value of anything received by an employee in breach of the ethical standards of this Article or regulations promulgated hereunder shall be recoverable by the RFTA as provided in Section 2.9 (Recovery of Value Transferred or Received in Breach of Ethical Standards).

2.7.4 Due Process. All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a

hearing shall be provided prior to imposition of any suspension or termination of employment.

2.8 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST NON-EMPLOYEES WHO BREACH ETHICAL STANDARDS

2.8.1 Existing Remedies Not Impaired. Civil and administrative remedies against non-employees, which are in existence on the effective date of this Manual, shall not be impaired.

2.8.2 Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, the RFTA Board may impose any one or more of the following:

1. written warnings or reprimands;
2. termination of transactions; or
3. debarment or suspension from being a contractor or subcontractor under RFTA contracts.

2.8.3 Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards. The value of anything transferred in a breach of ethical standards of this Article or regulations promulgated hereunder by a non-employee shall be recoverable by the RFTA as provided in Section 2.9 (Recovery of Value Transferred or Received in Breach of Ethical Standards).

2.8.4 Right of the RFTA to Debar or Suspend. Debarment or suspension may be imposed in accordance with the procedures set forth in Section 3.15 (Authority to Debar or Suspend) for breach of the ethical standards of this Article, provided that such action may not be taken without the concurrence of the RFTA Attorney.

2.8.5 Due Process. All procedures under this Section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a RFTA contract.

2.9 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

2.9.1 General Provisions. The value of anything transferred or received in breach of the ethical standards of this Article or regulations promulgated hereunder by an Employee or a non-Employee may be recovered from both the Employee and non-Employee.

2.9.2 Recovery of Kickbacks by the RFTA. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the RFTA and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from the other offending parties.

2.10 WHEN MUST THE PROCUREMENT PROCESS BE USED

When procuring goods and services with federal, state or local funds, it is expected that RFTA follows all federal, state and local procurement regulations. It is important to note that when state or local regulations are more restrictive than the federal regulations, or if the regulations should differ, the agency must follow the regulation that is most restrictive. Below is a summary of the procurement requirements for RFTA purchases based on state and federal regulations for the purchase of goods and services. *Note: some requirements here may be more stringent than FTA based on the State of Colorado's procurement rules.*

2.10.1 Micro-Purchases - \$3,000 or less. Purchases below \$3,000 may be made without obtaining competitive quotations and are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. Documentation must show that the price is fair and reasonable and how this determination was derived.

Micro purchases can be established using catalogue pricing. Price included in a catalogue, price list, schedule, or other form that:

- (a) is regularly maintained by a manufacturer or contractor;
- (b) is either published or otherwise available for inspection by customers; and
- (c) states prices at which sales are currently or were last made to a significant number of any category of buyers constituting the general buying public for the supplies or services involved.

Note: the Davis-Bacon Act, a federal law that requires federally funded construction projects pay workers no less than the local prevailing wages and benefits, applies to construction contracts of \$2,500 or more.

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2.10.2 Small Purchases - \$3,001 - \$99,999. Small purchase procedures call for written price or rate quotations from an adequate number of qualified sources (at least three). Definition of qualified sources includes soliciting bids from those with proper experience and skills, proper credentials, etc. The solicitations must be written and adequate documentation must be maintained to explain how the determination was derived. Many times, a Request for Quotes (RFQ) document is created by the procuring agency to solicit the proper written price or rate quotations.

2.10.3 Large Purchases - \$100,000 or more. Formal sealed bids or competitive proposals are generally required. Procurement files should include legal notices,

solicitation documents, specifications, evaluation documents, contracts, correspondence and the Procurement Manager's notes.

2.10.4 Revenue Contracts Involving FTA-Funded Facilities or Assets. These contracts must be awarded on a competitive basis. Income derived from such contracts must be used to offset program costs.

2.10.5 Sole Source - Procurement by Noncompetitive Proposals. Sole source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is also considered sole source procurement. All sole source procurements must comply with the following:

1. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - a. The item is available only from a single source;
 - b. The public demand or emergency for the item will not permit a delay resulting from competitive solicitation;
2. FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
3. After solicitation of a number of sources, competition is determined inadequate; or
4. The item is an associated capital maintenance item is being procured directly from the original manufacturer or supplier of the item to be replaced. You must first certify in writing to FTA:
 - a. that such manufacturer or supplier is the only source for such item;
 - b. that the price of such item is no higher than the price paid for such item by other customers.
5. A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

2.10.6 Architectural and Engineering Services (A&E). Grantees shall use qualifications-based competitive proposal procedures (Brooks Act) for this type of

contract. The services subject to this requirement are: program management; construction management; feasibility studies; preliminary engineering; design, architectural, engineering; surveying; mapping; and related services. Qualifications-based competitive proposal procedures require that:

1. An offeror's qualifications be evaluated;
2. Price be excluded as an evaluation factor;
3. Negotiations be conducted with only the most qualified offeror; and
4. Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

2.10.7 Design-Build. Grantees must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act when the preponderance of work is considered to be for architectural and engineering (A&E) services. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of work to be performed is not of an A&E nature.

2.10.8 Design-Bid-Build Services. Contracts for design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this [Manual](#) relates to the method of procurement used and all other applicable federal requirements.

2.10.9 Emergency Procurements. Notwithstanding any other provision of this Manual, the Procurement Manager may make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

2.10.10 Lease Versus Purchase. To obtain the best value, the recipient should review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. The recipient may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before the recipient may lease an asset, FTA regulations, "Capital Leases," 49 CFR Part 639, Subpart C, require the recipient to make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.

Comment [MSOffice7]: There is a state statute for CDOT – design-build. 43-1-1401, et. Seq. It is a two step process that looks at the qualifications first and then best value of designer and contractor. Not prohibited by FTA or FHWA, and design-build does not apply to just A & E services. I don't see where Pitkin County Rules allow design-build but I also do not see where they prohibit it. Has that been discussed?

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SECTION 3

3.1 METHODS OF PROCUREMENT Using the following guidance, the Department Head, Procurement Manager may determine method of procurement which best fits the current need:

3.1.1 Invitation for Bid (IFB) This is the most common method used in the public sector to obtain specific goods, such as vehicles and equipment. This method is typically used when complete specifications or purchase descriptions are available or could be easily developed. The IFB process must involve two or more bidders, and the award is given to the lowest responsive and responsible bidder. The specifications for goods and/or services to be procured under an IFB are not subject to negotiation. Bids that deviate from the specifications are deemed unresponsive and thus rejected. Typically, the IFB includes two parts, technical and financial. Bidder responses to each part are evaluated separately. Bids that deviate from the specifications would not be rejected if the deviations have been accepted through an approved equal process in your procurement.

3.1.2 Request for Proposal (RFP) The RFP is a competitive procurement method used when a general, rather than specific, description of goods and/or services is used. This method allows for the procurement of goods and/or services without detailed design specifications. The primary consideration in awarding a contract need not be price. Equitable communication with proposers may be used (such as interviews, presentations, and negotiations) to reach an optimal contractual agreement, in which both price and quality are used in the contractor selection. In this way, the technical expertise and the experience of the proposer can be evaluated. When using an RFP method, bidders typically submit a Statement of Work and separate Cost Proposal.

3.1.3 Request for Qualifications (RFQ)/Multi-Step Sealed Proposals: A Request for Qualifications, also known as a Multi-Step Sealed Proposals, is a variation of the RFP method and always requires a two part solicitation: first, a solicitation of information on the background and experience of the proposer; second, an RFP.

3.1.4 Request for Quotes (RFQ): FTA procurement requirements for small purchases from \$3,000 to \$99,999 are limited, mainly requiring competition in the form of quotations.

1. An RFQ is a solicitation document that seeks documented quotations and can be used for professional services, including both contracted transit services and consulting services, or goods with the title of "Request for Documents Quotes". The basic format for a RFQ provides a solicitation schedule, evaluation criteria, terms of the procurement contract, including applicable federal required clauses, qualifications and/or specifications, and any signature pages required. The RFQ is distributed to at least three (3) potential vendors or contractors to garner competition.

3.1.5 Piggybacking “Piggybacking” is the post award practice of allowing someone who was not included in the original procurement to purchase the same supplies or equipment through the original contract. Piggybacking is only allowed under certain circumstances, including the following:

1. The original solicitation must include an assignability clause that provides for the assignment of all or part of the deliverables as originally advertised and competed.
2. The original solicitation and contract must contain both a minimum and maximum quantity.
3. No additional quantities can be added.
4. Units must be originally specified with no “cardinal changes”.

3.2 GENERAL PROCUREMENT REQUIREMENTS

All purchases must comply with general procurement standards applicable to Third Party Procurements as described in FTA Circular 4220.1F, Third Party Contracting requirements. The Procurement Manager will need to ensure that all FTA requirements are met. In addition to ensuring adequate and open competition for federally funded purchases of goods and services, grantees must ensure bidder/proposer compliance with applicable federally required clauses, requirements and regulations, including:

- Americans with Disabilities Act (ADA)
- Energy Conservation Requirements
- Federal Changes
- No Government Obligation to Third Parties
- Program Fraud and False or Fraudulent Statements or Related Acts
- Termination Clauses (Applicable to all Contracts in excess of \$50,000)
- Civil Rights Requirements
- Disadvantaged Business Enterprise (DBE) Requirements
- Buy America Requirements
- Seismic Safety Requirements (Applicable to new buildings or additions to existing buildings)
- Clean Water Requirements (Applicable to contracts and subcontracts that exceed \$100,000)
- Access to Records and Reports
- Clean Air Requirements (Applicable to all contracts exceeding \$100,000)
- Recycled Products (Applicable when contractor has procured \$10,000 or more of recycled items designated by EPA, using Federal funds)
- Drug and Alcohol Testing
- Bus Testing
- Federal Motor Vehicle Safety Standards

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- Davis-Bacon and Copeland Anti-Kickback Acts
- Contract Work Hours and Safety Standards Act (applicable to contracts greater than \$100,000)
- Debarment and Suspension (applicable to all contracts in excess of \$25,000)
- Right of Protest
- Breaches and Dispute Resolution (applicable to all contracts in excess of \$99,999)
- Assignability
- Energy Conservation
- Conformance with National ITS Architecture (applicable to ITS contracts)
- Lobbying
- Bonding Requirements
- Lease Versus Purchase
- Metric Usage
- Environmental and Energy Efficiency Preferences

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Federal Cost Principles - The Common Grant Rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient. As a government entity RFTA's cost principles will comply with "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225

Evaluation of Options - To be eligible for Federal funding, options must be evaluated as part of the initial price evaluation of offers. If options not evaluated as part of the initial price evaluation the offer shall be treated as sole source procurements.

Exercise of Options

The exercising of an option must adhere to the terms and conditions of the option stated in the contract. Prior to exercising any option, a written determination must be made that the option price is better than prices available in the market or that the option was a more advantageous offer at the time the option was exercised.

Prohibitions – The Common Grant Rules prohibit solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325(h) from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be restrictive of competition include, but are not limited to, the following:

- (a) Excessive Qualifications. Imposing unreasonable business requirements for bidders or offerors.
- (b) Unnecessary Experience. Imposing unnecessary experience requirements for bidders and offerors.
- (c) Improper Prequalification. Using prequalification procedures that conflict with the prequalification standards described in subsection 1.c of this Chapter.

- (d) Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
- (e) Excessive Bonding. To encourage greater contractor participation in FTA assisted projects, FTA does not require the recipient to impose bonding requirements on its third party contractors other than construction bonding specified by the Common Grant Rules and this circular for construction. FTA discourages unnecessary bonding because it increases the cost of the contract and restricts competition, particularly by Disadvantaged Business Enterprises. Bond companies exercise their discretion and assure their profits primarily by declining to undertake excessive risks. Consequently many bidders have limited “bonding capacity.” Unnecessary performance bonding requirements reduce a prospective bidder’s or offeror’s capability to bid or offer a proposal on bonded work. Small businesses with short histories may have particular difficulty obtaining bonds as may be specified.
- (f) Brand Name Only. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- (g) In-State or Local Geographic Restrictions. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers. Exceptions expressly mandated or encouraged by Federal law include the following:
1. Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
 2. Licensing. A State may enforce its licensing requirements, provided that those State requirements do not conflict with Federal law.
 3. Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.
- (h) Organizational Conflicts of Interest. Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules
- (j) Arbitrary Action. Taking any arbitrary action in the procurement process.
- (k) Tag-ons. A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons.”

Payment Provisions – When using FTA assistance in a contract, RFTA will adhere to the following payment provisions:

(a) Advance Payments. Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic preaward authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other preaward authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

1. Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.

2. Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.

a. Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.

b. Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

In summary, if there are sound business reasons justifying the advance payment and adequate security for the payment, FTA will generally concur in a written request for an exception.

(b) Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments

provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

1. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.
2. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
3. Percentage of Completion Method. The Common Grant Rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

3.2.1 GRANTEE PROCUREMENT PROCESS CHECKLIST

Template #3 is a checklist of basic steps involved in the procurement process. Timeline information is also included to help your agency understand when it is appropriate to begin various steps of the procurement process. Not all of the items in the checklist are required for every procurement, however, the checklist can serve as a useful framework for a grantee's procurement process or you can refer to checklist(s) and flow chart(s) made as an attachment to the Terms and Conditions' document.

3.2.2 CANCELLATION OF REQUESTS FOR PROPOSALS

A Request for Proposal or other solicitation may be cancelled, or any or all proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the RFTA. The reasons therefore shall be made a part of the contract file.

3.3 METHODS OF SOURCE SELECTION

Comment [MSOffice8]: Do you not want to include Design-Build?)

3.3.1 Unless otherwise authorized by law, all RFTA contracts shall be awarded by competitive sealed proposals, pursuant to Section 3.3.2. (Competitive Sealed Proposal), except as provided in:

1. Section 3.3.3 (Multi-Step Sealed Proposals);

2. Section 3.3.4 (Small Purchases);
3. Section 3.3.5 (Sole Source Procurement);
4. Section 3.3.6 (Emergency Procurements);
5. Section 3.3.7 (State Bid).
6. Section 3.3.8 (Design-Build)

3.3.2 COMPETITIVE SEALED PROPOSALS Conditions for Use. Contracts shall be awarded by competitive sealed proposals except as otherwise provided in Section 3.3 (Method of Source Selection.)

1. **Requests for Proposals.** Proposals shall be solicited through a Request for Proposals. The Request for Proposals shall seek to promote overall economy and quality for the purpose intended and encourages competition in satisfying the RFTA's needs, and it shall not be unduly restrictive. The solicitation shall include a proposed contract for the proposal received. A bid bond may be required if it is determined to be in the best interest of the RFTA.
2. **Public Notice.** Public notice of the Request for Proposals shall be given at least 14 calendar days prior to the date set forth therein of the opening of the proposals.
3. **Receipt of Proposals.** Proposals shall be opened so as to avoid disclosure of contents to competing proposers during the process of negotiation. A Register of Proposals shall be prepared and be open for public inspection after contract award.
4. **Selection Committee.** The Selection Committee will conduct an independent review of each submission. After all documents have been reviewed and scored independently, the committee will meet and make a final selection. The Selection Committee may elect to hold discussions or ask for answers to specific questions. Any discussion is to include, and be held strictly between the Selection Committee and proposer. Any clarifications to the proposal must be submitted to the Selection Committee in writing. The Selection Committee may elect to have those proposers whose proposals are deemed by the Selection Committee to be most responsive to the evaluation factors give oral presentations.
5. **Evaluation Factors.** The Request for Proposals shall state the evaluation factors and their relative importance. Although price may be a major consideration, RFTA doesn't evaluate the proposal on price alone.
6. **Discussion with Responsible Proposers and Revisions to Proposals.** As provided in the Request for Proposals discussions may be conducted with

responsible proposers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers.

7. Award. Award shall be made to the responsible proposer whose proposal is determined in writing to be the most advantageous to the RFTA taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

3.3.3 MULTI-STEP SEALED PROPOSALS Conditions for Use. When, with the approval in advance by the RFTA CEO or its designee, the Procurement Manager determine that the strict application of the requirement for Competitive Sealed Proposals is either not practical or not advantageous to the RFTA, a contract may be entered into by Multi-Step Sealed Proposal. Multi-step Sealed Proposal can be used when one or more elements of the project can be effectively combined (i.e. RFQ/RFP for landfill services).

1. Request for Multi-Step Sealed Proposals. Proposals shall be solicited through a Request for Multi-Step Sealed Proposals. The request shall seek to promote overall workmanship and quality for the purpose intended and encourage competition in satisfying the RFTA's needs, and it may not be unduly restrictive. The solicitation shall include a proposed contract for the proposal received.

2. Public Notice. Adequate public notice of the Request for Multi-Step Sealed Proposals shall be given in the same manner as provided in Section 3.3.2 (2) (Competitive Sealed Proposals, Public Notice).

3. Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing officers ensuring the process of negotiation. A register of Proposers shall be prepared by the Procurement Manager, and shall be open for public inspection after contract award.

4. Selection Committee. The Selection Committee will conduct an independent review of each submission. After all documents have been reviewed and scored independently, the committee will meet and make a final selection. The Selection Committee may elect to hold discussions or ask for answers to specific questions. Any discussion is to include, and be held strictly between the Selection Committee and proposer. Any clarifications to the proposal must be submitted to the Selection Committee in writing. The Selection Committee may elect to have those proposers whose proposals are deemed by the Selection Committee to be most responsive to the evaluation factors give oral presentations.

5. Evaluation Factors. The Request for Multi-Step Sealed Proposals shall state the relative importance of the evaluation factors. The initial stage(s) of the selection shall focus on quality or contractor responsibility issues, but not to the exclusion of cost or revenue as a consideration and the final stage(s) of the selection shall focus on cost or revenue issues and may exclude further consideration of quality or responsibility.

6. Discussion with Responsible Proposers and Revisions to Proposals. As provided in the Request for Multi-Step Sealed Proposals discussions may be conducted with responsible proposers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers.

7. Best and final offer - In multi-step proposing. It may be determined to be in the RFTA's best interest to select a proposal that best meets the RFTA's requirements and negotiate that proposal so that the project may be completed under the constraints facing the RFTA for that project.

8. Award. Award shall be made to the responsible proposer whose proposal is determined in writing to be the most advantageous to the RFTA taking into consideration price or revenue generated and other evaluation criteria set forth in the Request for Multi-Step Sealed Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

3.3.4 SMALL PURCHASES. Any procurement not exceeding \$99,999 may be made in accordance with small purchase procedures provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section. Department Heads shall use these procedures to meet purposes and policies of the Procurement Manual provided in Section 2.10 (2.10.2)

1. All purchases between \$3,000 and \$99,999 shall require informal proposals documented by the department head. The department head shall retain a written document of the proposals received in the procurement file.

2. Projects between \$3,000 and ~~\$50,000~~ will only require the approval of the department head;

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3. Projects between \$50,001 and \$99,999 will require the approval of the department head and RFTA's CEO or its designee.

4. Written documentation shall include proposed scope of solicitation, price proposed, conditions for that proposed price, and time line for completion. The department head should solicit at least three proposals.

5. All purchases under \$3,000 may require informal bidding by the department head as they feel is appropriate. Written documentation of the bid process undertaken is desirable, but not required.

3.3.5 SOLE SOURCE PROCUREMENT

A contract may be awarded for a property, service, or construction item without competition when the Procurement Manager and the RFTA CEO or its designee determines in writing that there is only one acceptable source for the required property, service, or construction item.

3.3.6 EMERGENCY PROCUREMENTS

Notwithstanding any other provision of this Manual, the Procurement Manager may make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

3.3.7 STATE BID

A contract may be awarded for a property, service, or construction item on the terms and to the contractors that have been selected under the State of Colorado's or other governmental jurisdictions with competitive procurement process with department head and RFTA CEO or its designee's approval. The other jurisdiction's process must maintain the spirit of the RFTA's procurement standards in order for the proposal to be accepted by the RFTA. This process must be documented.

3.3.8 DESIGN-BUILD

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

3.4 TYPES OF CONTRACTS

Subject to the limitations of this Section, any type of contract, which will promote the best interests of the RFTA, may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such a contract is likely to be less costly to the RFTA

than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

The following contract types are restricted or prohibited:

(a) **Cost Plus a Percentage of Cost—Prohibited.** The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost and cost plus a percentage of construction cost methods of contracting.

(b) **Time and Materials—Restricted.** The Common Grant Rule for governmental recipients permits the use of time and material contracts only:

1. **When to Use.** After determining that no other contract type is suitable; and
2. **Firm Ceiling Price.** If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

3.4.1 MULTI-TERM CONTRACTS

1. Specified Period. Unless otherwise provided by law, a contract for property or services may be entered into for any period of time deemed to be in the best interests of the RFTA provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for the succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

2. Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:

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

3.4.2 Task Order Contracts - Task order contracts can be used when a vendor may be needed on an “as needed” basis. Performance of the work shall begin only when the Contractor has received a fully executed Task Order. These contracts may be for one year or may be a multi-term contract. These contracts have a “not to exceed” amount and a scope of work, but actual work is performed under a Task Order.

3.4.3 Five-Year Limitation – RFTA may not enter into a multi-year contract to buy rolling stock with an option that exceeds five (5) years to buy additional rolling stock or replacement parts, 49 U.S.C. Section 5325(e)(1). Options may not be exercised later than five (5) years after the date of its original contract.

Per FTA C 4220.1F, “FTA interprets this five-year period as covering the recipient’s “material requirements” for rolling stock and replacement needs from the first day when the contract becomes effective to its “material requirements” at the end of the fifth year. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that a recipient’s “material requirements” for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement parts than a recipient’s material requirements for a five-year period. The five-year rule does not mean the recipient must obtain delivery, acceptance, or even fabrication in five years. Instead it means only that FTA limits a contract to purchasing no more than the recipient’s material requirements for rolling stock or replacement parts for five years based on the effective date of the contract.” (FTA C 4220.1F, Ch. IV, Section 2. e(10))

3.5 CONTRACT CLAUSES AND THEIR ADMINISTRATION

3.5.1 Terms and Conditions. The RFTA Attorney shall promulgate regulations requiring the inclusion in RFTA contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

1. The unilateral right of the RFTA to order in writing:
 - a. changes in the work within the scope of the contract; and
 - b. changes in the time of performance of the contract that do not alter the scope of the contract work;
2. variations occurring between estimated quantities of work in a contract and actual quantities;
3. suspension of work ordered by the RFTA; and
4. site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions need not be included in a contract:
 - a. when the contract is negotiated;
 - b. when the contractor provides the site or design; or
 - c. then the parties have otherwise agreed with respect to the risk of differing site conditions.
5. insurance and indemnification requirements.

3.5.2 Price Adjustments

1. Adjustments in price pursuant to clauses promulgated under Subsection (1) of this section shall be computed in one or more of the following ways:

- a. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- b. by unit prices specified in the contract or subsequently agreed upon;
- c. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon; in such manner as the contracting parties may mutually agree; or
- d. in the absence of agreement by the parties, by a unilateral determination by the RFTA of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the RFTA and subject to the provisions of Section 3.13 (Legal and Contractual Remedies).

3.5.3 Additional Contract Clauses. The RFTA Attorney may promulgate regulations requiring the inclusion in RFTA contracts of clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate - The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.
2. Specified excuses for delay or nonperformance;
3. Termination of the contract for default; and
4. Termination of the contract in whole or part for the convenience of the RFTA.

3.5.4 Modification of Terms and Conditions. The Procurement Manager may vary the clauses promulgated by the RFTA Attorney under Section 3.5 and Subsection 3.5.3 of this Section with the approval of the RFTA Attorney and RFTA's designated Risk Manager for insurance related issues.

3.6 FISCAL RESPONSIBILITY

3.6.1 Every contract modification, change order, or contract price adjustment under a contract with the RFTA in excess of an amount established by the RFTA Board shall be subject to prior written certification by the Finance Department as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, the Procurement Manager shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefore, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration.

3.7 RIGHT TO INSPECT PLANT

3.7.1. The RFTA may at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded or to be awarded by the RFTA.

3.8 RIGHTS TO AUDIT RECORDS

3.8.1 Audit of Cost or Pricing Data. The RFTA may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books or records relate to such cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such costs or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

3.8.2 Contract Audit. The RFTA shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

3.9 RESPONSIBILITY AND RESPONSIVENESS OF PROPOSERS

3.9.1 Determination of Non-responsibility and Non-responsiveness The unreasonable failure of a proposer to promptly supply information in connection with an inquiry with respect to responsibility or responsiveness may be grounds for a written determination of non-responsibility or non-responsiveness with respect to such proposer.

3.9.2 Right of Nondisclosure. Information furnished and designated as

confidential by a proposer pursuant to this Section shall not be disclosed outside of the Selection Committee and Procurement Manager without prior written consent by the proposer.

3.9.3 Pre-qualification of Suppliers. Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

3.10 BID SECURITY

3.10.1 Requirement for Bid Security. Bid security may be required for any procurement at the discretion of the Procurement Manager. Bid security shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the RFTA Attorney.

3.10.2 Rejection of Proposals for Noncompliance with Bid Security Requirements. When the Request for Proposal requires security, noncompliance requires that the proposal be rejected unless, it is determined that the proposal fails to comply in a non-substantial manner with the security requirements.

3.10.3 Withdrawal of Proposals. After the proposals are opened, they shall be irrevocable for the period specified in the Request for Proposals. If a proposer is permitted to withdraw its proposal before award, no action shall be had against the proposer or the bid security.

3.11 CONTRACT PERFORMANCE AND PAYMENT BONDS

3.11.1 When Required - Amounts. When a construction contract is awarded in excess of an amount established by the RFTA CEO or its designee, or federal, state or local statutes, the following bonds or security shall be delivered to the RFTA and shall become binding on the parties upon the execution of the contract:

1. a performance bond satisfactory to the RFTA, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the RFTA, in an amount equal to 100% of the price specified in the contract; and
2. a payment bond satisfactory to the RFTA, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the RFTA, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

3.11.2 To Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the RFTA to require a performance bond or other security in

addition to those bonds, or in circumstances other than specified in Subsection 3.11.1 of this Section.

3.12 BOND FORMS AND COPIES

3.12.1 Bond Forms. The RFTA Attorney or its designee shall review the form of the bonds required by this Part.

3.12.2 Certified Copies of Bonds. Any person may request and obtain from the RFTA a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

3.12.3 Bond Location. All bonds shall be stored in a designated secured place.

Comment [MSOffice9]: Could also be stored in a safe deposit box?

3.13 LEGAL AND CONTRACTUAL REMEDIES

3.13.1 AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS

1. Right to Protest. Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract shall first try to resolve the grievance/protest with the Procurement Manager. If the grievance is not satisfied, the prospective proposer or contractor shall then protest to the RFTA CEO. The protest shall be submitted in writing within 5 days after such aggrieved person knows or should have known of the facts giving rise thereto.

2. Authority to Resolve Protests. The RFTA CEO shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved proposer or contractor, actual or prospective, concerning the solicitation or award of a contract.

3. Decision. If the protest is not resolved by mutual agreement, the RFTA CEO shall promptly issue a decision in writing. The decision shall:

- a. state the reason for the action taken; and
- b. inform the protestant of its right to administrative review as provided in this Article.

4. Notice of Decision. A copy of the decision under Subsection 3.13.1 (3) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

5. Finality of Decision. A decision under Subsection 3.13.1 (1) of this Section shall be final and conclusive, unless the protestant appeals administratively to the RFTA Board acting as the Procurement Appeals Board.

In all instances involving FTA funds the RFTA will disclose information regarding the protest to the FTA Region VIII office, and keep them informed about the status of the protest,

A protester must exhaust all administrative remedies with the RFTA before pursuing a protest with FTA.

3.14 AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES

3.14.1 Applicability. This section applies to controversies between the RFTA and a contractor and which arise under or by virtue of, a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

3.14.2 Authority. The RFTA CEO is authorized upon written request, prior to commencement of an action in a court or arbitration concerning the controversy, to settle and resolve a controversy described in Subsection 3.14.1 of this Section.

3.14.3 Decision. If such a controversy is not resolved by mutual agreement, the RFTA CEO shall promptly issue a decision in writing. The decision shall:

1. state the reason for the action taken; and
2. inform the contractor of its right to administrative review as provided in this Article.

3.14.4 Notice of Decision. A copy of the decision under Subsection 3.14.3 of this Section shall be mailed or otherwise furnished immediately to the contractor.

3.14.5 Finality of Decision. The decision under Subsection 3.14.3 of this Section shall be final and conclusive, unless the contractor appeals administratively to the RFTA Board acting as the Procurement Appeals Board.

3.14.6 Failure to Render Timely Decisions. If the RFTA CEO does not issue the written decision required under Subsection 3.14.4 of this section within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed with other remedies.

3.15 AUTHORITY TO DEBAR OR SUSPEND

3.15.1 Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the RFTA CEO, after consultation with the RFTA Attorney, shall have the authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The same officer, after consultation with the RFTA Attorney, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

3.15.2 Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

1. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a RFTA contractor;
3. conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. violation of contract provisions, as set forth below, of a character which is regarded by the RFTA CEO to be so serious as to justify debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
5. filing of false or misleading information as part of the procurement process;
6. filing or prosecution of protest or appeal that is groundless or frivolous;
7. collusion with other prospective competitors or any other anti-competitive act, omission or agreement that is contrary to the interest of the taxpayers;

8. any other cause the RFTA CEO determines to be so serious and compelling as to affect responsibility as a RFTA contractor, including but not limited to debarment by another government for any cause; and

9. for violation of the ethical standards set forth in Section 2.2 (Ethics in Public Contracting).

3.15.3 Decision. The RFTA CEO shall issue a written decision to debar or suspend. The decision shall:

1. state the reasons for the action taken; and
2. inform the debarred or suspended person involved of its right to administrative review as provided in this Article.

3.15.4 Notice of Decision. A copy of the decision under Subsection 3.15.3 of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

3.15.5 Finality of Decision. A decision under Subsection 3.15.3 of this section shall be final and conclusive, unless the debarred or suspended person appeals administratively to the RFTA Board acting as the Procurement Appeals Board.

3.16 SOLICITATION OF AWARD IN VIOLATION OF LAW

3.16.1 Applicability of this Part except in situation in which a temporary restraining order must be requested from a court, the provisions of this Part apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

3.16.2 Remedies Prior to an Award if prior to an award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

1. cancelled; or
2. revised to comply with the law.

3.16.3 Remedies after an Award if after an award it is determined that a solicitation or award of a contract is in violation of the law, then:

1. if the person awarded the contract has not acted fraudulently or in bad faith:
 - a. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of RFTA; or

- b. the contract may be terminated and the person awarded the contract, plus a reasonable profit, prior to the termination;
- 2. if the person awarded the contract has acted fraudulently or in bad faith:
 - a. the contract may be declared null and void; or
 - b. the contract may be ratified and affirmed if such action is in the best interests of the RFTA, without prejudice to the RFTA's rights to such damages as may be appropriate.

3.16.4 Interest on amounts ultimately determined to be due to a contractor or the RFTA shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

3.17 CREATION OF THE PROCUREMENT APPEALS BOARD

3.17.1 The RFTA Board of Directors shall act as the Procurement Appeals Board

3.17.2 Acting by one or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties and the RFTA CEO.

3.17.3 Jurisdiction Of The Procurement Appeals Board unless an action has been initiated previously in court for essentially the same cause of action, or unless within 15 days after the action is brought before the Procurement Appeals Board, written objection is made by either the aggrieved proposer, or contractor, prospective or actual, or the RFTA Attorney, the Board shall have jurisdiction to review and determine de novo:

- 1. any appeal by an aggrieved party from a determination by the RFTA CEO which is authorized by:
 - a. Section 3.13.1 (Authority to Resolve Protested Solicitations and Awards);
 - b. Section 3.15 (Authority to Debar or Suspend); and Section 3.14 (Authority to Resolve Contracts and Breach of Contract Controversies)

3.17.4 Appeal of Solicitations or Awards

- 1. **Scope.** this section applies to:
 - a. an appeal addressed to the Board of a decision under Subsection 3.13 (4) (Authority to Resolve Protested Solicitations and Awards, Decision).
- 2. **Time Limitations on Filing a Protest or an Appeal;**
 - a. For an appeal under Subsection (1)(a) of this section, the aggrieved person shall file an appeal within seven days of the receipt of a decision

under Subsection 3.13.1 (Authority to Resolve Protested Solicitations and Awards, Decision).

3.17.5 Decision. On any appeal under Subsection (1)(a) of this Section, the Board shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The proceedings shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

3.17.6 Finality of Decision. A determination of an issue of fact by the Board under Subsection 3.17.5 of this Section shall be final and conclusive.

3.18 SUSPENSION OR DEBARMENT PROCEEDINGS

3.18.1 Scope. This section applies to a review by the Procurement Appeals Board of a decision under Section 3.15 (Authority to Debar or Suspend.)

3.18.2 Time Limitation on Filing an Appeal. The aggrieved person shall file its appeal with the Board within 60 days of the receipt of a decision under Subsection 3.15.3 (Authority to Debar or Suspend, Decision).

3.18.3 Decision. The Board shall promptly decide whether, or the extent to which, the debarment or suspension was in accordance with the Constitution, statutes, regulations, and the best interests of the RFTA, and was fair. The proceedings shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

3.18.4 Finality of Decision. A determination of an issue of fact by the Board under Subsection 3.18.3 of this Section shall be final and conclusive.

3.19 CONTRACT AND BREACH OF CONTRACT CONTROVERSIES

3.19.1 Scope. This section applies to a review by the Procurement Appeals Board of a decision under Section 3.14 (Authority to Resolve Contract and Breach of Contract Controversies).

3.19.2 Time Limitation on Filing an Appeal. The aggrieved contractor shall file its appeal with the Board within 60 days of the receipt of the decision under Section 3.14 (Authority to Resolve Contract and Breach of Contract Controversies, Decision).

3.19.3 Decision. The Board shall promptly decide the contract or breach of contract controversy. The proceedings shall be de novo. Any prior determination by administrative officials shall not be final or conclusive.

3.19.4 Finality of Decision. A determination of an issue of fact by the Board under Subsection 3.19.3 of this Section shall be final and conclusive.

3.19.5 Appeal and Review of Procurement Appeals Board Decisions

1. Appeal. Any person receiving an adverse decision, the RFTA, or both may appeal from a decision by the Procurement Appeals Board to the courts under Colorado Rules of Civil Procedure Rule 106.

2. Authorization of Appeal by the RFTA. The RFTA shall make no such appeal unless recommended by the RFTA CEO, or the department head involved and approved by the RFTA Attorney.

3.20 DISCONTINUANCE OF CONTRACTOR'S APPEAL

3.20.1 After notice of an appeal to the Procurement Appeals Board has been filed with the RFTA CEO, a contractor may not discontinue such appeal without prejudice, except as authorized by the Board.

3.21 OPINIONS AND WAIVERS

3.21.1 Advisory Opinions. On written request of employees or contractors, the RFTA Attorney may render advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Compliance with requirements of a duly promulgated advisory opinion of the RFTA Attorney shall be deemed to constitute compliance with the ethical standards of this Article.

3.21.2 Waiver. On written request of an employee, the RFTA Board may grant an employee a written waiver from the application of Subsection 2.2.4 (Employee Conflict of Interest) and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the RFTA so require or when the ethical conflict is insubstantial or remote.

GLOSSARY OF TERMS

The words defined in this Section shall have the meanings set forth below whenever they appear in this Manual, unless:

- (a) The context in which they are used clearly requires a different meaning; or
 - (b) A different definition is prescribed for a particular Article or provision.
- (1) Business means any corporation, partnership, individual, sole proprietorship, Joint Stock Company, joint venture, LLP, LLC or any other private legal entity.
 - (2) Change Order means a written order signed by the Project Manager, directing the contractor to make changes which the changes clause of the contract authorizes the Project Manager to order without the consent of the contractor.
 - (3) Department Head or their Designee means any person elected or appointed to direct the operations of any Procurement agency of the RFTA.
 - (4) Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings, or real property.
 - (5) Contract means all types of RFTA agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.
 - (6) Contract Modification means any written alteration in specifications, delivery point, and rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
 - (7) Contractor means any person having a contract with a governmental body.
 - (8) Cost-reimbursement Contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this manual, and a fee, if any.
 - (9) Data means recorded information, regardless of form or characteristic.
 - (10) Designee means a duly authorized representative of a person holding a superior position.
 - (11) Employee means an individual drawing a salary from the governmental body, whether elected or not and any non-compensated individual performing a personal service for any governmental body, including but not limited to members of the RFTA Board, members of volunteer and/or advisory boards.

- (12) Excess Property means any property other than expendable property having a remaining useful life but which is no longer required by the Using Agency in possession of the property.
- (13) Expendable Property means all tangible property other than fixed assets.
- (14) Fixed Assets means all tangible property having an original acquisition cost of over \$5,000 per unit and a probable useful life of more than one year.
- (15) Governmental Body means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of this RFTA.
- (16) Grant
- (a) “Grant” means a cash payment of public funds made directly to a regional transportation activity enterprise by a governmental unit within the state, which cash payment is not required to be repaid.
 - (b) “Grant” does not include the following:
 - (i) Public funds paid or advanced to a regional transportation activity enterprise by a governmental unit in exchange for an agreement by a regional transportation activity enterprise to provide a regional transportation system or for the use of property included in or in connection with a regional transportation system;
 - (ii) Refunds made in the current or next fiscal year;
 - (iii) Gifts;
 - (iv) Any payments directly or indirectly from federal funds or earnings on federal funds;
 - (v) Collections for another government;
 - (vi) Pension contributions by employees and pension fund earnings;
 - (vii) Reserve transfers or expenditures;
 - (viii) Damage awards; or
 - (ix) Property sales.
- (17) Participant means any individual, or firm intending to submit a proposal in response to a formal solicitation by the RFTA.
- (18) Person means any business, individual, union, committee, club, other organization, or group of individuals.

- (19) Procurement means buying, Procurement, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any property, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (20) Procurement Manager means any person duly authorized to negotiate and to administer Requests for Proposals and contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.
- (21) Property means all RFTA property, including but not limited to equipment, materials, documents, water rights, insurance, supplies, and leases of real property, excluding land or permanent interest in land.
- (22) Procurement Agency means any governmental body, which is authorized by this Manual or its implementing regulations, or by way of delegation, to enter into contracts.
- (23) Property means, all supplies, including but not limited to equipment, materials, printing, and leases of real property, excluding land or permanent interest in land.
- (24) Purchase Description means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made part of, the solicitation.
- (25) Regulation means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements.
- (26) Request for Proposals means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (27) Responsible Proposer means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability, which will assure good faith performance.
- (28) Responsive Proposer means a person who has submitted a proposal which conforms in all material respects to the Request for Proposals.
- (29) Selection Committee a group of not less than two individuals designated to review proposals and recommend a selection from the participants. RFTA Board Members and the RFTA CEO are prohibited from serving on a Selection Committee.

- (30) Services mean the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- (31) Surplus Property means any property other than expendable property no longer having any use to the RFTA. This includes obsolete property, scrap materials, and fixed assets that have completed their useful life cycle.
- (32) Using Agency means any governmental body of the RFTA, which utilizes any supplies, services, or construction procured under this Manual.