

## 1.0 PURPOSE

CATS Procurement Policies provide a framework for the management of procurement processes which ensure that the acquisition of goods and services conform to applicable federal, State, and local laws and requirements. They also provide decision-making guidelines for CATS management on how procurement processes will be conducted in order to maximize the purchasing value of public transit funds, fulfill the mission of the transit system, meet obligations and protect the public interest.

### 1.1 Objectives

- A. To ensure public confidence in the procurement procedures followed by CATS.
- B. To ensure the fair and equitable treatment of all persons who do business with CATS.
- C. To promote increased economy in CATS procurement activities and maximize to the fullest extent practicable, the purchasing value of the public transit funds used by CATS.
- D. To foster broad-based competition within the free enterprise system.
- E. To provide safeguards for the maintenance of a procurement system of quality and integrity.
- F. To provide for the resolution of protests and contract disputes.
- G. To ensure compliance with federal, State and local laws, regulations and guidelines governing transit procurements.
- H. To maximize opportunities for participation in City (CATS) contracts by minority- and women-owned businesses identified and certified by federal regulations as Disadvantaged Business Enterprises.

### 1.2 Legal Authority

Procurement actions will be conducted in accordance with all applicable federal, State and local laws, regulations and policies, as amended from time to time, including:

- A. Federal (U.S. Department of Transportation, Federal Transit Administration)
  - 49 USC Chapter 53, Federal Transit Laws
  - 49 CFR Section 18.36, "Procurement"
  - 49 CFR Part 661 Buy America Requirements – Surface Transportation Assistance Act of 1982
  - 49 CFR Part 26, Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
  - FTA Circular 4220.1F, "Third-Party Contracting Requirements"
  - FTA Master Agreement



- B. State of North Carolina North Carolina General Statutes (NCGS)
  - NCGS 14-234 Public officers or employees benefiting from public contracts; exceptions
  - NCGS Chapter 44A, Art. 3 Model Payment and Performance Bond
  - NCGS Chapter 87 Contractors
  - NCGS Chapter 133 Public Works
  - NCGS 133-32 Gifts and Favors Regulated
  - NCGS Chapter 143, Art. 8 Public Contracts
  - NCGS 159, Art. 3 The Local Government Budget and Fiscal Control Act
- C. City of Charlotte Local Authority
  - City of Charlotte Charter, Section 8.87 (Session Law 2003-197), "Transit Procurements"
- D. Other Authority
  - Transit Governance Interlocal Agreement

### **1.3 Application**

This policy shall apply to all actions and contracts for the procurement of equipment, supplies, services and construction entered into by the City for CATS irrespective of the funding source. When a procurement involves the expenditure of federal funds received directly by the City or through the State, such procurements shall be conducted in accordance with applicable federal and/or State laws such as "Buy America" for federally funded purchases of equipment, goods and supplies and "Davis Bacon" for the procurement of federally funded construction projects.

The guidelines set forth in these policies are for the benefit of CATS, a department of the City, and do not confer any rights on actual or potential bidders, contractors, or any other person.

### **1.4 Ethics**

Procurements will be conducted in compliance with law and in conformance with the highest ethical standards. CATS' staff shall be independent, impartial and responsible to the citizens of the City of Charlotte, Mecklenburg County and the State of North Carolina and shall not use their positions for personal gain.

- A. CATS' staff shall not engage in any transaction that presents or may present the appearance of a real or apparent conflict of interest.
- B. CATS' staff shall not engage in any transaction that is incompatible with the proper discharge of his or her official duties in the public interest or would



tend to impair independent judgment or action in performance of his or her official duties.

- C. Contractors doing business or seeking to do business with CATS shall not give gifts or favors to CATS staff nor shall CATS staff accept gifts of favors in violation of G.S. 133-32 or City of Charlotte Policy Number HR12 regarding Gifts and Favors.

### **1.5 Good Faith**

All CATS employees involved in the negotiation, performance or administration of contracts shall act in good faith.

### **1.6 Public Access to Procurement Information**

CATS recognizes that its procurement information and contracts may be subject to public records laws and that it must make such records available to the public in accordance with applicable laws.

### **1.7 Procurement Authority**

CATS shall conform to the current procurement ordinances, policies and/or procedures adopted by the Council of the City of Charlotte or the Charlotte City Manager.

### **1.8 Procurement Responsibility**

The Chief Executive Officer shall serve as the principal purchasing official for CATS and shall be responsible for the procurement of equipment, supplies, services and construction in accordance with this policy. The Chief Executive Officer or the Chief Executive Officer's designee shall be authorized to establish written procedures to provide further guidance and ensure that CATS procurements are conducted in accordance with all applicable federal, state or local laws, regulations or policies.

The Chief Executive Officer may delegate authority to purchase supplies, services, equipment or construction to other City staff as deemed necessary for the effective procurement of such items.

## **2.0 PROCUREMENT PROCESSES**

### **2.1 Procurement Methods**

All procurements will be conducted in a manner utilizing practices that encourage full and open competition. CATS shall use sound business judgment in planning



and structuring its procurements in accordance with all applicable federal, state or local laws, regulation or policies.

The following methods will generally be utilized to procure equipment, goods, supplies, services, and construction:

- A. Invitation to Bid/Formal Bid
- B. Request for Proposal
- C. Competitive Negotiated Procurement
- D. Request for Qualifications
- E. Informal Bidding
- F. Piggybacking

## **2.2 Invitation To Bid (ITB)/Formal Bid**

An Invitation to Bid is a publicly advertised solicitation to which firms respond via sealed bid. Pursuant to State and local law, invitations to bid/formal bids are required for all construction and repair projects exceeding \$500,000 and for the purchase of apparatus, supplies, materials and equipment exceeding \$ 100,000. An ITB for the acquisition of equipment, vehicles, supplies, and construction will be utilized unless the procurement would require the use of any other lawful exception as set forth in G.S. 143-129. In accordance with FTA Circular 4220.1F, an ITB will be utilized for all federally funded procurements in excess of \$100,000. An ITB will require complete, clear and concise specification and result in a firm fixed non-negotiable price contract being awarded to the lowest responsive and responsible bidder.

## **2.3 Request For Proposal (RFP)**

A Request for Proposal is a publicly advertised solicitation for a written scope of work and price submitted in response to a request for services or certain goods such as technology equipment where the specifications cannot be easily described in explicit detail and/or factors other than price need to be considered. Awards shall be made to the most responsive and responsible proposers as determined by a committee's evaluation of cost, technical expertise and other pre-determined criteria that is in the best interest of the City.

## **2.4 Competitive Negotiated Procurements**

Competitive Negotiated Procurements for transit purposes are authorized pursuant to Section 8.87 of the Code of the City of Charlotte. The City, pursuant to G.S. 143-129(h), may opt to procure transit equipment, vehicles and supplies by competitive negotiations if conditions are not appropriate for formal sealed bids. Competitive negotiations allows the City to issue Request for Proposals that may be subject to negotiation with respect to specifications, price and other



terms and conditions in order to achieve the best value. Council approval of this procurement method is required prior to the initiation of any such procurement.

## **2.5 Request For Qualifications (RFQ)**

A Request For Qualification is a publicly advertised solicitation primarily for procurement of professional services. Awards shall be made to the most qualified proposer as determined by a committee's evaluation of pre-determined criteria that is in the best interest of the City. In accordance with federal or state law as applicable, the services of architects, engineers, surveyors and construction at risk managers shall be procured based upon qualifications.

## **2.6 Informal Bid**

Although it will be CATS policy to principally use the formal advertised competitive procurement methods, procurements for construction and repair or apparatus, supplies, material or equipment in excess of \$5,000 but not in excess of the limits established for formal bids shall be conducted pursuant to G.S. 143-131. Although such procurements are not subject to the same requirements as formal bids, it will be CATS policy to employ sound business practices and procurement methodology in the acquisition of goods and services regardless of the value. **When federal funds are utilized for such procurements, CATS will adhere to applicable federal requirements in addition to State law.**

## **2.7 Piggybacking**

Pursuant to G.S. 143-129(g), and Charlotte Charter Section 8.87(b), the City may purchase apparatus, supplies, materials or equipment for CATS without a separate bidding procedure from any supplier that has, within the past 60 months contracted to furnish the item to (1) the federal government or any federal agency, (2) the State of North Carolina or any agency or political subdivision of the State, or (3) any other state agency or political subdivision of said state (e.g., a transit agency in another state).

## **3.0 DISADVANTAGED BUSINESS ENTERPRISE**

### **3.1 Application**

In accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26 and as a condition of receiving assistance from this agency through the Federal Transit Administration (FTA) the City has adopted a Disadvantaged Business Enterprise (DBE) Program which will include an annual overall goal for CATS.



Implementation of a DBE Program shall be accorded the same priority, as compliance with all other legal obligations incurred by the City of Charlotte in its financial assistance agreements with the Federal Transit Administration or other USDOT agencies.

### **3.2 Objectives**

The City shall ensure that DBEs have an equal opportunity to receive and participate in USDOT assisted contracts.

### **3.3 Guidelines**

The Chief Executive Officer of CATS, as the Director of Public Transit for the City, shall:

- A. Ensure compliance with the requirements of USDOT 49 CFR Part 26.
- B. Establish and publish an annual DBE overall goal for CATS.
- C. Submit annually to FTA a DBE goal methodology for CATS in accordance with the City's approved DBE Program.

## **4.0 PERIODIC REVIEW AND AMENDMENT**

- 4.1** The Procurement Policies delineated herein shall be subject to review and revision by the Metropolitan Transit Commission (MTC) at least every three years. This does not preclude the MTC from revising specific policies included herein nor from adding policies should the MTC determine that the best interest of the public and/or CATS would be served by making such a revision.
- 4.2** Amendments or revision to these Procurement Policies may be initiated or proposed by any member of MTC or by the Chief Executive Officer of CATS. Nothing in these procurement policies is intended to prohibit the Chief Executive Officer from implementing any requirements reflecting changes in federal, State or local law, regulations or policies consistent with the guidelines set forth herein.
- 4.3** The MTC must approve any amendment or revision by majority vote before said amendment or revision shall become official policy of CATS.

### Summary of Changes

- 1.2 Updated reference to FTA Circular 4220.1F (previously 4220.1E); also updated in section 2.2
- 2.2 Changed "300,000" to "500,000": Invitations to bid/formal bids are required for all non-federally funded construction and repair projects exceeding \$500,000.

Previous Revision: March 28, 2007

