

Stark Area Regional Transit Authority
PROCUREMENT POLICY
REVISED 09/2009

1.0 Purpose

References:

Federal: FTA Circular 4220.1F, Chapter II

Policy: This Procurement Policy identifies the regulations and processes which govern all Authority personnel involved in the procurement and contract administration process. This Policy covers the entire range of procurement activities and its requirements are binding on all Authority personnel.

2.0 Effective Date

References: None

Policy: This policy shall be effective on the effective date of changes to Ohio Revised Code Section 306.43 contained in Ohio House Bill 562 (September 23, 2008) and shall remain in full force and effect until rescinded, replaced, or modified by the Board of Trustees. The effective date of any modification of this Policy shall be identified on the pages modified.

3.0 Scope of Policy

References: None

Policy: Except as otherwise specified herein, all purchases and dispositions of equipment, materials, goods, and services to or by the Authority involving either an expenditure of public funds or revenue from Authority assets whether by sale, lease, rental, or otherwise shall be governed by this Policy. The general requirements herein shall apply except as altered or excluded for specific types of procurements. To the maximum extent possible, the Authority shall purchase and dispose of equipment, materials, goods, and services through competitive processes.

4.0 Exclusions

References:

State: Ohio Revised Code Chapter 135
Ohio Revised Code Sec. 306.43(H)(8)

Policy: The following activities are excluded from this Policy:

- Acquisition or disposition of any rights in real property, but not consultants or brokers in connection therewith;
- The sale of debt securities or sale/leaseback or lease/leaseback transactions, but not the procurement of consultants or brokers for any of them;
- Payments for items mandated by law, regulation, or agreements other than procurement contracts entered into by the Authority;
- Routine administrative expenses such as postage which are specifically identified in the Authority's budget;
- Purchases or reimbursement to employees for travel or similar expenses incurred on behalf of the Authority under the Authority's other policies and procedures;
- The designation of eligible depositories for the Authority's active, interim, and inactive funds pursuant to Chapter 135 of the Ohio Revised Code; and
- Action regarding employee-related matters under the Personnel Policy, but not the procurement of consultants pertaining thereto.

5.0 Governance**References:**

Federal: 29 CFR Part 3 (Copeland Act)
29 CFR Sec. 5.5 (Davis-Bacon Act)
31 U.S.C. Sec. 6101 note
40 U.S.C. Sec. 541
40 U.S.C. Sec. 276a and 276c
49 U.S.C. Chapter 53 (Mass Transportation)
49 U.S.C. Sec. 5323c, 5323m, and 5323u
49 CFR Part 18 (Common Rule)

49 CFR Part 21 (Nondiscrimination)
49 CFR Part 26 (Disadvantaged Businesses)
49 CFR Parts 27, 37 & 38 (Disabilities)
49 CFR Part 29 (Debarment and Suspension)
49 CFR Part 622 (Environmental Impact)
49 CFR Part 633 (Project Management Oversight)
49 CFR Part 639 (Capital Leases)
49 CFR Part 661 (Buy America)
49 CFR Part 663 (Pre-Award/Post-Delivery Audits of Rolling Stock)
49 CFR Part 665 (Bus Testing)
Executive Order 12549
Executive Order 12689
FTA Joint Development Policy
FTA Project & Construction Management Guidelines, 1996 Update
FTA Master Agreement (issued annually)
FTA Circular 4220.1F and Change 1 (Procurement)
FTA Circular 5010.1D (Grant Management)
FTA Circular 5620.1 (Environmental Assessments)
FTA Circular 9300.1B (Capital Grants)
FTA Circular 9400.1A (Arts in Transit)
OMB Circular A-87 (Cost Principles)
OMB Circular A-133 (Audits)

State: Ohio Revised Code Sec. 9.31 (Bid Withdrawal)
Ohio Revised Code Sec. 9.311 (Bonds)
Ohio Revised Code Sec. 9.312 (Rejection of Apparent Low Bid)
Ohio Revised Code Sec. 9.313 (Bond Reduction)
Ohio Revised Code Sec. 9.314 (Reverse Auction and Internet Purchases)
Ohio Revised Code Sec. 9.32 (Notice to Surety)
Ohio Revised Code Secs. 9.33-9.333 (Construction Management)
Ohio Revised Code Chapter 102 (Ethics)
Ohio Revised Code Chapter 149 (Public Records)
Ohio Revised Code Sec. 153.12 (Construction Contract Award)
Ohio Revised Code Sec. 153.13 (Construction Estimates; Escrow Accounts)
Ohio Revised Code Sec. 153.14 (Construction Payments)
Ohio Revised Code Sec. 153.50 (Separate Bids)
Ohio Revised Code Sec. 153.54 (Construction Bonds)
Ohio Revised Code Sec. 153.62 (Change Order for Additional Work)
Ohio Revised Code Sec. 306.34 (Board of Trustees)
Ohio Revised Code Sec. 306.35 (Powers)

Ohio Revised Code Sec. 306.43 (Procurement)
Ohio Revised Code Chapter 1306 (E-Commerce)
Ohio Revised Code Sec. 1311.25-1311.32 (Public Liens)
Ohio Revised Code Sees. 1333.61-1333.69 (Trade
Secrets)
Ohio Revised Code Sec. 2305.31 (Indemnification)
Ohio Revised Code Sec. 2921.43 (Ethics)
Ohio Revised Code Sec. 4113.61 (Prompt Payment)
Ohio Revised Code Sec. 4113.62 (Waiver of Claims)
Ohio Revised Code Chapter 4115 (Prevailing Wage)

Policy: As a political subdivision of the State of Ohio, the Authority is governed by the applicable portions of the Ohio Revised Code. The primary state governance for procurement actions in Ohio is ORC Sec. 306.43. As a third-party grantee of the Federal government, the Authority is governed by applicable federal laws and regulations. The primary federal governance for procurement activities is FTA Circular 4220.1F. The documents listed above, and as they may be amended or replaced, are those which directly regulate aspects of the procurement function. Additional documents, including the FTA Best Practices Manual, Federal Acquisition Regulations, and other sections of the Ohio Revised Code, while they may or may not be binding on the Authority, shall be used for guidance to the extent matters covered are not addressed by governing laws or regulations.

6.0 Structure of Procurement

References:

Federal: 49 CFR, Sec. 18.36(b) and (c)
FTA Best Practices Procurement Manual, Sec. 2.1

Policy: The Procurement Administrator, under the direction of the Director of Finance & Administration, shall have a sufficient degree of autonomy within the organization to function effectively as part of a checks and balance system governing Authority acquisitions and dispositions.

7.0 Ethics

References:

Federal: 49 CFR, Sec. 18.36(b) and (c)
FTA Master Agreement, Sec. 3
FTA Circular 4220.1F, Chapter III Sec. 1.
FTA Best Practices Procurement Manual, Sec. 2.4.2.2.2

State: ORC Chapters 102 and 2921

Local: SARTA Personnel Policy and Code of Ethics

Policy: As provided in the Common Grant Rules and the Federal Transit Administration (FTA) Master Agreement, no employee, officer, agent, or Board Member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a personal conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.

Organizational conflicts of interest, both real and apparent, shall be avoided to the maximum extent possible. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

No SARTA employee, officer, Board Member, or agent shall solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Only unsolicited items of nominal intrinsic value (of no more than \$50 value) may be accepted from such parties.

8.0 Delegations of Authority

References:

State: ORC Sec. 306.34; Sec. 306.35; and Sec. 306.43

Policy: Responsibility for procurement actions lies with the Board of Trustees. The Board hereby delegates to the Executive Director of the Authority or, in his or her absence, the Director of Finance & Administration, the following responsibilities:

- Authorize and approve all purchases, sales, and other procurement actions not exceeding \$100,000, which by federal or state requirements do not require formal solicitation or approval by the Board of Trustees;
- Advertise for all formal procurements, which are those exceeding the Executive Director's \$100,000 authority;
- Cancel procurements;
- Enter into agreements for legal services;
- Approve all funding encumbrances and authorizations to proceed with solicitation for acquisitions and dispositions of goods, equipment, and services for or by the Authority;
- Execute all contract documents, whether procurement, revenue, agreements and leases;
- Settle all claims and disputes;
- Approve all change orders on contracts not exceeding \$100,000, in a net amount that does not cause the total amount of any such contract to exceed \$100,000, and approve change orders on other contracts in a net amount not to exceed the following limits: \$100,000.00 for contracts up to \$1,000,000.00; the lesser of 10% or \$250,000.00 for all contracts between \$1,000,000.00 and \$5,000,000.00; in an amount not to exceed \$500,000.00 for all contracts over \$5,000,000.00. Trustees may, by resolution, vary these limits for particular contracts or projects. The Executive Director shall report, as required by the Board, all changes made under this delegated authority; and
- Approve all change orders not involving an additional expenditure of Authority funds, except for cardinal changes to the scope of the contract.

The Executive Director is also empowered to:

- Determine the lowest responsive and responsible bidder;
- Determine when acceptance of an offer resulting from a negotiated proposal is in the best interest of the Authority;
- Reject all bids or proposals when it is determined to be in the best interest of the Authority;
- Determine whether only one source of supply is readily available for the purchase of goods and services; and
- Terminate any contract if deemed to be in the best interest of the Authority.

9.0 Full and Open Competition

References:

Federal: FTA Master Agreement, Sec. 15(b)
 FTA Circular 4220.1F, Chapter VI Sec. 1.
 FTA Best Practices Procurement Manual, Sec. 2.4.2

State: ORC Chapter 102
 ORC Sec. 306.43

Policy: SARTA will conduct all procurement transactions in a manner providing full and open competition consistent with the standards of the Common Grant Rules. Some of the situations considered to be restrictive of competition, and are therefore prohibited by SARTA, include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to consultants that are on retainer contracts;
- Organizational conflicts of interest;

- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

SARTA will ensure that all prequalified lists of persons, firms, or products which are used in procuring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, SARTA will not preclude potential bidders from qualifying during the solicitation period.

10.0 Local Geographical Preference

References:

Federal: FTA Master Agreement, Sec 15(d)
FTA Circular 4220.1F, Chapter VI Sec. 2.g.
FTA Best Practices Procurement Manual, Sec. 2.4.2.2.3

Policy: SARTA will conduct procurements in a manner that prohibits the use of in-State or local geographical purchase preferences which serve to restrict full and open competition, except in those cases where applicable Federal or State statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. When employing the qualifications-based method for contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

11.0 Procurement Records

References:

Federal: FTA Master Agreement, Sec. 8(c)
FTA Circular 4220.1F, Chapter III Sec. 3.d.

Policy: The Procurement Administrator, Grants Manager, and other Authority Personnel as necessary, shall maintain records sufficient to detail the significant history of the

procurement. These records shall include, but shall not be limited to, the following:

- Rationale for the method of procurement;
- Reasons for selecting the contract type used;
- Reasons for contractor selection or rejection;
- Justification for contract cost or price;
- Bid or proposal tabulation worksheet;
- All documented communications with potential contractors, prior the bid opening date;
- Advertising affidavits of publication;
- Bidder's lists, with names, addresses, and telephone numbers; and
- All Bid Proposals received.

All files for purchases with federal funds must comply with FTA Circular 4220.1F.

12.0 Change Orders

References:

Federal: FTA Circular 4220.1F, Chapter V Sec. 7.b. and Chapter VII Sec. 2.
FTA Best Practices Procurement Manual, Sec. 9.2

State: ORC Sec. 153.62

Policy: Change Orders are contract amendments altering the scope, price, or schedule of the original contract. Approval of change orders shall be in accordance with the provisions of Sec. 8.0 of this Policy. The Board of Trustees may, for any specific contract or project, delegate its change order authority to specific officers or employees, at specified dollar levels. No work under a change order may be authorized prior to such approval, except upon the written direction of the Executive Director. A cardinal change, or sometimes informally referred to as a "tag-on," is 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. Cardinal changes are considered new procurements, and are subject to the appropriate provisions of this policy regarding non-competitive procurements.

13.0 Claims and Disputes

References:

Federal: FTA Circular 4220.1F, Chapter VII
FTA Master Agreement, Sec. 53
FTA Best Practices Procurement Manual, Sec. 11

Policy: Claims related to procurement actions or contracts shall be submitted in writing to the Executive Director. Claims in excess of \$25,000 shall include a certification by the owner or an officer of the vendor that the claim is, to the best of his or her knowledge or belief, accurate as to both the basis and the amount of the claim. As a grantee of Federal Funds, SARTA must notify FTA of any current or prospective litigation or major disputed claim in excess of \$100,000 relating to any third party contract. The Authority shall establish a procedure by which a vendor may appeal a denial of a claim, in whole or in part. Settlement of any claim shall be by the approval of the Executive Director, based upon a recommendation by the Director of Finance & Administration that the settlement is fair and reasonable and is in the best interest of the Authority. Disputes other than formal claims arising during the course of project performance shall, to the extent feasible, be resolved by the Director of Finance & Administration and the Project Manager. Disputes, which are not so resolved, may be brought by the aggrieved party to a court of law, unless an alternative form of dispute resolution is agreed upon by the parties. The Director of Finance & Administration shall promptly notify the Executive Director and General Legal Counsel.

14.0 Protests

References:

Federal: FTA Circular 4220.1F, Chapter VII
FTA Master Agreement, Sec. 53

Policy: Protests of procurement actions may be filed before bids or proposals are received, after announcement of a proposed award, and after action by the Board of Trustees. Protests before bids or proposals are received may address the adequacy or fairness of the solicitation documents. If an award of a federally-funded project will be made during the pendency of a protest, the Director of Finance & Administration must notify the FTA of the protest prior to the award. Protests after announcement of a proposed award may address the basis for selection or rejection of a bidder or proposer. Protests following action by the Board of Trustees may address only the procedure by which the Board accepted the bid or proposal. The protestor must have a substantial economic interest in the procurement. Protests shall be in writing, and in sufficient detail to permit an evaluation and response. Protests shall be decided by the Executive Director whose decision shall be final.

15.0 Procurement Planning

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 6.
FTA Best Practices Procurement Manual, Sec. 2

Policy: The initiating department shall be responsible for identifying its needs, justifying them, and defining the needs to the point that a specification or scope of services can be prepared. The initiating department is responsible for preparing an estimate of the cost of the item or service, in the same form that an offeror would develop or propose a price. The initiating department and Procurement Administrator are jointly responsible for developing a schedule to meet the initiator's needs and identifying potential suppliers. The schedule should be part of a comprehensive plan for annual procurement actions, to ensure that the required resources are available as required. Said schedule shall be included in SARTA's annual Budget Book.

16.0 Disadvantaged Business Enterprises

References:

Federal: 49 CFR, Part 26
FTA Best Practices Procurement Manual, Chapter 7
FTA Circular 4220.1F, Chapter IV Section 2.a.(6)(a)

State: ORC Sec. 306.43(M)

Policy: In making procurements hereunder, the Authority shall serve to ensure the participation of Disadvantaged Business Enterprises (DBE), as well as contractor compliance in accordance with all applicable laws and regulations. The Authority shall use its best efforts to encourage fair and representative participation of DBEs on procurements, either as prime contractors or as subcontractors. Moreover, the Authority shall determine the opportunity for DBE participation on all procurements in the amount of \$25,000 or more, and where qualified DBEs are identified, solicitations for such procurements shall include at least one DBE among the contractors solicited.

17.0 Debarment

References:

Federal: Executive Order 12549 and 12689
31 U.S.C., Sec. 6101 note
49 CFR, Part 29
FTA Master Agreement, Sec. 3(b)

Policy: The Authority shall not award contracts to firms that are debarred by the Federal government. Debarment by other government entities may be considered in determining a vendor's responsibility, but shall not necessarily preclude award to the debarred vendor.

18.0 Specifications, Scopes of Services, and Solicitation Documents

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 2.
FTA Best Practices Procurement Manual, Sec. 3 and
Sec. 4

Policy: Unless otherwise determined by the Executive Director, the Procurement Administrator shall prepare

specifications and scopes of services based upon information provided by the initiating department. Specifications or scopes prepared by others shall be reviewed by the Procurement Administrator for conformity with applicable procurement standards. Solicitation documents must include a clear and accurate description of the recipient's technical requirements for the property or services to be acquired in a manner that provides for full and open competition. The solicitation must also identify all factors to be used in evaluating bids or proposals, and should state the type of contract that will be awarded (Ex. Firm Fixed Price, Cost Reimbursement, etc). If SARTA intends to reserve its right to award a contract to other than the low bidder or offeror, or if it intends to reserve its right to reject all bids or offers, that information should be stated in the solicitation document. Solicitation documents must also identify all Federal requirements that will affect contract scope and performance, and all Federal requirements that a bidder or offeror must fulfill before and during contract performance. All specifications and solicitation documents must be approved by the head of the initiating department, if applicable, the Director of Finance & Administration, and any others designated by the Director of Finance & Administration, prior to issuance.

19.0 Procurement Types for Formal Contracts

References:

Federal: 49 CFR, Sec. 18.36(b) and (d)
FTA Circular 4220.1F, Chapter VI, Sec. 3.
FTA Best Practices Procurement Manual, Sec. 4

State: ORC Sec. 9.314 and 306.43(B), (C), and (D)

Policy: For formal contracts (those for which the Board of Trustees has not delegated its purchasing authority and any others so designated by the Executive Director of the Authority or, in his or her absence, the Director of Finance & Administration, the Authority may utilize sealed bids, two-step procurements, and negotiated procurements where at least two qualified sources are identified as reasonably available. The Authority shall use negotiated procurements where a non-competitive

procurement is appropriate. To the extent authorized by law, the Authority may purchase services or supplies via reverse auction utilizing the Internet. The Authority may use any type of contract deemed appropriate by the Director of Finance & Administration consistent with applicable laws and regulations.

20.0 Contract Pricing

References:

Federal: FTA Circular 4220.1F, Chapter IV Sec. 2.b.(5), Chapter V Sec. 7.a.(1), and Chapter VI Sec. 2.c.

FTA Best Practices Procurement Manual, Sec. 2.4.3 and 2.4.5

FTA Administrator Letter dated May 29, 2002

Policy: The Authority must utilize firm fixed price or fixed unit price not-to-exceed contracts for sealed bid procurements and may use them for negotiated procurements. Such contracts may allow price escalation based on actual costs or a generally recognized index, provided that the escalator has a defined upper limit. The Authority may also use a cost plus fixed fee contract, or any other type of contract permitted by applicable laws or regulations; however, for negotiated procurements it may not use a cost plus percentage fee type of contract. The Authority may use indefinite quantity or indefinite delivery contracts where appropriate, but may not use an indefinite quantity and indefinite delivery contract. The Authority may use a time and materials type of contract only if no other form is suitable and if the contract contains a not-to-exceed ceiling. The Authority may utilize progress payments to the extent consistent with law and regulation, provided that it obtains or secures value consistent with the amount paid. The Authority shall not make advance payments unless specifically authorized by the Director of Finance & Administration or the Executive Director. SARTA may include options in contracts. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement. When contracting for tangible goods, the contract shall limit

option quantities for additional equipment and supplies to not more than fifty percent (50%) of the initial quantity of the same contract line item. For professional service and requirements contracts, the total of the base and options time periods shall not exceed three (3) years. SARTA may not exercise an option until it has ensured the option is in accordance with the contract and that the price is better than prices available in the market or is more advantageous at the time the option is exercised.

21.0 Cost and Price Analysis

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 6.
FTA Best Practices Procurement Manual, Sec. 5.2

Policy: SARTA will perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation, but as a starting point, SARTA must make independent cost estimates before receiving bids or proposals. Information on costs used in the independent cost estimate may be obtained from past history, in-house cost, or any other available cost data. The independent cost estimates and the cost and/or price analysis should be documented and filed with the appropriate procurement action.

22.0 Sealed Bid Procurements

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 3.c.
FTA Best Practices Procurement Manual, Sec. 4.4

State: ORC Sec. 306.43(B)

Policy: Unless the Director of Finance & Administration determines that the appropriate conditions do not exist, all procurements above the small purchase limit of \$100,000 shall be by sealed bid. If less than two responsive bids are received for a sealed bid solicitation, the Director of Finance & Administration may either (1)

negotiate price with the responsive bidder or (2) cancel the solicitation.

23.0 Competitive Negotiated Procurements

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 3.d.
FTA Best Practices Procurement Manual, Sec. 4.5

State: ORC Sec. 149.43 and 306.43(D)

Policy: When the conditions for a sealed bid procurement do not exist, the Director of Finance & Administration may direct that competitive negotiated proposals be solicited. Competitive negotiated procurements must be conducted in a manner that preserves the integrity of the procurement process. To the extent permitted by law, regulation or court decision, the evaluation of proposals shall be conducted in a confidential manner, and all confidential or proprietary information shall be held confidential.

24.0 Two-Step Procurements

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 3.e.
FTA Best Practices Procurement Manual, Sec. 4.7.1

State: ORC Sec. 306.43(C)

Policy: When the conditions for a competitive sealed bid do not exist, the Director of Finance & Administration may direct that a two-step process be utilized. This process shall consist of a negotiated technical proposal followed by a sealed bid from those firms whose technical proposals are acceptable. To the extent permitted by law, regulation or court decision, the evaluation of proposals shall be conducted in a confidential manner, and all confidential or proprietary information shall be held confidential.

25.0 Micro-Purchases

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 3.a.
FTA Best Practices Procurement Manual, Sec. 4.1

State: ORC Sec. 306.43(A)

Policy: Purchases reasonably estimated not to exceed \$3,000 qualify as micro-purchases. At least one oral or written quote must be obtained for micro-purchases. After determining the price is fair and reasonable, the Procurement Administrator may award a contract or issue the purchase order. Competitive quotations are not required and these purchases are exempt from FTA's Buy America requirements. SARTA shall not split larger procurements into smaller ones that qualify as micro purchases just to avoid competition. Davis-Bacon prevailing wage requirements will apply to construction contracts exceeding \$2,000. Micro-purchases should be distributed equitably among qualified suppliers. The Procurement Administrator shall maintain documentation showing a determination that the price is fair and reasonable and a description of how the determination was made.

26.0 Small Purchases

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 3.b.
FTA Best Practices Procurement Manual, Sec. 4.2

State: ORC Sec. 306.43(A)

Policy: Purchases reasonably estimated not to exceed the small purchase limits of \$100,000 established pursuant to Sec. 8.0 of this Policy may be procured informally, provided that a record is maintained consistent with applicable laws and regulations. Price or rate quotations shall be obtained from an adequate number of qualified sources to permit a reasonable comparison consistent with the nature of competitive negotiation within the given circumstances. This shall generally mean at least three (3) offers/bids on purchases up to \$100,000. Purchases above \$3,000 and up to \$100,000 require a written quotation. All contracts above \$10,000 must have termination for cause and termination for

convenience provisions. All contracts above the small purchase threshold of \$100,000 must contain remedies for breach of contract.

27.0 Sole Source Procurements

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 3.i.
FTA Best Practices Procurement Manual, Sec. 4.6

State: ORC Sec. 306.43(H)

Policy: A sole source procurement may be used when, after reasonable inquiry, the Director of Finance & Administration determines that only one source for the item or service is reasonably available. A sole source procurement shall be conducted as a non-competitive negotiated procurement, in accordance with applicable laws, regulations, and this Policy. For any sole source award, a cost and profit analysis is required. SARTA must maintain in writing, and make available to the FTA on request, its rationale and justification for any sole source purchase.

28.0 Emergency Procurements

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 3.i.
FTA Best Practices Procurement Manual, Sec. 4.6

State: ORC Sec. 306.43(H)(1)

Policy: Upon authorization by the Executive Director, the Director of Finance & Administration may direct that a non-competitive procurement be conducted to the minimum extent needed to meet an emergency situation. The Executive Director shall contact the President of the Board of Trustees if the estimated cost to abate the emergency is anticipated to exceed the Executive Director's delegated authority.

29.0 Piggybacking

References:

Federal: FTA Circular 4220.1F, Chapter V Sec. 7.a.(2)
FTA Best Practices Procurement Manual, Sec. 6.3.3

Policy: SARTA may participate in purchasing through piggybacking, or it may allow others to piggyback off existing SARTA contracts. When piggybacking is used, it is essential to affirmatively determine that the contract to be piggybacked meets Federal requirements, including compliance with FTA Circular 4220.1F. Piggybacking is only permissible if the original contract contains appropriate assignability provisions, and after first determining that the contract price remains fair and reasonable.

30.0 Revenue Contracts

References:

Federal: FTA Circular 4220.1F, Chapter II Sec. 2.b.(4)
FTA Best Practices Procurement Manual, Sec. 1.3.3.8

Policy: SARTA shall ensure fair and equal access to FTA assisted property and will seek to maximize revenue derived from such property. When several potential competitors for a limited opportunity exist, SARTA shall use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. If one party seeks access to a public transportation asset that is open and unrestricted, and provided SARTA is willing and able to offer contracts or licenses to other parties similarly situated, a competitive process is not necessary.

31.0 Joint Development

References:

Federal: Federal Register / Vol. 72, No. 25 / Wednesday,
February 7, 2007
FTA Joint Development Policy
FTA Circular 5010.1D, Chapter IV

Policy: Joint Development is the use of grant-funded real property, or the air rights above such property, for

transit-oriented development. Transit-oriented joint development projects require FTA approval. Incidental use of grant-funded real property must not interfere with the intended public transportation uses of project assets, and also requires FTA approval.

32.0 Intergovernmental Agreements

References:

Federal: FTA Circular 4220.1F, Chapter V
FTA Best Practices Procurement Manual, Sec. 1.3.3.5

State: ORC Sec. 306.43(H)(4) and (J)

Policy: The Authority may, to the extent permitted by law or regulation, purchase or dispose of goods or services by agreement with another governmental agency or through an intergovernmental purchasing group. The Authority may exercise options under contracts entered into by other governmental entities, or offer such options to another governmental agency or intergovernmental purchasing group provided that: (1) the granting agency's contract allows for the assignment of the option and (2) the granting agency's procurement process meets all material and competitive requirements required by the Authority's funding source.

33.0 Non-Profit Agencies

References:

State: ORC Sec. 306.43(H)(8) and (9)

Policy: The Authority may, to the extent permitted by law or regulation, purchase or dispose of goods or services to recognized non-profit organizations. In the case of a disposition of property (excluding real property), assurances shall be obtained that the property shall not be resold or otherwise used for profit.

34.0 Electronic Procurements and Purchasing Cards

References:

Federal: FTA Best Practices Procurement Manual, Sec. 4.1.1

State: ORC Sec. 9.314

Policy: The Authority may utilize electronic means, to the extent consistent with legal and regulatory requirements, to conduct any procurement defined herein in whole or in part. Documents requiring an original signature or notarization shall not be in electronic form unless the use of electronic signature is authorized by law and approved by the Director of Finance & Administration. The Executive Director, the Director of Finance & Administration, or the Procurement Administrator of the Authority may use purchasing (credit) cards as authorized by the procedures of the Executive Director, to acquire items under contracts previously awarded by the Authority or through the existing procurement process, in accordance with this Policy. Additionally, the Board of Trustees may authorize the use of purchasing cards for the acquisition of readily available retail items from sources not under such contracts, and payment of Worker's Compensation or other insurance premiums and other ordinary invoices and purchases.

35.0 Incentive Payments and Liquidated Damages**References:**

Federal: FTA Circular 4220.1F, Chapter IV Sec. 2.b.(6) and Chapter VI Sec. 5.

FTA Best Practices Procurement Manual, Sec. 8.2.3

Policy: The Authority may, under appropriate circumstances, utilize incentives to encourage extraordinary vendor performance, or provide for liquidated damages calculated to protect the Authority from losses due to vendor nonperformance. It may not impose financial penalties that are punitive in nature. Liquidated damages must be calculated and documented prior to the issuance of the solicitation on the basis of the anticipated actual loss to the Authority resulting from vendor non-performance.

36.0 Contract Contents

References:

Federal: FTA Best Practices Procurement Manual, Sec. 1.2

State: ORC Sec. 153.12

Policy: Contracts for the acquisition of goods and services shall include, at a minimum: the specification or agreed-upon scope of services; the price and term of the contract; payment terms; contractual terms including but not limited to appropriate warranties and indemnities; and all clauses and certifications required by law and regulation.

37.0 Contract Execution

References:

Federal: FTA Best Practices Procurement Manual, Sec. 1.2.1

State: ORC Sec. 306.34 and 306.35

Local: Board of Trustees Bylaws

Policy: When authorized by the Board of Trustees, the Executive Director or his Designee will sign contracts over \$100,000. Contracts not exceeding \$100,000 may be signed by the Executive Director or his designee without specific Board of Trustee authorization. The General Legal Counsel shall review all contracts for legal form and correctness before they are executed by the Authority.

38.0 Design Services

References:

Federal: 40 U.S.C., Sec. 541
FTA Circular 4220.1F, Chapter VI Sec. 3.f.
FTA Master Agreement, Sec. 15(p)
FTA Best Practices Procurement Manual, Sec. 6.5

State: ORC Sec. 306.43(E)(1)

Policy: Architectural and engineering services, value engineering services, and incidental services related thereto, as defined in 40 U.S.C. Sec. 541 et seq. (Brooks Act), shall be conducted as negotiated procurements, except that selection shall be made of the most technically qualified firm without consideration of price. Price shall be negotiated with the selected firm. If agreement cannot be reached with the most qualified firm, the process is repeated with the second most qualified firm, continuing until agreement is reached, or the pool of technically acceptable firms is exhausted, at which point the procurement must be cancelled.

39.0 Design/Build Services

References:

Federal: FTA Circular 4220.1F, Chapter VI Sec. 3.h.
FTA Master Agreement, Sec. 15(q)
FTA Best Practices Procurement Manual, Sec. 6.1.4

Policy: To the extent permitted by law and regulation, the Authority may solicit the services of a single firm or entity to both design a construction project and construct it. Such solicitations shall be as permitted and in the manner prescribed by the Ohio Revised Code, unless such procedure violates the provisions of federal law or regulation, in projects involving federal funds.

40.0 Construction Management Services

References:

Federal: FTA Best Practices Procurement Manual, Sec. 6.1.2
FTA Project and Construction Management Guidelines
1996 Update

State: ORC Sec. 9.333

Policy: The Authority may, as it deems appropriate, employ a firm to perform construction management services, as defined in section 9.33 of the Ohio Revised Code. Solicitation of such services shall be in the same manner as is used for architect/engineering services. Public advertisement of such solicitation shall be made not less than 30 days prior to the receipt of proposals.

Unless specifically waived by the Director of Finance & Administration, the Project Manager shall be required to provide the financial assurances required by Sec. 9.333 of the Ohio Revised Code.

41.0 Construction Services

References:

Federal: 40 U.S.C., Sec. 276a and 276c
FTA Master Agreement, Sec. 23
FTA Circular 4220.1F, Chapter VI Sec. 3.g.
FTA Best Practices Procurement Manual, Sec.

6.1.1

State: ORC Sec. 153.12-14; Sec. 153.50; Sec. 153.54;
Sec. 9.31, Sec. 9.311, and Sec. 9.32; Sec. 306.43 (E)(3);
and Chapter 4115

Policy: Solicitations for construction, improvement, or repair of facilities shall be conducted as Sealed Bid Procurements. To the extent required by law or regulation, solicitations shall require that the award shall be made to the lowest responsive bid from a responsible bidder for either (1) the sum of bids for various construction trades, including plumbing and gas fittings; steam and hot water heating, ventilation apparatus, and stream-power; and electrical equipment, and general work not falling within such trades; or (2) to a single bid for all work within the scope of the solicitation. The responsibility requirement for such solicitation shall include possession of all individual and corporate licenses required under applicable laws, codes, and regulations. The successful bidder or bidders must conform with the prevailing wage requirements defined in Ohio Revised Code Chapter 4115, if no federal funds are involved, or in the Davis-Bacon Act (40 U.S.C. 276a et seq.) and the Copeland Act (40 U.S.C. 276c et seq.), if federal funds are involved. No bid shall be opened unless time frames for addenda to specifications meet the requirements of the Ohio Revised Code. No award shall be made unless it is within the range of the published engineer's estimate as authorized by the Ohio Revised Code. Awards to other than the low bidder, bonding requirements, remedies for mistakes in bids, and conditions and penalties for bid

withdrawal shall be in compliance with the Ohio Revised Code. In accordance with the Ohio Revised Code, the surety on the contractor's bond shall be notified in writing of any award.

42.0 Rolling Stock

References:

Federal: 49 U.S.C., Sec. 5323c and 5323m
49 CFR, Parts 639, 663, and 665
FTA Circular 4220.1F, Chapter IV Sec. 2.e.
FTA Master Agreement, Sec. 15(e), Sec. 15(n), and
16
FTA Best Practices Procurement Manual, Sec. 6.2.1
and 6.3
FTA, Conducting Pre-Award and Post-Delivery
Reviews for Rail Vehicle Procurements

APTA: American Public Transportation Association, Bus
Procurement Guidelines

State: ORC Sec. 306.43(G)

Policy: The Authority may procure rolling stock by either negotiated procurement or sealed bid. Rolling stock shall be defined to include transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services. Solicitations for rolling stock shall require compliance with all applicable standards regarding dimensions, weight, accessibility, and safety. Unless specifically authorized by the Executive Director, the Authority shall not procure rolling stock, which has not been tested in accordance with Code of Federal Regulations, if applicable. The Authority shall conduct the pre-award and post-delivery audits as required by the Code of Federal Regulations. The Authority shall not, except with the prior approval of the Executive Director, dispose of rolling stock before the end of its useful life as defined by the Federal Transit Administration. If an indefinite delivery (ID) or indefinite quantity (IQ) contract is used for the purchase of rolling stock, the contract must not have a period of performance exceeding five (5) years inclusive of options, extensions, or renewals. In addition, if an ID or IQ

contract is used, the contract must also state a minimum and maximum quantity to be purchased, and a good faith estimate of the quantity likely to be purchased.

43.0 Pilot Programs

References: None

Policy: The Authority may use pilot programs of limited time and scope to test new products or systems. Acquisition of products for such tests may be on a sole source basis. Such programs shall last no more than six (6) months, unless the Executive Director determines that a longer duration is required, due to the nature of the item being tested. Before the end of the test period, a report shall be prepared determining the utility of and need for the item tested. Should the item be determined to be both useful and needed, it shall be procured through the appropriate procurement process.

44.0 Disposition of Property

References:

Federal: 49 CFR, Sec. 18.32 and Sec. 18.33
FTA Master Agreement, Sec. 19(h)
FTA Circular 5010.1D, Chapter IV
FTA Best Practices Procurement Manual, Sec. 1.3.3.10

State: ORC Sec. 306.43(K) and (L)

Policy: The Authority may sell personal property, including capital equipment and surplus or obsolete parts and supplies, by sealed bid or public auction. The Authority may also dispose of property by donation to non-profit organizations. Trade-in of used equipment towards the purchase of new equipment shall also be permitted. Sale of capital assets whose fair market value is estimated to exceed the small purchase limit shall be authorized by the Board of Trustees. Sale of federally funded capital assets that have not exceeded their useful life as established by the Federal Transit Administration shall be authorized by the Board of Trustees. The Authority may also transfer items to other transit entities.

45.0 Broker Services

References:

Federal: FTA Best Practices Procurement Manual, Sec. 2.4.3.5

Policy: The Authority may employ brokers to provide services where the use of such brokers is standard industry practice. Broker services shall be procured by competitive negotiated procurement. Payments to brokers shall not be on a cost plus percentage of cost basis.

46.0 Arts in Transit

References:

Federal: FTA Circular 9400.1A

Policy: The Authority shall procure public art for major construction projects through a modified competitive negotiated procurement process, provided that the guidelines set forth in FTA Circular 9400.1A are followed. The policy set forth for negotiated procurements shall be followed to the extent possible within these guidelines. If the Authority chooses, it may procure a consultant to assist in the procurement of public art utilizing standard negotiated procurement policy and procedures. Any resulting contract shall be subject to compliance with federal guidelines.

47.0 Bonds

References:

Federal: FTA Circular 4220.1F, Chapter IV Sec. 2.h.
FTA Master Agreement, Sec. 15(o)
FTA Best Practices Procurement Manual, Sec. 8.2.1

State: ORC Sec. 153.54 and Sec. 9.313

Policy: Except to the extent mandated by law, the Authority shall utilize performance and payment bonds only where the risk to the Authority of non-performance by a contractor exceeds the anticipated cost of the bond. In

determining the applicability of a bonding requirement, consideration should be given to the potential impact on small and disadvantaged businesses. A bid bond may be required on all competitive bid procurements and shall be required on all formal competitive bid requirements. Additional specialized types of bonds may be required for certain procurements. The use of such bonds shall be as directed by the Director of Finance & Administration, upon the advice of the General Legal Counsel and/or OTRP. The Director of Finance & Administration may authorize the reduction of any bond supplied for the rendering of services or the supplying of materials to the extent permitted by Ohio Revised Code section 9.313.

48.0 Buy America

References:

Federal: 49 U.S.C., Sec. 5323(U)
49 CFR, part 661
FTA Best Practices Procurement Manual, Sec. 4.3.3.2.2
and 8.1.4

State: ORC Sec. 306.43(G)

Policy: In making procurements hereunder, the Authority shall, to the extent required by law, require bidders and proposers to certify compliance with Buy America standards, or to provide a basis under which the FTA may grant a waiver.

49.0 Acting

References: None

Policy: Whenever this Policy gives authority or responsibility to the employee holding a certain position, that authority or responsibility shall be exercised by the employee "acting" in that position in the absence of the employee who normally holds it.