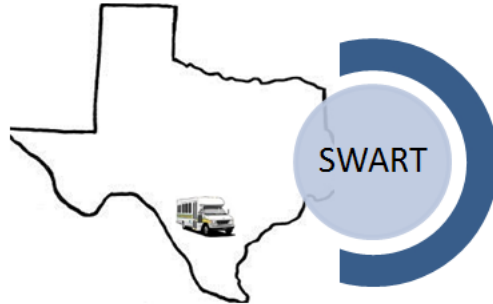

SOUTHWEST AREA REGIONAL TRANSIT DISTRICT (SWART)



PROCUREMENT & PURCHASING POLICY AND PROCEDURES

MAY 2025

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General Provisions

Purpose

The purpose of this Policy is to ensure the fair and equitable treatment of all persons involved in procurement activities undertaken by the Southwest Area Regional Transit District (SWART), and to maximize the purchasing value of public funds in procurement, to provide safeguards for maintaining a procurement system of quality and integrity, and to give a standard outline of the principles, policies, and practices to be used in performing all purchasing procedures for SWART.

Objectives

The objectives of the purchasing department are:

- To procure commodities and services at a competitive price while conserving funds by reducing costs and improving the quality of materials purchased;
- To attain an elevated level of cooperation and coordination with requesting departments; and
- To improve procedures to efficiently and promptly procure needed items for SWART Public Access to Procurement Information

Procurement information is a public record to the extent provided in Texas Government Code Chapter 551, Open Meetings, and Chapter 552, Public Information, and is available to the public as provided in such statutes.

Definitions

In addition to the definitions below, SWART adopts the definitions used in the glossary of terms provided by the National Transit Database, located at <https://www.transit.dot.gov/ntd/national-transit-database-ntd-glossary>.

Approved Equal. An item or service approved by SWART as equal to the brand name item originally specified.

Architect - Engineer (A&E) and Land Surveying Services. Professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Texas.

Bid Bond (or Bid Guarantee). A promise from a surety (or a certified or cashier's check given by a bidder) for a supply or construction contract to guarantee that the bidder, if awarded the contract within the time stipulated, will enter into the contract at the price bid and furnish the prescribed performance and/or payment bond. Bid bonds are not usually appropriate for negotiated procurements due to the nature of the process.

Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

Brand Name. The name of a product or service is limited to the product or service produced or controlled by one private entity or a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers associated with only one manufacturer.

Brand Name or Equal Specification. A specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the requirements of SWART, and which provides for the submission of equivalent products.

Brand Name Specification. A specification limited to one or more items by the manufacturer's names or catalogue numbers.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.

Buyer's Option. A right in a contract by which, for a specified time, SWART may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the agreement through an Option.

Change Order. A written order issued by the Procurement Manager, directing the contractor to make changes, which the "Changes" clause of the contract authorizes the Procurement Manager to order without the consent of the contractor. The General Manager must sign all change orders after the project lead has signed off on them.

Confidential Information. Any information that is available to an employee only because of the employee's status as an employee of SWART and is not a matter of public knowledge or available to the public on request.

Construction. The process of building, altering, repairing, improving, or demolishing any public structure, building, or other public improvements to any public real property. It does not include the routine operation or maintenance of existing structures, towers, or real property.

Contract. All types of agreements between SWART and other parties, regardless of what they may be called, for procuring supplies, services, or construction.

Contract Modification (bilateral change). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other contract provisions accomplished by mutual action of the parties to the agreement.

Contractor. Any person having a contract with SWART or a using agency thereof.

Cost Analysis. Cost data is evaluated to determine costs incurred or estimates of fees, prices, and expenses to be reimbursed.

Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements that are expected or incurred by the contractor in the contract.

Cost-Reimbursement Contract. A contract under which a contract is reimbursed for costs that are allowable and allocable per the contract terms and the provisions of this Policy, as well as a fee or profit, if any.

Design Specifications. Specifications are based on the design of a product or service. Typical design specifications may include dimensions, materials used, commonly and competitively available components, and non-proprietary manufacturing methods.

Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity.

Disadvantaged Business Enterprise (DBE). A small business that is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at

least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and that has been certified as such through TxDOT's TUCP program. DBEs bidding on a SMART Project must provide documentation certifying their DBE status.

Employee. An individual who SMART compensates as follows: for directly operated services, the labor expense for the individual is reported in object class labor, and for purchased transportation services, the labor expense for the individual meets the same criteria as object class labor. This term applies to transit employees and contractors

Financial Interest. Ownership of any interest or involvement in any relationship with SMART from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$600 per year, or its equivalent; ownership of 25% of any property or business; or holding a position in a business such as officer, director, trustee, partner, employee, or the like, or having any position of management.

Full and Open Competition - All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- Unreasonable requirements placed on firms in order for them to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than normal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate Family. A spouse, children, parents, brothers, sisters, grandparents, grandchildren, in-laws, adopted, half, and stepfamily are all considered immediate family.

Informal Bid. A request for price quotations for a commodity or service that does not require a sealed bid, public opening, or reading of bids.

Invitation for Bids (IFB). A formal request to prospective suppliers requesting price quotations. The term includes all documents that are attached or incorporated. Utilizing an IFB indicates a low-bid process.

Organizational Conflict of Interest. All SMART procurement transactions funded on the whole or in part by Federal monies must be conducted in a manner that provides for full and open competition. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable (or potentially unable) to render impartial assistance or advice to SMART; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage. A situation of this nature restricts full and open competition and SMART will use

appropriate contract clauses to preclude any unfair competitive advantage. This would include, for example, using a suitable clause in A&E contracts to preclude the successful awardee from submitting a proposal for any resultant contract for construction.

Person. Any business, individual, union, committee, club, other organization, or group of individuals.

Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling and historical and current selling prices. The definition relates to data relevant to both prime and subcontract prices.

Procurement. The buying, purchasing, renting, leasing, or acquiring any supplies, services, or construction. It also includes all functions pertaining to obtaining any supply, service or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Qualified Products List. An approved list of supplies, services, or construction items described by model or catalogue numbers, which, before competitive solicitation, SWART has determined will meet the applicable specification requirements.

Request for Proposal (RFQ). All documents, whether attached or incorporated by reference, are used to solicit proposals.

Responsible Proposer, Bidder, or Offeror. A person with the capability in all respects to perform fully the contract requirement, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit will assure good faith performance.

Responsive Proposer or Bidder. A person who has submitted a bid that conforms in all material respects to the requirements outlined in the invitation for bids.

Services. The labor and other work are provided by outside organizations for fees and related expenses. In most instances, services from an outside organization are procured as a substitute for in-house employee labor, except for independent audits, which employees could not perform in the first place. The substitution is usually made because the skills offered by the outside organization are needed for only a short period of time or are better than internally available skills. The charge for these services is usually based on the labor hours invested in performing the service.

Small Business. A United States business that is independently owned and not dominant in its field of operation, or an affiliate or subsidiary of a business dominant in its field.

Specification. Any description of the physical or functional characteristics or the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Using Agency. Any department, commission, board, or public agency requiring supplies, services, or

construction procured under this Policy.

Authority and Duties

Except as otherwise provided herein, the **Procurement Manager** serves as SWART's principal public purchasing official and is responsible for procuring supplies, services, and construction in accordance with this Policy.

Duties: Under this Policy and subject to the supervision of the General Manager, they procure or supervise the procurement of all supplies, services, and construction needed by SWART and establish and maintain programs for specifications development, contract administration, inspection, and acceptance in cooperation with the public agencies using the supplies, services, and construction. For bus procurements, the Procurement Manager shall be present for all **Resident Inspections**.

Preparing specifications for technical equipment, plans, or designs is usually the responsibility of the requesting departments. The Procurement Manager assists when requested. The Procurement Manager has full authority to question the quality, quantity, competitive nature, and kind of items requisitioned to maintain the best interests of SWART. The Procurement Manager changes or modifies no specifications without coordination with the requesting department.

Delegation to Other District Officials

With the General Manager's approval, the **Procurement Manager** may delegate authority to purchase certain supplies, services, or construction items to other SWART officials if such delegation is deemed necessary for the effective procurement of those items.

Joint Purchasing Agreements

SWART may enter into agreements with other businesses, state governments, federal governments, and local and city governments for jointly made procurements, so long as the purchases executed are in SWART's best interest. All purchases will comply with this policy and all applicable local, state, and/or federal requirements.

Written Record of Procurement History

Written Procurement Procedures [FTA C 4220.1F, III. 3, d. (1)]. The Common Grant Rules require the recipient to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions and other aspects of project implementation. The Common Grant Rules require the recipient to maintain these records for three years after the recipient and sub-recipients, if any, have made final payment and all other pending matters are closed. The recipient must also prepare, maintain, and distribute the following documents as necessary:

1. Procurement History. The Common Grant Rules require the recipient to maintain and make available to FTA written records detailing the history of each procurement, as follows:
 - (a) Procurement Method. A governmental recipient must (and a non-governmental recipient should) provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive, while a non-governmental recipient need only justify lack of competition when it does not obtain competitive bids or proposals for contracts exceeding the simplified acquisition threshold
 - (b) Contract Type. A governmental recipient must (and a non-governmental recipient should) state the reasons for selecting the contract type it used (fixed price, cost reimbursement, and so forth)

- (c) Contractor Selection. A governmental recipient must state the reasons for contractor selection or rejection. FTA expects the recipient to include a justification for each non-competitive award. For procurements exceeding the simplified purchase threshold, a non-governmental recipient must state its reasons for contractor selection but need not state its reasons for contractor rejection. Each recipient should include a written responsibility determination for the successful contractor; and
- (d) Cost or Price. Each recipient must evaluate and state its justification for the contract cost or price.
- (e) Reasonable Documentation. The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary significantly for different procurements. For example, a receipt or bill accompanying a \$100 credit card purchase might contain the required information to support that procurement. More substantial procurements may require extensive documentation.

Basic Procurement Process

The steps detailed below are undertaken by either the SWART procurement team or a consultant for third-party procurements. SWART has policies and procedures, including written procurement procedures, standards for procurement officials, and protest procedures, on file to assist with creating procurement documentation. SWART requires consultants to use this document when preparing procurements for SWART. SWART follows the procurement process in compliance with the Recipient's Responsibilities in the latest version of Federal Transit Administration (FTA) Circular 4220.1, which is 4220.1F, when federal funds are used, and the PTN-130 Form, when state funds are used.

Procurement Preparation and Planning Activities

SWART starts the procurement process with a request for a procurement from the requesting department. The requesting department will create a written procurement history as required in the FTA Common Grant Rules. The written procurement history includes the rationale for the procurement method, contract type, reasons for contractor selection or rejection, and the basis for the contract price.

SWART will perform a cost or price analysis concerning every procurement action, including contract modifications. The method and degree of analysis depend on the facts and circumstances surrounding each procurement, but as a starting point, SWART will make independent estimates before receiving bids or proposals. The requesting department will also prepare an independent cost estimate (ICE) for each procurement, using one of the following sources: published price list (e.g. catalogs), past pricing, engineering or technical estimate, open marketplace commercial item listing, current published standards (e.g. labor rate, cost per unit), or other justified methods. When federal grant funds are used, the Procurement Manager will forward the request to the General Manager and/or the Chief Financial Manager to ensure the availability of funds.

The Procurement Manager is responsible for verifying the overall Disadvantaged Business Enterprise (DBE) program goal and the method to achieve that goal. If a procurement includes a contract goal, the Procurement Manager ensures the appropriate DBE goal percentage is identified and applied. The Procurement Manager also manages the DBE-related portions of the procurement. He facilitates outreach by including contact information for potential DBE and Small Business Enterprise (SBE) firms to notify them of the upcoming release. SWART documents this outreach in a separate internal DBE Participation memo.



The written procurement history, ICE, and DBE Participation memo form the basis for SWART to develop the solicitation package. Each package is different due to the rationale in the written procurement history. Based on the method of procurement, the solicitation packages can be an Invitation for Bid (IFB), Request

for Proposals (RFP), Request for Qualifications (RFQ), Sole Source Procurement (other than full and open competition), or a Small Purchase. Elements need to be in any solicitation package, including: background about the procurement, applicable laws and regulations, submittal instructions, scope of work with technical specifications if applicable, inspection and acceptance, invoicing and payment, contact information for the Procurement Coordinator, federally required contract clauses (when federal funds are used), requirements for the DBE Program, indemnification clauses, and the protest procedure, which does not apply to sole source procurements. Solicitation Packages must include federally required contract clauses based on the type of procurement listed in the FTA Circular 4220.1F, when federal funds are used.

For Architectural Engineering (A&E) Services and Other Services procurements, SWART uses qualifications-based procurement procedures contained in the “Brooks Act,” 40 U.S.C. Sections 1101 through 1104, to acquire A&E services. Still, also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services, as stated in the FTA Circular 4220.1F, however SWART is bound by state law to comply with Texas Government Code Chapter 2254, Professional and Consulting Services, for acquiring consulting services with money received from the federal government unless a federal law or regulation conflicts with the application of this chapter. No federal law or regulation conflicts with application of this chapter. SWART does not use price as an evaluation factor. SWART negotiates with the most qualified offeror, and only after disagreeing with a fair and reasonable price may negotiations be conducted with the next most qualified offeror. For all A&E Services and Other Services procurements, SWART states that they comply with Texas Government Code Chapter 2254, Professional and Consulting Services, for all A&E procurements in the solicitation package.

SWART prepares a public notice to be placed in at least one (1) newspaper, the TTA (Texas Transit Association) website, and the SWART website, which follows Title VI regulations. The public notice may include the solicitation number, brief description of work, availability of solicitation package, information about pre-bid or pre-proposal meetings, due date, and/or contact information. The Procurement Manager has prepared the suggested vendor list.

If TxDOT administers funding procurements, SWART submits the above documentation to the appropriate TxDOT Public Transportation Coordinator for review before the procurement is issued.

Pre-Award Activities

SWART documents actions taken during the open solicitation period. Documentation of actions taken may include the affidavit of publication of the notice, sign-in sheets from the pre-bid or pre-proposal meeting, responses to questions, and/or addenda. The open solicitation actions are included in the solicitation's internal documentation. The Procurement Manager and the requesting Department Director(s) or their designees will review the proposals or bids.

SWART updates the written procurement history to include Pre-Award Activities. The procurement history includes descriptions of Full and Open Competition, reviews of Bidder or Proposer Responsiveness, reviews of Bidder or Proposer Responsibility, a Price or Cost Analysis, proposal evaluation results if applicable, and award recommendation. For the review of Responsiveness, SWART creates a checklist of documents listed in the instructions of the solicitation package and compares bids and proposals against the checklist. The checklist also includes the certifications required by the Federally Required Contract Clauses. For the review of Responsibility, SWART reviews requested financial documentation to determine if the Bidder or Proposer has enough assets to complete the project, but to fully verify if a bidder is a responsible contractor, SWART must verify the following:

A recipient may award a contract...only to a ‘responsible’ contractor capable of successfully performing under the terms and conditions of the contract [FTA C 4220.1F, VI, 8.b.]. To be found responsible, a contractor must fulfill all of the following criteria:

- (1) Integrity and Ethics. Have a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (2) Debarment and Suspension. Be neither debarred nor suspended from Federal programs under DOT regulations, “Non-procurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- (3) Affirmative Action and DBE. Be in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (4) Public Policy. Be in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B).
- (5) Administrative and Technical Capacity. Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
- (6) Licensing and Taxes. Be in compliance with applicable licensing and tax laws and regulations.
- (7) Financial Resources. Have, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- (8) Production Capability. Have, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (9) Timeliness. Be able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (10) Performance Record. Be able to provide:
 - (a) Current Performance. A satisfactory current performance record, and
 - (b) Past Performance. A satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
 - 1 Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
 - 2 Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation, and

Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror’s control, or unless the bidder

or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. FTA expects the recipient to consider the number of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

SWART can do reference checks and these other types of verifications through resources such as:

- (a) The General Services Administration's System for Award management (SAM) available at www.sam.gov The SAM must always be checked to determine that the contractor has not been suspended or debarred, and the file must be documented that SAM was checked; for TxDOT procurements the Texas debarred vendor list is also checked;
- (b) Records and experience data, including verifiable knowledge of your agency's personnel;
- (c) Information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information;
- (d) Pre-award survey reports; and
- (e) Other sources, such as publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.

When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the Procurement Manager should make, sign, and place in the contract file a determination of non-responsibility that states the basis for the determination. Documents and reports supporting a determination of responsibility or non-responsibility, including any pre-award survey reports, should be included in the contract file.

Bidders and Proposers must submit certifications for federal clauses based on the thresholds in the table below. SWART reviews all bids or proposals for certifications deemed necessary. Pre-award certifications for rolling stock include the Federal Motor Vehicle Safety Standards, the Domestic Content Worksheet, and the Transit Vehicle Manufacturer DBE Certification.

If TxDOT administers funding procurements, SWART submits the above documentation to the appropriate TxDOT Public Transportation Coordinator for review before contract award. If TxDOT is not administering funding for the procurement, SWART submits a memo to the General Manager/Assistant General Manager with the recommended vendor selection. The General Manager/Assistant General Manager must sign off on the vendor selection before the written vendor notification of award

Post-Award Activities

SWART finalizes the written procurement history to document Post-Award Activities, which may include: invoicing, deliverables, post-delivery certification, and the PTN-130, if TxDOT administers funds.

The General Manager reviews invoices and pays contractors in acceptance with the contracts. For contracts with DBE subcontracting firms, SWART requires the contractor to complete the Contractor Payment Report Form and submit it along with the Contractor Monthly Reports and invoices. Prompt payment to DBE subcontractors is reviewed on a periodic basis.

SWART inspects all deliverables before acceptance. For vehicle procurements, SWART requires the completion of post-delivery certifications for Buy America, FMVSS, Domestic Content Worksheet and Motor Vehicle Safety Pollution Requirements Certifications and performs Post-Delivery Audits.

If TxDOT administers funding procurements, SWART submits the above documentation to the appropriate TxDOT Public Transportation Coordinator for review prior to contract close out.

Purchasing Policy

According to the FTA's Best Practices Procurement Manual, SWART purchases materials, services, supplies, and equipment and sells declared surplus property.

Before making any purchases or selling any items, the Procurement Manager allows competition under the prescribed rules and regulations. No purchases are made unless the General Manager and the Assistant General Manager verify that sufficient funds are available in the budget to pay for the purchase. No purchases are approved without a purchase order being issued before purchase.

Fair and Reasonable Price. Each purchase made needs to be deemed and documented as a fair and reasonable price. For micro-purchases, a fair and reasonable price determination is made based on price analysis. Some standard price analysis techniques are as follows:

- Comparison of proposed prices received in response to the solicitation.
- Comparison of prices received with prior procurement actions for the same or similar end items. Prior price comparisons may be affected by:
 - ✓ Changes in economic conditions between the two procurements;
 - ✓ Differences in quantities;
 - ✓ Inclusion of non-recurring costs in the prices. Nonrecurring costs can be removed from both prices to make a fair comparison.
- Comparison with competitive published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements.
- Comparison of proposed prices with the cost estimates performed before the solicitation, although this alone is seldom adequate to warrant a determination that the price is fair and reasonable.

Authorization to purchase commodities and services according to dollar limitations are as follows:

Micro-Purchase- Informal

- Amount: \$3,000 or Less
- Competitive quotations are not required if it can be determined and documented that the vendor's price is fair and reasonable. Informal quotes (phone, fax, email, or written) may be obtained in certain circumstances to ensure a fair and reasonable price. Purchases shall be distributed equitably among qualified suppliers. A completed Micro purchase form must accompany every micro purchase.

Small Purchase Requiring Informal Bid

- Amount: \$3,000.01 up to \$49,999.99
- Small Purchase procedures require obtaining price or rate quotations from an adequate (two or more) number of qualified sources. Informal quotes (phone, fax, email or written) are obtained whenever possible for purchases from \$3,000.01 up to \$49,999.99. A completed Small Purchase form must accompany every small purchase.

Formal Procurements

- Amount: \$50,000.00 and above
- Solicitations for purchases estimated at \$50,000 or more must be published in a newspaper or general circulation for two consecutive weeks. Therefore, most of SWART's purchases exceeding \$50,000.00

are solicited using formal procurement methods: Invitation for Bids (IFB), Request for Proposal (RFP), etc.

Source Selection Methods

Small Purchases

Micro-Purchase. For amounts of \$3,000 or less, no competitive bids or quotes are required if the price to be paid is fair and reasonable, and there must be documentation that the price to be paid is fair and reasonable. If the price to be paid is fair and reasonable, a copy of the purchase order and justification is maintained for SWART records. Purchases are distributed equitably among qualified suppliers, including DBE/WBE firms. When practicable, a quotation is solicited from a source other than the previous supplier before placing a repeat order.

Small purchases range from \$3,000.01 up to \$49,999.99. Must obtain price or rate quotation from an adequate number of qualified sources consisting of two (2) or more informal bids. An informal bid is defined as a bid or quote that is taken over the phone, via fax, email, or by a written quote. Informal bids or quotes must be recorded by agency delegates using the informal bid/quote form. Include the names of the business submitting quotations and the date and amount of each quotation. Bid/quote forms are to be submitted to the Procurement Manager to be kept on file. Awards are to be made to the business offering the lowest acceptable quotation. The price to be paid is fair and reasonable, and there must be documentation that the price to be paid is fair and reasonable.

Selecting the Appropriate Procurement Method

Negotiated Procurements. There are three basic types of negotiated procurement: competitive negotiation, non-competitive negotiation, and small purchase procedures. Although formal advertising (sealed bidding) is the traditional mode of procurement, negotiation is recommended, as allowed, in specific instances.

The negotiated method of procurement should be used if:

- Contracting for services or items not precisely defined, described, or standardized.
- Contracting for research and development where the end product may be conceptual in nature.
- Consider not only price but also factors such as delivery time and quality to determine the most advantageous offer.

Competitive Sealed Bids (IFB)

IFB is the preferred procurement method under the conditions described below. The award will be made on the basis of the lowest, most responsive and responsible bidder. If these conditions are absent, a negotiated procurement method, such as an RFP, would be more appropriate.

- The estimated contract amount is greater than \$50,000.
- The purchase requirements or specifications can be defined precisely.
- There is a reasonable expectation that at least three (3) independent bids will be received.
- The award will be made on the basis of price alone.
- There is time to carry out the necessary procedures.
- The contract awarded will be a firm fixed-price or fixed-price with escalation.

Exceptions to competitive sealed bid and award include:

- Small purchase procedures.
- Emergency procurements as determined by the General Manager.
- There is only one source of supply.
- Contracting for designated professional services.
- Contracting for architect/engineer or land surveying services.

- Contracting under a negotiated procurement.
- The purchase requirements or specifications cannot be defined precisely.

Detailed Procedures for IFB.

1. The department requested that the department prepare written specifications, procurement history, and an ICE.
2. The Procurement Manager reviews specifications for completeness and to detect and correct any discrepancies or ambiguities that could unnecessarily limit competition.
3. The Procurement Manager collaborates with the General Manager/Assistant General Manager and the Chief Financial Manager to proactively identify and engage with appropriate DBEs and Small Business Enterprises (SBEs).
4. If the purchase is to be made from grant or capital funds, the requisition is then forwarded to the General Manager or Assistant General Manager to ensure the availability of funds.
5. The grant line-item budget is reviewed to determine whether a budget revision is required prior to purchase. Justified and required revisions are processed at this point. FTA concurrence for a budget revision to a non-construction line must be obtained whenever the Federal share exceeds \$100,000 and the cumulative amount of transfers in the proposed revision exceeds 10% of the total grant budget. For construction grants, prior FTA approval is required whenever the revision would transfer funds between construction and non-construction work. These requests are processed by the General Manager, with the appropriate paperwork forwarded to FTA.
6. The Procurement Manager will prepare the bid package.
 - a. Bid Opening Date. A bid opening date will be determined. The Procurement Manager conducts formal public bid openings. The bid opening will be a minimum of 30 calendar days after the first public notice.
 - b. Bid Quotation Number. A bid quotation number assigned by the Procurement Manager.
 - c. Public Notice. The ad runs in a newspaper of general circulation, with the ad appearing at least 20 calendar days prior to the date set for opening bids when procuring standard commercial articles, and at least 30 calendar days before the date set for bid opening in other procurements. If exceptional circumstances require a shorter period, the first ad runs not less than 15 days before the date set for opening bids. The public notice describes the goods or services sought, provides contact information for obtaining the IFB, and specifies the date, time, and location of the bid opening.
 - d. Invitation for Bid (IFB) Package. An Invitation to Bid and Bid Quotation Form is prepared and attached to form a complete Invitation for Bid (IFB) Package. The IFB is the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders. The IFB Package will include specifications and all contractual terms and conditions applicable to the procurement and will consist of the following:
 - Invitation to Bid Form
 - Bid Specifications
 - Attachments & Amendments
 - General Contract Provisions

All required Federal, State, and SWART forms and clauses
Bid Protest Policy

- e. Distribution of the IFB. The entire bid package will be sent to the vendor list approved by the Procurement Manager. The suggested vendor list is prepared by the requesting department. The bid notice is sent to bidders on the SWART vendor list, and the DBE's listed on TxDOT's website. A bid package, including a vendor mailing list, is sent to the Requesting Department Head.
 - f. Procurement Manager's Contract File. A complete bid package is retained in the contract file along with the originals of each item in the package. An up-to-date vendor mailing list is kept in the contract file including any packages sent out subsequent to the initial mailing. Evidence of advertising is placed in the contract file when received.
7. Amendment to Invitations for Bid. If after publication of notice and issuance of IFBs, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, the Procurement Manager will issue an amendment to the IFB. The amendment is sent to each vendor to whom the IFB has been furnished. Any information given to a prospective bidder concerning an IFB will be furnished promptly to all other prospective bidders and published as an amendment to the invitation if such information is necessary to bidders in submitting bids on the IFB or if lack of such information would be prejudicial to uninformed bidders. Bids are not opened until sufficient time has passed to permit each prospective bidder to consider such information in submitting or modifying its bid based on the Amendment. Amendments will be sequentially numbered and must be acknowledged by each vendor submitting a bid. The changes required will be supplied to the Procurement Manager by the department head requested.
8. Responsiveness of Bids. To be considered for the award, a bid must comply in all material respects with the IFB. Bids must be executed and submitted in accordance with the instructions contained in the IFB. Bidders are required to use the bid form furnished by SWART to assure uniformity in bids.
9. Bid Opening. All bids must be recorded on or before the exact time and date indicated on the invitation for bid. All bid responses are sent to the Procurement Manager who will maintain them until the bid opening. Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The amount of each bid and the name of each bidder are recorded; the record and each bid are open to public inspection. Late bids are considered non-responsive and are not accepted.
10. Late Bids. Bids are "late bids" when they are received by the Procurement Manager after the exact time and date for bid opening. Late bids are considered non-responsive and are returned unopened to the bidder.
11. Modification or Withdrawal of Bids. Bids may be modified or withdrawn by written notice received in the office designated in the IFB not later than the exact time set for opening of bids. No information contained therein is disclosed before the time set for bid opening. A bid may be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for opening of bids.
12. Late Modifications and Withdrawals. Modifications of bids and requests for withdrawal of bids which are received in the office designated in the IFB after the exact time set for opening are "late modifications" or "late withdrawals". A late modification or late withdrawal are subject to the rules and

procedures applicable to late bids. A late modification of the otherwise successful bid may be opened at any time.

13. **Modification of Specifications and Pre-Bid Appeal.** SWART shall, in all purchases of buses, and may, in certain other procurements where the Procurement Manager deems it advisable, provide a formal pre-bid procedure to be implemented as follows:
 - a. **Amendment to Specifications.** SWART may issue amendments to its bid solicitation documents. Amendments, if any, shall be issued as far in advance of the date of bid opening as practicable. If, in the opinion of the Procurement Manager, any amendment issued less than fifteen (15) days prior to the date of bid opening significantly alters the nature of the procurement, it shall contain a provision postponing the date of bid opening to a date that will provide bidders with adequate time to respond to it. Amendment shall be numbered sequentially.
 - b. **Requests for Clarifications.** Bidders and suppliers may submit to the Procurement Manager approved equals and clarifications of specifications provided that such requests for approved equals and clarifications of specifications are:
 - (1) submitted in writing and received by the Procurement Manager no later than the date specified in the bid solicitation documents; and
 - (2) supported by evidence such as technical data, test results or other pertinent information that demonstrates that the substitute offered is equal to or better than the specifications requirement.
 - c. **Decision on Requests for Clarifications.** The Procurement Manager's decisions on submissions under subparagraph b. above shall be issued as soon as practicable.
 - d. **Notice of Decision.** Any material issued by SWART pertaining to the bid solicitation documents (including clarifications, approved equals, corrections, etc.) shall be set forth in an amendment and sent to all parties who are on record as having obtained a copy of the bid solicitation documents.
 - e. **Appeal.** Should any bidder or supplier choose to appeal SWART's decision, such an appeal shall be in writing and filed with the Procurement Manager no less than seven (7) calendar days before the date of bid opening.
 - f. **Finality of Decision.** The bidder or supplier may withdraw its appeal at any time before SWART issues a final decision. There shall be no further review of the appeal after the final decision is issued.
14. **Bids.** All bid responses are sent to the Procurement Manager who maintains them until bid opening.
15. **Cancellation of Invitation after Opening.** Unless a compelling reason exists for rejecting all bids and canceling the IFB after bids have been opened, the award shall be made to that responsible bidder who submitted the lowest, responsive bid. An IFB shall not be cancelled and re-advertised due solely to increased requirements for the items being procured. The award shall be made on the initial 'PB and any substantial additional quantity shall be treated as a new procurement. After opening, but prior to the award, IFBs may be cancelled by SWART and all bids rejected, where the Procurement Manager determines that compelling circumstances justify such action. Complete written documentation of these cases shall be placed in the contract file. When it is determined to reject all bids, the Procurement Manager shall notify each bidder that all bids have been rejected, stating the reasons for such action.

16. **Rejection of Individual Bids.** The originals of all rejected bids and any written findings with respect to such rejections are preserved with the papers relating to the procurement. Bids may be rejected for the following reasons:
- a. **Non-responsive.** Any bid which fails to conform to the essential requirements of the IFB, such as specifications, delivery schedule, or any alternatives to these or other requirements which may be specifically provided for in the IFB, may be rejected as non-responsive.
 - b. **Conditions.** A bid may be rejected if the bidder imposes conditions, which would modify requirements of IFB or limit its liability to SWART so as to give him/her an advantage over other bidders. A low bidder may be requested to delete objectionable conditions from its bid if these conditions do not affect the price, quantity, quality, or delivery of the items offered.
 - c. **Unreasonable Price.** Any bid may be rejected if the Procurement Manager determines that the price is unreasonable and the determination is supported by written review and analysis of the action.
 - d. **Absence of Guarantee.** Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the IFB, the bid may be rejected.
 - e. **Assignment.** The Procurement Manager may reject a bid if, after its submittal, the bidder assigns or transfers the bid during the period between the bid opening and the award or the original bidder may be required to perform.
 - f. **Not Responsible.** Low bids received from firms determined by SWART not to be responsible (or ineligible for any reason) may be rejected.
 - g. **Restrictions on Disclosure of Descriptive Literature.** A bid may be considered non-responsive when it is accompanied by descriptive literature, if the bidder imposes a restriction that such literature may not be publicly disclosed, and such restriction prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid which relate to quantity, price and delivery terms. Descriptive literature restricted by a bidder against public disclosure is not disclosed in a manner, which could contravene the restrictions without permission of the bidder.
17. **All or None Qualifications.** Unless the IFB so provides, a bid is not rendered non-responsive by the fact that the bidder specifies that award is accepted only on all, or a specified group, of the items included in the IFB. Bidders are not permitted to withdraw or modify “all or none” qualifications after bid opening since such qualifications are substantive and affect the rights of the bidders.
18. **Minor Informalities or Irregularities in Bids.** The Procurement Manager may, at his option, waive such deficiency resulting from a minor informality or irregularity.
19. **Bid Acceptance, Tabulation and Evaluation.** Bids are unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids are evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award are objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The IFB is set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the IFB. The Procurement

Manager prepares a tabulation of the bids and performs an evaluation to determine the low responsive and responsible bidder.

20. **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids are permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of SWART or fair competition are permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, is supported by a written determination made by the Procurement Manager.

21. **Award.** The Procurement Manager and the department head or their designees, review the bids. The vendor who is the lowest responsive and responsible bidder meeting all requirements and specifications in the IFB is recommended to the General Manager/Assistant General Manager for the award of contract. The General Manager/Assistant General Manager must sign off on the vendor selection prior to the written vendor notification of award. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the General Manager/Assistant General Manager, and such bid does not exceed such funds by more than five percent, the Procurement Manager is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. SWART Board of Directors approval is required to award all contracts in which the aggregate amount in the contract is more than \$100,000. Contracts of \$100,000 or less may be awarded by the General Manager/Assistant General Manager as long as they are within budgeted amounts approved by the SWART Board of Directors. The SWART Board of Directors may transfer approval authority for contracts of \$100,000 or less to the General Manager.

Aggregate Amount of Contract

-\$25,000

\$25,000+

\$100,000+

Approval Required

General Manager/Assistant General Manager

General Manager/Assistant General Manager

SWART Board of Directors

22. **Tie-Bids.** In the event two (2) or more vendors have submitted the lowest and best bids, price and service considered, the bids are awarded by a coin toss held in public.
23. **Placing Order.** Once a purchase order is issued, the vendor copy is mailed or emailed to the vendor.
24. **Contract.** If the Procurement Manager determines that a SWART contract should be used, then the Procurement Manager ensures that it is prepared and sent to the vendor for signature after the purchase has been approved. All contracts are required to reference the RFP number, purchase order number and are required to include a delivery schedule.

25. Internal Notification of Award. The requesting department head will be advised by the Procurement Manager that the procurement has been approved and a purchase order issued. A copy of the Purchase Order is to be forwarded to the General Manager so that funds may be encumbered.
26. Receipt of Material/Services. Material is received and distributed to the requesting department as required. As the work is completed or the materials received, the receiving/shipping documents is forwarded to the Accounts Payable clerk for payment processing. If the items purchased are for inventory stock, the receiving documents are routed to Accounts Payable. The requesting department head should verify receipt of the goods or services for payment.

Competitive Sealed Proposals (RFP)

When the Procurement Manager determines that the use of RFP is either not practicable or not advantageous to SWART, a contract may be entered into by use of the IFB method. RFPs are used when due to the uniqueness of the need a sealed bid is not appropriate, are created around general guidelines instead of firm specifications, and should only be used when no fixed criteria exist. The quality of competing products or services is compared and trade-offs made between the price and quality of the products or service offered.

Although formal bidding is the traditional mode of procurement, negotiation is strongly recommended, when allowed by federal, state and local law, in specified instances. You should use a negotiated method of procurement if:

- You are contracting for services or items that cannot be precisely defined, described, or standardized.
- You are contracting for research and development where the end product may be conceptual in nature.
- You must consider not only price but also quality and contractual factors in order to determine the most advantageous offer.
- You must weigh artistic or aesthetic values to the extent that price is a secondary consideration.

Basic Steps

The basic steps in competitive negotiated procurement are:

- A request for proposal (RFP) is issued which contains the specifications describing actual minimum needs.
- Qualified offerors submit sealed proposals.
- The proposals are opened in private and evaluated.
- The Procurement Manager decides whether to negotiate with offerors within a competitive range or to award the contract without further discussion.
- If negotiations take place, offerors may modify their proposals accordingly and submit their "best and final" offer.
- Best and final offers are evaluated and a contract is awarded.

Detailed Procedures for RFP.

Procedures for Competitive Negotiation Procurement by RFP include, but are not limited to, the following:

1. Requesting department prepares written specifications, written procurement history, and an ICE.
2. Specifications are reviewed by the Procurement Manager for completeness and to detect and correct any discrepancies or ambiguities, which could unnecessarily limit competition.
3. The Procurement Manager works with the General Manager/Assistant General Manager and the Chief Financial Manager to provide proactive outreach to appropriate DBEs and Small Business Enterprises

(SBEs).

4. If the purchase is to be made from a grant or capital funds, requisition is then forwarded to the General Manager/Assistant General Manager and to the Chief Financial Manager to ensure the availability of funds.
5. The grant line-item budget is checked to determine whether a budget revision is required prior to purchase. Justified and required revisions are processed at this point. FTA concurrence for a budget revision to a non-construction line must be obtained whenever the Federal share exceeds \$100,000 and the cumulative amount of transfers in the proposed revision exceeds 10% of the total grant budget. For construction grants, prior FTA approval is required whenever the revision would transfer funds between construction and non-construction work. These requests are processed by the General Manager, with the appropriate paperwork forwarded to FTA.
6. The Procurement Manager will prepare the RFP package.
 - a. Proposal deadline date. A deadline date for the submission of proposals has been established by the Procurement Manager consulting with the requesting department. The Proposals are opened by the Procurement Manager on the determined date. The deadline established should be set so that the requirement can be advertised and mailed or emailed at least 30 calendar days in advance of that date. The date established is in no case be less than 15 calendar days from advertising and mailing.
 - b. Request for Proposal Number. An RFP number is assigned by the Procurement Manager, this RFP number must be referenced on all documentation including the final executed contract.
 - c. Advertisement. An advertisement is placed in the local newspaper "Legal Notice" section of the classified ads. The ad runs once at least 30 calendar days prior to the date set for opening proposals. If special circumstances require a shorter time period, the first ad is not less than 15 days before the date set for opening proposals. If the Procurement Manager determines that wider coverage is needed for advertising, then an ad is placed in Passenger Transport (or other appropriate trade publication). An ad in Passenger Transport normally runs one time. Passenger Transport is published once a week on Monday with the deadline for advertising copy (written only) one week prior to publication (Monday at noon). The ad placed in Passenger Transport should meet the same time requirements stated above. Therefore, to meet the 15-day minimum, the ad has to be mailed to Passenger Transport not less than four weeks before the scheduled proposal opening.
 - d. Distribution of the RFP. A suggested vendor list is prepared by requesting department. The proposal notice is sent to proposers on the SWART vendor list, and the DBEs listed on TxDOT's website. A proposal package, with a vendor mailing list included, is sent to the requesting department head.
 - e. RFP Package. The RFP package is the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective proposers for the purpose of submitting proposals. The RFP package includes specifications and all contractual terms and conditions applicable to the procurement and will consist of the following:
 - Proposal Specifications
 - Attachments & Amendments
 - General Contract Provisions

All required Federal, State, and SWART forms and clauses
Proposal Protest Policy

- g. **Contract File.** A complete RFP package is retained in the contract file along with the originals of each item in the package. An up-to-date vendor mailing list is kept in the contract file including any packages sent out subsequent to the initial mailing. Evidence of advertising is placed in the contract file when received.
- 7. **Amendment to RFP.** If after publication of notice and issuance of an RFP, but before the time set for opening of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous request, the Procurement Manager issues an amendment. The amendment is sent to each vendor to whom the RFP has been furnished. Any information given to prospective offerors concerning an RFP is furnished promptly to all other prospective offerors, and published as an amendment, if such information is necessary for submitting proposals or if lack of such information would be prejudicial to uninformed prospective offerors. No award is made unless such amendment has been issued in sufficient time to permit each prospective offeror to consider such information in submitting or modifying its proposal. Amendments are sequentially numbered and each vendor submitting a proposal should acknowledge receipt. The method of acknowledgment is specified in the amendment and/or the RFP. The changes required are supplied to the Procurement Manager by the requesting department.
- 8. **Submission of Proposals.** The proposals are sent to the Procurement Manager who will maintain them, unopened, until the date set for the opening.
- 9. **Opening of Proposals.** At the date and time specified in the RFP, the Procurement Manager opens the proposals. This opening is NOT opened to the public. At least one other SWART staff person is present at the opening. The Procurement Manager maintains a register of proposals received. This register will contain the name of each offeror, the number of modifications received, if any, and a descriptive title of the requirement. This register of proposals is open for public inspection only after the contract award.
- 10. **Receipt of Proposals.** No proposal is handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A list of proposals is prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals is open for public inspection only after the contract award. Proposals arriving before the opening date and time are filed until the proposal opening. All proposals received are date stamped.
- 11. **Late Proposals.** Proposals are late when they are received by the Procurement Manager after the exact time for proposal opening. Late proposals received after the actual proposal opening are not considered.
- 12. **Evaluation Factors.** The RFP identifies that price and other evaluation factors are considered.
 - (a) All evaluation factors will be identified in the procurement documents along with their relative importance; numerical or percentage ratings or weights, however, need not be disclosed.
 - (b) SWART will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.
- 13. **Discussion with Responsible Offerors and Revisions to Proposals.** As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of;

and conformance to, the solicitation requirements. Offerors are afforded fair and equal treatment concerning any opportunity for discussion, or revision of the identity of competing offerors, or of any information derived from proposals submitted by competing offerors.

14. **Award.** The award is made to the responsible offeror, whose proposal is determined in writing to be the most advantageous to SWART, taking into consideration price and the evaluation factors set forth in the RFP. No other factors or criteria are used in the evaluation
15. **Contract File.** The contract file contains the basis on which the award is made. The SWART Board of Directors is required to award all contracts with an aggregate amount exceeding \$100,000. Contracts of \$100,000 or less may be awarded by the General Manager or Assistant General Manager, provided they are within the budgeted amounts approved by the SWART Board of Directors. All contracts are required to reference the RFP number and purchase order number and include a delivery schedule.

Circumstances Permitting Negotiation. Specific conditions must exist to allow negotiated procurement in lieu of competitive sealed bidding.

Emergency and Public Exigency. Purchase contracts may be negotiated without formal advertising if the General Manager/Assistant General Manager, along with the SWART Board of Directors, has determined an emergency exists and the public exigency does not permit delay due to advertising.

Application. This emergency authority is used only when the need is compelling and of unusual urgency, irrespective of whether that urgency could or should have been foreseen.

Limitations. Every contract negotiated under this authority is supported by written documentation justifying the use of the authority. This documentation is prepared and signed by the Procurement Manager.

Oral Offers. When a purchase is made under this authority based on telephone or other oral offers, a written confirmation of the accepted offer is obtained and included in the contract file.

Purchases not over \$50,000. Contracts for the construction of improvements or the purchase of material, machinery, equipment, supplies, and other property may be negotiated without formal advertising if the aggregate amount involved does not exceed \$50,000. Such procurements are Small Purchases.

Professional Consulting Services. Purchases and contracts are negotiated without formal advertising when they involve professional consulting services. If the procurement for such services exceeds \$50,000, adequate public notice of the request for proposals is given.

Services of Educational Institutions. Contracts are negotiated without formal advertising if they involve any service to be rendered by a university, college, or other educational institution.

Real Property. A contract for the purchase of real property may be negotiated without formal advertising.

Types of Negotiation. Negotiation is non-competitive or competitive as follows:

Noncompetitive negotiation. Noncompetitive negotiation is authorized when thoroughly justified. This type of negotiation is to be used if:

- The item is available only from a single source (sole source). The existence of a sole-source situation should be a matter of fact, not one dependent on the relative and limited knowledge of sources known to the project or contracting officers. It is not sufficient merely to conclude generally that a certain source is uniquely qualified or is the only company that can meet a specific delivery requirement. If a unique capability is claimed, particulars and details must be furnished on how the source is solely qualified (mere preferability or desirability is not sufficient). General conclusions and statements as to capability, experience, personal know-how, and so forth are not acceptable.
- There is a public exigency or emergency that does not allow time for competitive solicitation.
- FTA authorizes a non-competitive negotiation.

Competitive Negotiation. Competitive negotiation is a procurement method in which proposals are solicited from multiple sources and the process is publicly advertised. Negotiations are conducted with one or more sources that submit offers, and either a fixed-price or a cost-reimbursement type contract is awarded, as appropriate.

- Solicitation of Proposals. Proposals are solicited from the maximum number of qualified sources, including certified DBEs, to permit reasonable competition consistent with the nature and requirements of the procurement. The RFP is also publicized, and reasonable requests by other sources to compete are honored to the maximum extent practicable. Proposals are supported by statements and analyses of such information concerning other vital matters as is deemed necessary by the Procurement Manager.
- Confidentiality. Information is not conveyed to one or more proposers, which would give them a competitive advantage.
- No Ceiling Price. The RFP does not disclose a ceiling or budget price.
- Evaluation factors. The RFP identifies all significant evaluation factors and their relative importance in descending order.
 - All evaluation factors will be identified in the procurement documents along with their relative importance; numerical or percentage ratings or weights, however, need not be disclosed.
 - SWART will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.
- Discussions. Written or oral discussions are conducted with all responsible proposers who submit proposals within a competitive range, price, and other factors considered, except that the discussions may be omitted when inappropriate, unnecessary, or impracticable and when the RFP provides that award may be made without discussion.
- Revision. Each proposer with whom negotiations are conducted is given a reasonable opportunity (with a common cutoff date) to support, clarify, correct, improve, or revise its proposal.
- Notification to Unsuccessful Proposers. Unsuccessful proposers are notified at the earliest practicable time that their proposals have not been selected for the award.
- Award. The award is given to the proposer responsible for the proposal that is most advantageous to SWART, considering price, technical factors, and other relevant aspects. Upon written request, unsuccessful proposers are informed in general terms only of the reasons for non-acceptance of their proposals without disclosing other proposers' proprietary data.

General Requirements for Negotiation. No contract is entered into as a result of negotiation unless or until the following requirements have been satisfied.

- Negotiation Permitted. The contemplated procurement falls within one of the circumstances that permit negotiation.
- FTA Approval. Any clearance or approval prescribed by FTA has been obtained.

- **Responsible Contractor.** The proposer has been deemed responsible.
- **Competition.** When a proposed procurement appears to be non-competitive, the Procurement Manager assures us that competitive procurement is not feasible. The Procurement Manager documents the reasons for any non-competitive procurement. He takes steps to foster competitive conditions for subsequent procurements, particularly regarding the availability of complete and accurate data, the reasonableness of delivery requirements, and the possible breakout of components for competitive procurements.

Types of Contracts. The type of negotiated contract is determined by the Procurement Manager appropriate for the procurement, with consideration to (i) the responsibility assumed by the contractor for the costs of performance and (ii) the amount and type of profit incentive offered by the contractor to achieve or exceed specified standards or goals. The cost-plus-a-percentage-of-cost system of contracting is expressly prohibited.

The following types of contracts are authorized.

1. **Fixed-price Contracts.** Fixed-price type contracts provide for a firm price or, under appropriate circumstances, may provide for an adjustable price for the supplies or services provided.
 - a. **Firm-Fixed-Price Contracts.** A firm-fixed-price contract provides for a price that is not subject to any adjustment due to the contractor's cost experience during the performance of the contract.
 - b. **Fixed-Price Contract with Escalation.** A fixed-price contract with escalation allows for the upward or downward revision of all or part of the stated contract price upon the occurrence of specific contingencies defined in the contract. A reasonable ceiling limits upward adjustments. Downward adjustments are made in instances where prices or rates fall below the base levels specified in the contract. In the establishment of the base level from which escalation will operate, contingency allowances are eliminated to the extent that escalation is provided for any particular contingency.
2. **Cost Reimbursement Contract.** A cost-reimbursement type of contract provides for the payment of allowable costs incurred by the Contractor in performing the contract.
 - a. **Cost Contract.** A cost contract is a cost-reimbursement type of contract under which the contractor receives no fee. This type of contract may be suitable for research and development work, particularly with non-profit educational institutions or other non-profit organizations, as well as for facilities contracts and initial small quantity procurements or new items with anticipated subsequent large production runs.
 - b. **Cost-Sharing Contract.** A cost-sharing contract is a cost-reimbursement type of contract under which the contractor receives no fee but is reimbursed only for a portion of its allowable costs that have been agreed upon.
 - c. **Cost-Plus-A-Fixed-Fee Contract.** A cost-plus-a-fixed-fee contract is a type of cost-reimbursement contract that provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, remains unchanged regardless of the actual cost.
 - d. **Time and Materials Contract.** A time and materials contract provides for the procurement of property or services based on (i) direct labor hours at specified fixed hourly rates which include direct and indirect labor, overhead, and profit and (ii) materials at cost.

- e. Labor-Hour Contract. A labor-hour contract is a variant of the time and material type contract in which the contractor does not supply materials.

3. Letter Contract.

- a. Definition and Application. A letter contract is a written preliminary contractual instrument that authorizes the immediate commencement of the manufacture of property or the performance of services. Letter contracts are reviewed and approved by the FTA before being awarded. Letter contracts are used only in emergency situations where the interests of SWART require that the contractor be given a binding commitment so that work can commence immediately, and negotiation of a definitive contract in sufficient time to meet the requirement is not possible.
- b. Content. Letter contracts are specifically negotiated, and as a minimum, provide for the following:
 - (1) Contract Provisions. As many definitive contract provisions, such as termination, payment, approval of subcontracts, and protection of SWART furnished property, as practicable.
 - (2) Immediate Performance. The immediate commencement of performance of the contract by the contractor, including the procurement of necessary materials.
 - (3) Payment Method. The extent and method of payments in the event of termination.
 - (4) Maximum Expenditure. The contractor is not authorized to expend monies or incur obligations beyond the maximum.
 - (5) Contract Type. A definitive contract of this type is anticipated.
 - (6) Price/Cost Information. The contractor must provide such price and cost information as determined to be required by the Procurement Manager.
 - (7) Agreement to Execute. The prompt entry into "good faith negotiations" by both parties to reach an agreement upon and execute a definitive contract.
- c. Limitations
 - (1) Determination of Suitability. A letter contract is used only after the Procurement Manager has determined that no other type of contract is suitable. Such determination is fully documented.
 - (2) Competition. A letter contract is not entered into without competition when competition is practicable. Where a letter contract award is based on price competition, an overall price ceiling must be included in the letter contract.
 - (3) Definitive Contract. A letter contract includes an agreement between SWART and the contractor regarding the date by which the definitive contract may be agreed upon. This date is before the expiration of 80 days from the date of the letter contract or the completion date of forty percent (40%) of the production of the supplies, or the performance of the work called for under the contract, whichever comes first. In extreme cases, the

Procurement Manager may authorize an extension of the additional period.

- (4) **SWART's Liability.** The maximum liability of the SWART stated in the letter contract is the amount estimated to be necessary to cover the contractor's requirements for funds before the execution of the definitive agreement. This maximum amount does not exceed fifty percent (50%) of the total estimated cost of the procurement.
 - (5) **Cost Commitment.** The total estimated cost must not exceed the funds available for obligation and commitment in the appropriate allotment account of the FTA grant. Therefore, the letter contract must not describe, refer to, or otherwise commit SWART to a definite contract in excess of the funds available for obligation and commitment at the time the letter contract is executed.
 - (6) **Amendments.** Amendments to letter contracts to accomplish a new procurement may be used only if the new procurement is inseparable from the procurement covered by the existing letter contract. Such amendments are subject to the same limitations as new letter contracts.
- d. **Definitive Contract.** A letter contract is superseded by a definitive contract at the earliest practicable date, but no later than the target date established. In the event SWART and the contractor, after exhausting all reasonable efforts, cannot negotiate a definite contract because of failure to reach agreement as to price or fee, the contractor may, if authorized by the Procurement Manager, proceed with the work and the SWART Procurement Manager, with the approval of FTA, determines a reasonable price or fee, subject to a disputes clause.

Price Negotiation Policies and Techniques.

- 1. **Scope.** This subsection outlines the price negotiation procedures applicable to the negotiation of prime contracts and modifications thereto, including those to formally advertised contracts, as well as to subcontracts subject to approval or review by FTA.
- 2. **General.** To further SWART's policy of procuring property and services from responsible sources at fair and reasonable prices, all proposals that are properly subject to negotiation are analyzed for price and cost prior to awarding the contract to ensure that the price is fair and reasonable.
- 4. **Selection of Contract Type.**
 - a. **Appropriateness.** SWART negotiates a price and contract type appropriate to the procurement. Such a contract provides the contractor with the most significant incentive for efficient and economical performance.

When negotiations indicate the need for using a contract other than a firm fixed-price contract, SWART ensures that the type of contract selected and the contractor's accounting system are compatible.
 - b. **Selection of Cost-Reimbursement Type Contracts.** A cost-reimbursement contractor is required to have an acceptable cost accounting system, which will reflect allowable costs allocable to the contract work.

The requesting department will prepare "Evaluation of Proposals" criteria for each cost

reimbursement contract. The evaluation factors are included in the RFP and meticulously followed by those who are selected to evaluate the offers. Among the factors to be considered are the following:

- (1) Quality of similar work known to have been performed.
- (2) Depth of experience in the field.
- (3) Competence of technical personnel.
- (4) Quality of the responses to the REP.
- (5) Ability to meet contract schedules.
- (6) Total cost.

c. Monitoring. The SWART Procurement Manager monitors each procurement program to determine if the circumstances that initially dictated the selection of a specific type of contract have changed, making a different kind of contract more suitable.

4. Conduct of Negotiations. All SWART personnel involved in procurement evaluate offerors' or contractors' proposals, including price revision proposals, and conduct subsequent negotiations. Thoroughly documented oral discussions and written communications are conducted with proposers to the extent necessary to resolve uncertainties relating to the procurement or the price to be paid. Basic questions are not left for later agreement during price revision or other supplemental proceedings. During negotiation, cost and profit figures of one offeror are not revealed to other offerors.

5. Selection of Offerors for Negotiation Award. After receipt of initial proposals, written or oral discussion is conducted with all offerors who submitted proposals within a competitive range, price, and other factors considered, except that this requirement is not necessarily applied to:

- a. \$25,000 or under Exception. Procurements not over \$25,000 by Small Purchase procedures.
- b. Certified Cost or Pricing Data Exception. Procurements for items or services for which rates or prices are fixed by law or regulations.
- c. Fair Prices Exception. Procurements in which it can be clearly demonstrated that acceptance without discussion of the most favorable initial proposal would result in a fair and reasonable price.

6. Confidentiality of Negotiations. Whenever negotiations are conducted with more than one offeror, no indication is given to any offeror of a price that must be met to obtain further considerations. No offeror is advised of his relative standing with other offerors as to price, nor is he furnished information as to the prices proposed by others.

7. Cost and Pricing Techniques.

- a. Pricing Objective. SWART develops a pricing objective before the negotiations that includes, as appropriate, the following pricing appraisal methods:

- (1) An accounting projection of trends based on cost or pricing data;
 - (2) An engineering appraisal of the need for the estimated labor and material costs and the cost of tooling and facilities, as well as the reasonableness of scrap and spoilage factors;
 - (3) Independent estimates by competent technical personnel;
 - (4) Audit reports or pricing recommendations from others will be considered advisory only.
- b. Pricing Decision. The Procurement Manager is solely responsible for the final pricing decision. In instances where the Procurement Manager does not adopt audit or other specialist recommendations that have particular significance regarding the contract price, appropriate comments are included in the contract file.
 - c. Proposal Revisions. All offerors selected to participate in negotiations must be offered an equitable opportunity to submit such price, technical, or other revisions in their proposals as may result from the negotiations. All such offerors are informed of the specified date and time desired for the closing of the talks, and that any revisions to their proposals must be submitted by that date. All offerors are informed that, after the specified closing date for negotiations, no written or oral discussions will be conducted with any offeror.
 - d. Change in Requirements. When a substantial change occurs in the requirements or a decision is made to modify the scope of the work or statement of requirements during negotiations, such change or modification must be documented in writing as an amendment to the RFP, and a copy will be provided to each prospective contractor. A contract change that falls outside the scope of the original contract is considered a sole-source procurement.
 - e. Cost, Profit, and Price Relationships. The objective of the Procurement Manager is to negotiate fair and reasonable prices, taking into account all relevant factors.
8. Pricing Techniques. Price competition exists when at least two independent offers are received that are responsive to the expressed requirements of the solicitation.
 9. Requirements for Price or Cost Analysis. A price or cost analysis is made in connection with every negotiated procurement action. The method and extent of the cost analysis are necessary to ensure the reasonableness of the pricing result. The amount of the proposed contract, the associated costs, and the time required to gather the data needed for analysis are considered. Price Analysis is used in all other instances to determine the reasonableness of the proposed contract price.
 - a. Price Analysis. Price analysis is the process of examining and evaluating a prospective price without considering the separate cost elements and the proposed profit of the individual supplier whose price is being evaluated. Price analysis is performed in a manner appropriate to the procurement by comparison of the price quotations submitted with each other, with other current quotations, with published price lists, or with other available yardsticks.
 - b. Cost Analysis. Cost analysis involves reviewing and evaluating a contractor's cost or pricing data, as well as the factors applied in projecting costs from such data, to form an opinion on the degree to which the contract should cost, assuming reasonable economy and efficiency. It includes the appropriate verification of cost data, the evaluation of specific elements of costs, and

the projection of these data to determine the effect of prices on such factors as the following:

- (1) The necessity for certain costs;
- (2) The reasonableness of amounts estimated for the necessary costs;
- (3) Allowances for contingencies;
- (4) The basis used for allocations of particular overhead costs to the proposed contract;
- (5) The appropriateness of allocations of particular overhead costs to the proposed contract.

A memorandum is included in the contract file reflecting how the cost analysis was conducted, the factors considered in the analysis, and the judgment made.

10. Evaluation and Pricing of Individual Contracts. Each contract is priced separately and independently, and no considerations are given to losses or profits realized or anticipated in the performance of other contracts.
11. Subcontracting Considerations in Cost Analysis. Contractor's "make-or-buy" programs and proposed subcontractors is reviewed for sufficiency and economy, and the information from such review will, where appropriate, obtain the following information from the proposer or contractor:
 - a. The purchasing practices of the contractor.
 - b. The principal components to be subcontracted and the identities of the contemplated subcontractors, including (i) the degree of competition obtained (ii) cost or price analysis or price comparisons accomplished, including accurate, complete, and current cost or pricing data, and (iii) the extent of subcontract supervision;
 - c. The types of subcontracts;
 - d. The estimated total extent of subcontracting, including procurement of purchased parts and materials.

The review of subcontracting confirms that the contractor obtained competition, if available, from qualified sources in awarding subcontracts to the extent consistent with the procurement. Contractors are required to conduct an appropriate price analysis in all significant subcontract transactions and to undertake a cost analysis if competition is not available or does not yield reasonable subcontract prices. Where the Procurement Manager's consent to subcontract, price, or cost analysis is required as a condition for such permission.

12. Overhead Rate Considerations. Negotiators utilize audited overhead data or overhead rates, where available, in connection with negotiating all types of contracts. The purpose of such data or rates is to ensure a reasonable and equitable allocation of indirect costs to individual contracts. The Procurement Manager examines such data or rates to determine whether they include elements of cost that individually are not allocable to the contract under consideration.
13. Profit/Fee. The provision for profit or fee is determined only after the dollar amount of the cost has been established for negotiation purposes and not by applying a predetermined percentage.

14. Amount of Profit. The amount of profit on a cost-plus-fixed-fee type contract does exceed ten percent (10%) of estimated cost.
15. Factors for Determining Fee or Profit. The following factors are considered in determining profit or fee in all negotiated contracts.
 - a. Effect of Competition. Unless competition is effective and proposals are on a firm, fixed-price basis, the Procurement Manager carefully considers the amount of estimated profit included in the price.
 - b. Degree of Risk. Unless otherwise specified, the degree of risk assumed by the contractor will affect the amount of profit or fee to which the contractor is entitled.
 - c. Nature of Work to be performed. A significant consideration in determining the amount of profit or fee, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, as well as any unusual demands of the contract.
 - d. Extent of Assistance. Any extraordinary assistance rendered by SWART is considered in determining what constitutes a fair and reasonable profit or fee.
 - e. Extent of Contractor's Investment. The extent of a contractor's total investment, including both equity and borrowed capital, in the performance of the contract is taken into consideration when determining the amount of the fee or profits.
 - f. Character of Contractor's Business. Recognition is given to the type of business typically carried on by the contractor, the complexity of manufacturing techniques, the amount of research involved, the rate of capital turnover, and the impact of each individual procurement on the business.
 - g. Subcontracting. In negotiating the profit or fee, subcontracting is evaluated separately. Generally, where subcontractors perform a substantial amount of the work, the prime contractor receives a lower profit.

Source-Selection Memorandum. The Procurement Manager prepares a source selection memorandum for the file detailing how the successful proposer is selected for each negotiated procurement by these procedures.

Contracting for Designated Professional Services

Authority. Professional or personal services, except architects, engineers, and land surveyors, are procured by the selection procedures specified in this Section. No contract for the services of legal counsel may be awarded without the approval of the Executive Committee.

Selection Procedures

- a. Conditions for Use. Except as provided under Sole Source Procurement, Negotiated Procurement, or Emergency Procurement, the professional services designated in Subsection (1) of this Section are procured under this Subsection.
- b. Statement of Qualifications. Individuals engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in offering such services.

SWART may specify a uniform format for statements of qualifications. Individuals may amend these statements at any time by filing a new statement.

- c. **Public Announcement and Form of Request for Proposals.** SWART gives adequate notice of the need for such services through an RFP. The RFP describes the services required, list the types of information and data required of each offeror.
- d. **Discussions.** SWART may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualification for further consideration. Discussion discloses any information derived from proposals submitted by other offerors.
- e. **Award.** The award is made to the offeror, as determined in writing, to be the best qualified based on the evaluation factors outlined in the RFPS, and negotiation of compensation is conducted to determine what is deemed fair and reasonable. If compensation cannot be agreed upon with the best-qualified offeror, then negotiations are formally terminated with the selected offeror. Suppose proposals were submitted by one or more other offerors determined to be qualified. In that case, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification rankings, and the contract may be awarded to the offeror then ranked as the best qualified if the amount of compensation is determined to be fair and reasonable. The SWART Board of Directors' approval is required to award all contracts with an aggregate amount exceeding \$100,000. Contracts of \$100,000 or less may be awarded by the General Manager or Assistant General Manager, provided they are within the budgeted amounts approved by the SWART Board of Directors. All contracts awarded are required to reference the RFP number, purchase order number, and include a delivery schedule

Sole Source Procurement

A contract may be awarded without competition when the Procurement Manager, in writing, determines after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or construction item. The Procurement Manager conducts negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements is maintained as a public record, listing each contractor's name, the amount and type of each contract, a description of the item(s) procured under each contract, and the identification number of each contract file.

Negotiated Procurement

The Procurement Manager may negotiate contracts without competitive sealed bids or proposals, if the contract is for construction for which no more than one bid or proposal is received or the contract, whether in the form of bonds, notes, other obligations, loan agreements, or otherwise, is to borrow money or is a part of a transaction relating to the borrowing of money, including credit support agreements, such as lines or letters of credit or other debt guaranties, bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreements, agreements with securities dealers, brokers, or underwriters, and any other contracts or agreements considered by the Executive Committee to be appropriate or necessary in support of the authority's financing activities.

Emergency Procurement

Notwithstanding any other provisions of this Policy, the Procurement Manager may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements are 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 is included in the contract file. As soon as practicable, a record of each emergency procurement is made and sets forth the contractor's name, the amount and type of contract, a listing of the item(s) procured under the agreement, and the identification number of the contract files.

Cancellation of Invitations for Bids or Requests for Proposals

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected as a whole or in part as may be specified in the solicitation, when it is for the good cause and in the best interest of SWART. The reason, therefore, is documented in the contract file. Each solicitation issued by SWART states that the solicitation might be cancelled and that any bid or proposal may be rejected as a whole or in part for good cause when in the best interest of SWART. Notice of cancellation will be sent to all businesses solicited. The notice identifies the solicitation, explains the reason for cancellation, and, where appropriate, explains that an opportunity is given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection are provided upon request by unsuccessful bidders or offerors.

Change Order Procedures

Definitions

Contract Modification: Any written change in the terms of the contract.

Bilateral Contract Modification: A modification that the Contractor and the Procurement Manager sign; also referred to as a *supplemental agreement*. They are used to (1) make negotiated equitable adjustments to the contract price, delivery schedule, and other contract terms resulting from the issuance of a change order, (2) definitive letter contracts, and (3) reflect other agreements of the parties modifying the terms of the contract.

Unilateral Contract Modification: A contract modification that is signed only by the Contracting Officer. They are used to make administrative changes, issue change orders, make changes authorized by clauses other than a *Changes clause* (e.g., *Options clause*), and issue termination notices.

Administrative Change: A unilateral contract change, in writing, that does not affect the substantive rights of the parties (e.g., changes of address for submittals of documents, reports, etc.).

Changes Clause: A clause which permits the grantee Procurement Manager to make unilateral changes, in designated areas, *within the general scope of the contract*, to be followed by such equitable adjustments in the price and delivery schedule as the change makes necessary. Although the grantee has unilateral rights, two general principles are essential:

The right exists only because the terms of the contract specifically confer it, and when such unilateral rights are exercised, the grantee must adjust the price and/or other provisions to compensate for the alteration in the contractor's obligations.

Change Order: A written order, signed by the Procurement Manager, directing the Contractor to make a change that the *Changes clause* authorizes the Procurement Manager to order without the Contractor's consent.

Cardinal Change: A contract change which is "**outside the scope**" of the original contract, and thus not within the authority of the Changes clause to order. Such changes are sole-source procurements and must be processed accordingly.

Constructive Contract Change: A change to a contract resulting from the conduct of the grantee's officials that has the effect of requiring the Contractor to perform additional work. *A constructive change* results from the acts, written or oral, or from the omissions of the grantee's officials, which have the same effect as if the

Procurement Manager had issued a formal, written change order. Actions giving rise to constructive changes should, of course, be avoided. Such changes represent actions that usually exceed the authority of the individual responsible for them, e.g., improper technical direction by the Technical Officer, which constitutes a change to the contract. When these actions occur, contractors must be advised, as part of the terms of their contracts, to bring any such actions to the immediate attention of the Procurement Manager. This will enable the appropriate grantee officials to make an official determination and provide written directions under the Changes clause. Some common examples are:

- Specifications or contract provisions that are "impossible to perform."
- Specifications are ambiguous.
- Drawings that contain errors, omissions, or inconsistencies.
- Grantee-provided information that is late, defective, etc.
- Technical direction by personnel that modifies the expressed terms of the contract.
- Acceleration of work, where the grantee insists that the contract delivery schedule be met despite the Contractor's valid claims of excusable delays.
- An inspector's interpretations of test specifications, procedures, methods, conditions, and results that go beyond a reasonable interpretation of the specification.

Deductive Change: A change resulting in a reduction in the contract price because of a net reduction in the Contractor's work.

Equitable Adjustment: An adjustment in the contract price, delivery schedule or other terms of the contract arising out of the issuance of a *change order*.

Procedures

Verification of Change Order Contents

Before issuing or approving a change order, the original solicitation and contract will be reviewed to determine if the change falls within the scope of work. A change order may only be issued if the change is found to be within the general scope of work and falls under one of the types of changes described in the change clause.

If the change is not within the scope of the original solicitation and contract, it constitutes a cardinal change and is considered a sole-source procurement, handled accordingly.

Non-emergency changes: If time permits,, a cost and technical proposal is requested from the contractor before the change is issued, and an equitable adjustment to the contract price, delivery schedule, etc., is negotiated. A bilateral supplemental agreement is then issued, outlining the changes in work and the corresponding adjustments to the contract price, among other details.

Emergency changes: When time is not permitted for negotiating the change before issuance, a "not-to-exceed" price is obtained from the Contractor prior to commencing work. A bilateral contract Change Order is then issued, defining the changed work, with a maximum or ceiling price that is to be negotiated at a later date, but only downward. The Change Order is issued as a two-party modification because it contains a "not-to-exceed" maximum or ceiling price for the change, and SWART cannot unilaterally impose a ceiling price commitment on the Contractor. The Contractor then submits a formal proposal within thirty days and negotiations will take place. A bilateral contract modification (supplemental agreement) is then issued reflecting the equitable adjustment to the price, etc.

Change Order Contents

Description of Proposed Change: Describe completely and definitively the change or changes proposed.

Origin and Originator of Proposed Change: Name the originator of the proposed change and identify the original proposer, i.e., design professional, contractor, inspector.

Justification for Proposed Change: State in the change proposal the condition, circumstance, or occasion that makes the change proposal necessary. Be precise and specific. Indicate precisely what change has been made, what condition was encountered, or what error or omission exists.

Reason of Proposed Change:

- a) Error in the contract documents.
- b) Omission from the contract documents.
- c) Unforeseeable job site conditions such as rock, expansive soil, unrecorded utility lines, or similar circumstances.
- d) Change in the requirements of a regulatory agency, such as revisions in building codes, safety or health regulations.
- e) The change originated by SWART.
- f) Changes in specified work due to the unavailability of specified materials.
- g) Other, describe when applicable.

Independent Cost Estimate

A cost or price analysis is required for every procurement action, including change orders. The ICE is a price or cost estimate developed by SWART or SWART's consultant, based on the project requirements (i.e., statement of work, other specifications, or change order conditions), without the influence of potential contractors' efforts, prior to receiving contractor proposals.

Changes in scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.

Cost Analysis: A cost analysis must be carried out when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, such as under professional consulting and architectural and engineering services contracts.

A cost analysis is necessary whenever adequate price competition is lacking, and for sole-source procurements, including contract modifications or change orders, unless price reasonableness can be established based on a catalog or market price of a commercial product sold in substantial quantities to the general public, or based on prices set by law or regulation.

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

Profit: SWART negotiates profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed.

Federal Cost Principles: Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

Execution of Change Order

The contractor shall review and sign contract change order and send all copies, each with back-up materials, to SWART for signature. The original signed change order is maintained with the original contract and solicitation.

Each change order is numbered sequentially and added to the change order log. If a change order is voided or not used, then the change order log shall reflect that status.

Professional Services Contract

When seeking a Professional Services Contract, SWART releases a Request for Proposal (RFP) outlining the scope of work and services being requested. The RFP notice is placed in the newspaper, trade magazines, and on the vendor list.

The RFP is conducted in a manner that provides complete and open competition. The selection is made based on "Best Value," where proposals contain both price and qualitative components, and a combination of price and qualitative considerations determines the award.

The Contract Term Limit is set at the estimated time required to complete the project(s).

Status Reports: The contractor must provide monthly progress reports. Monthly reports are to list the grant number, the ALI code, the progress that was completed during the month, and the percent remaining to complete.

Completing and finalizing a scope: The final invoice for each ALI must state "Final Invoice for ALI #___". No further invoices may be submitted on that scope as the contractor is thereby stating that the work on the scope is complete and paid in full with payment of that invoice. A copy of the final invoice is sent to the Procurement Office after the invoice has been paid.

Change Orders: Prior to a change order being issued or approved the original solicitation and contract is reviewed to determine if the change is within the scope of work. A change order may only be issued if the change is found to be within the general scope of work and falls under one of the types of changes described in the change clause. If the change falls within the scope of work, then the Change Order Procedures must be followed.

If the change is not within the scope of the original solicitation and contract, it is a cardinal change and is considered sole-source procurement and handled accordingly.

Qualifications and Duties

Responsibility of Bidders and Offerors

Award to Responsible Contractor. A recipient may award a contract...only to a 'responsible' contractor capable of successfully performing under the terms and conditions of the contract [FTA C 4220.1F, VI, 8.b.]. To be found responsible, a contractor must fulfill all of the following criteria:

- (11) Integrity and Ethics. Have a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (12) Debarment and Suspension. Be neither debarred nor suspended from Federal programs under DOT regulations, “Non-procurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- (13) Affirmative Action and DBE. Comply with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (14) Public Policy. Comply with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B).
- (15) Administrative and Technical Capacity. Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
- (16) Licensing and Taxes. Comply with applicable licensing and tax laws and regulations.
- (17) Financial Resources. Have, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- (18) Production Capability. Have, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (19) Timeliness. Be able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (20) Performance Record. Be able to provide:
 - (a) Current Performance. A satisfactory current performance record, and
 - (b) Past Performance. A satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
 - 1 Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
 - 2 Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation, and

Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder's or offeror’s control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. FTA expects the

recipient to consider the number of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

Determination of Non-responsibility. If a bidder or offeror who would otherwise have been awarded a contract is found to be non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, is prepared by the Procurement Manager. The unreasonable failure of a bidder or offeror to provide prompt information in response to an inquiry regarding their responsibility may be grounds for determining non-responsibility concerning such bidder or offeror. A copy of the determination is sent promptly to the non-responsible bidder or offeror. The final determination is to make part of the contract file and be made a public record.

Right of Disclosure. Information furnished by a bidder or offeror pursuant to this Section is not disclosed by SWART outside of the office of the Procurement Manager or the using agency without prior written consent by the bidder or offeror.

Cost or Pricing Data

Required Submissions Relating to the Award of Contracts. A prospective contractor submits cost or pricing data when the contract is expected to exceed \$50,000 and is to be awarded by competitive sealed proposals, or by sole source procurement authority.

Exceptions. The submission of cost or pricing data relating to the award of the contract is not required when:

- The contract is based on adequate price competition;
- The contract price is based on established catalogue prices or market prices;
- The contract price is set by law or regulation; or
- It is determined in writing by the Procurement Manager that the requirement of Cost or Pricing Data; Required Submissions Relating to the Award of the Contracts may be waived, and the determination states the reasons for such a waiver.

Required Submissions Relating to Change or Contract Modifications. A contractor submits cost or pricing data before the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$25,000 or 25% of the aggregate contract amount.

Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

- Unrelated and separately priced adjustments for which cost, or pricing data would not be required are consolidated for administrative convenience; or
- It is determined in writing by the Procurement Manager that the requirements of Cost or Pricing Data; Required Submissions Relating to Change Orders or Contract Modifications may be waived, and the determination states the reasons for such waiver.

Certification Required. A contractor, actual or prospective, required to submit cost or pricing data under this Section, certifies that, to the best of its knowledge and belief the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

Price Adjustment Provision Required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required contains a provision that the price to SWART, including profit or fee, will be adjusted to exclude any significant sums by which SWART finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between SWART and the contractor.

Cost or Price Analysis

A cost analysis or a price analysis, as appropriate, is conducted before the award of the contract other than one awarded under Competitive Sealed Bidding. A written record of the cost analysis is included in the contract file. SWART will perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depend on the facts and circumstances surrounding each procurement. As a starting point, SWART will make independent estimates before receiving bids or proposals.

Bid and Performance Bonds on Supply or Service Contracts

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Procurement Manager deems it advisable to protect SWART's interests. Any such bonding requirements are outlined in the solicitation. Bid or performance bonds are not used as a substitute for a determination of a bidder's or offeror's responsibility.

Types of Contracts and Contract Administration

Types of Contracts

General Authority. Subject to the limitations of this Section, any contract which is appropriate to the procurement, and which will promote the best interests of SWART may be used, provided that the use of the cost-plus-a-percentage-of-the-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 SWART than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

Multi-Term Contracts

Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of SWART, 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 succeeding fiscal periods are subject to the availability and appropriation of funds therefor.

Determination Prior to Use. Before the utilization of a multi-term contract, it is determined in writing:

- That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- That such a contract serves the best interests of SWART by encouraging effective completion or otherwise promoting economies in SWART procurement.

Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal period, the contract is cancelled, and the contractor is reimbursed for the reasonable value of any non-recurring costs incurred but not authorized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any available appropriations for such purposes.

Multiple Source Contracting

General. A multiple-source award is an award of an indefinite-quantity contract for one or more similar supplies or services to more than one bidder or offeror. The provisions of the Uniform Commercial Code Section limit the obligation to order SWART's actual requirements.

Limitations On Use. A multiple source award may be made when an award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source award is made under the provisions of Competitive Sealed Bidding, Competitive Sealed Proposals, Small Purchases, Negotiated Procurements, and Emergency Procurements, as applicable. Multiple source awards are not made when a single award meets SWART's needs without compromising economy or service. Awards are not made to divide the business, making available products or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards are limited to the least number of suppliers necessary to meet the valid requirements.

- SWART reserves the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement, or an amount specified in the contract; and;
- SWART reserves the right to take bids separately if the Procurement Manager approves a finding that the supply of service available under the contract does not meet a nonrecurring special need of SWART.

Intent to Use. If a multiple source award is anticipated before issuing a solicitation, SWART reserves the right to make such an award and the criteria for the award will be stated in the solicitation.

Determination Required. The Procurement Manager makes a written determination, setting forth the reasons for a multiple-source award, which is included in the procurement file.

Time and Materials Contracts

Time and Materials contracts are used when no other contract type is applicable. This type of contract employs a firm ceiling price that the contractor cannot exceed, except at their own risk. As the grantee, SWART must document the contract file to confirm that no other type of contract is applicable for the particular contract being awarded. Additionally, it must be documented that there is a ceiling price for funds available and that they may not be exceeded without SWART's authorization.

Revenue Contracts

“A revenue contract is a contract in which the recipient or sub recipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. The recipient has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows:

- (a) Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- (b) Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system). The recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial

number of such cables without interfering with transit operations). Competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.”

Contract Clauses and their Administration Contracting Clauses.

All SWART contracts for supplies, services, or construction include provisions necessary to define the responsibilities and rights of the parties to the agreement. The Procurement Manager, after consultation with the General Counsel, may issue clauses appropriate for supply service, or construction contracts, addressing, among others, the following subjects:

- a. The unilateral right of SWART to order in writing changes in the work within the scope of the contract;
- b. The unilateral right of SWART to order in writing the temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- c. Variations occurring between estimated quantities of work in contract and actual quantities;
- d. Defective pricing;
- e. Liquidated damages;
- f. Specified excuses for delay or nonperformance;
- g. Termination of the contract for default;
- h. Termination of the contract in whole or in part for the convenience of SWART;
- i. Suspension of work on a construction project ordered by SWART; and
- j. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - I. When the contract is negotiated;
 - II. When the contractor provides the site or design, or
 - III. When the parties have otherwise agreed concerning the risk of differing site conditions.

Price Adjustments. Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section are computed in one or more of the following ways:

- By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.
- By unit prices specified in the contract or subsequently agreed upon;
- 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 other manner as the contracting parties may mutually agree; or
- In the absence of agreement by parties, by a unilateral determination by SWART of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee as computed by SWART and subject to the provisions of Appeals and Remedies.

A contractor is required to submit cost or pricing data if any adjustment in the contracting price is subject to the provisions of Cost or Pricing Data.

Standard Clauses and Their Modification. The Procurement Manager, after consultation with the SWART Board of Directors, may establish standard contract clauses for use in SWART contracts. Suppose the Procurement Manager establishes any standard clauses addressing the subjects outlined in Subsection (1) of this Section. In that case, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

Contract Term Limitations for Rolling Stock

Contract terms, including options, for rolling stock and replacement parts shall not exceed the recipient's needs for five years on buses and seven years on railcars. FTA interprets the five-year and seven-year periods as covering the recipient's rolling stock and replacement parts needs from the first day the contract becomes effective to the end of the fifth year. This means that the contract may not encompass more rolling stock and replacement parts than the recipient needs within a five- or seven-year period. The five-year and seven-year rule does not mean that delivery, acceptance, or even fabrication must be completed within those years; it only means that a contract is limited to purchasing no more than the recipient's rolling stock or replacement parts' needs for five or seven years, based on the effective date of the contract. For all other types of contracts, the contract file must contain evidence that the contract term is based upon sound business judgment.

Tag-Ons

The use of tag-ons is prohibited and applies to both the original buyer and others. Tag-on is defined as the addition of work (supplies, equipment, or services) that is beyond the scope of the original contract that amounts to a cardinal change. These actions are considered non-competitive procurements and require sole-source approval procedures.

Contract Administration

A contract administration system is designed to ensure that a contractor is performing per the solicitation under which the contract was awarded, and the terms and conditions of the contract, is maintained. All contracts must reference the RFP or IFB number and the purchase order number, and they are required to include a delivery schedule.

Contract Administration for Construction Projects

Pre-Construction Meeting

- A pre-construction meeting shall be held on-site.
- Proof that bonding and insurance requirements have been met shall be supplied by the contractor at the pre-construction meeting.
- Official Notice to Proceed shall be supplied by SWART and presented to the contractor at the pre-construction meeting.

Site Visits

- The Contract Administrator shall visit all construction projects for a minimum of twice per month. Weekly construction meetings are encouraged. Upon each visit the Contract Administrator shall:
- Make note of progress made since the previous site visit.
- Take pictures of any work that has been done.
- Discuss any problems or concerns with the Project Superintendent.

Payment Applications

- The contractor shall submit payment applications on the 5th of the month for the previous month.
- The project engineer shall approve all payment applications before being submitted to SWART's accounts payable department.
- Payment shall be made upon receipt of Federal or State funds.
- Davis-Bacon Compliance (on projects over \$2,000)
- Certified payrolls are due with each payment application for the previous month.
- On-site interviews shall be conducted weekly. Interviews shall cover at least 20% of the workforce used on the project.

Interviews shall be compared to on-site interviews.

Payments

- Advance Payments - FTA does not authorize or participate in funding payments to a contractor prior to the contractor incurring costs, unless prior written concurrence is obtained from FTA.
- Progress Payments – Progress payments may only be made based on costs incurred (or, in the case of construction contracts only, based on percent of completion) and the grantee must obtain adequate security for which progress payments are made. Adequate protection may include taking title, letters of credit or equivalent means to protect the grantee's interest.

Liquidated Damages

- Liquidated damages assessment must be at a specific rate per day for each day of overrun and must be specified in the contract. Any damages recovered shall be credited to the project involved unless the FTA permits otherwise.

Approval of Accounting System

Except to firm fixed-price contracts, no contract type is used unless it has been determined in writing by the Procurement Manager that:

- The proposed contractor's accounting system permits the timely development of all necessary cost data in the form required by the specified contract type contemplated; and
- The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

Right to Inspect Plant

SWART may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier, which is pertinent to the performance of any contract awarded or to be awarded by SWART.

Right to Audit Records

Audit of Cost or Pricing Data. SWART may, at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data according to Cost of Pricing Data to the extent that such books, documents, papers, and records are pertinent 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, maintains such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.

Contract Audit. SWART is entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. The contractor maintains such books and records for a period of three years from the date of final payment under the prime contract and by the subcontractor for three years from the date of final payment under the subcontract.

Reporting of Anti-Competitive Practices

When, for any reason, collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts is transmitted to the State Attorney General.

SWART's Procurement Records

Contracting File. All determinations and other written records on the solicitation, award, or performance of a contract are maintained for SWART in a contract file by the Procurement Manager.

Retention of Procurement Records. All procurement records are retained and disposed of by SWART under records retention guidelines and appropriate regulations.

Contractor Records

If a contract is funded as in whole or in part by assistance from a federal agency, then the contract includes provisions:

- Requiring the contractor and subcontractors at any tier to maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- Requiring the contractor and subcontractor at any tier to provide to SWART, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records to examine, auditing, and copy them.

Options

An option is a unilateral right in a contract that allows a grantee, for a specified time, to elect to purchase additional equipment, supplies, or services specified in the contract, or to extend the contract's term. If SWART chooses to use options, the requirements below apply:

Price – The recipient may not exercise an option unless it has determined that the option price is better than prices available in the market, or when it intends to exercise the option, the choice is more advantageous.

Awards – Treated as Sole Source Procurements. The following actions constitute sole-source awards:

1. Failure to evaluate options before awarding the underlying contract. If a contract has one or more options and those options were not assessed as part of the original contract award, exercising those options after contract award will result in a sole-source award.
2. Negotiating a lower option price. Exercising an option after the recipient has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonable determined from the terms of the original contract, or that price results from Federal actions that can be reliable measured, such as changes in Federal prevailing labor rates for example.
3. An option may not be exercised unless the SWART has determined that the option price is better than prices available in the market, or that when SWART intends to exercise the option, the option is more advantageous.

All options and their terms should be stated clearly in any/all executed contracts, including quantities, periods, etc.

Specifications

All specifications are drafted to promote overall economy for the intended purposes and encourage competition in satisfying SWART's needs, without being unduly restrictive. The policy enunciated in this Section applies to all specifications, including but not limited to those prepared for SWART by architects, engineers, designers, and draftsmen. Specifications should be written in a manner that achieves open completion. Specifications should not be made in a manner that narrows the completion field down to only one vendor.

- (a) "Each solicitation must provide a clear and accurate description of the technical requirements for the property or services to be procured." [FTA C 4220.1F, VI, 2.a.]

- (b) “In competitive procurements, the description may not contain features that unduly restrict competition.” [FTA C 4220.1F, III, 3.a.(1) (b)]
- (c) “The Common Grant Rule ... advises the recipient to describe technical requirements in terms of ‘functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.’” [FTA C 4220.1F, III, 3.a.(1) (d)]
- (d) “In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate, and realistic specification or purchase description is available.” [FTA C 4220.1F, VI, 3.c. (1) (a)]
- (e) “If this procurement method is used... the invitation for bids will include any specifications and pertinent attachments... in order for the bidder to properly respond.” [FTA C 4220.1F, VI, 3.c. (2) (c)]

Definition of Specification. Specifications are a clear and complete description of the ESSENTIAL requirements that the items being procured should meet. Well-written specifications ensure that the correct item is purchased and that maximum value is obtained for the expenditure of public funds. Also, specifications should be written so that all qualified vendors, large and/or small, may compete on an equal basis. Specifications should be written in a manner that achieves open completion. Specifications should not be made in a manner that narrows the completion field down to only one vendor.

Responsibility. The department head requesting the goods or services is responsible for preparing the specifications. The procedures contained in this section govern the writing of specifications for SWART.

Heading. The specification's heading or title will be “SWART” for all FTA grant and operating budget procurements.

Brand Name Specification Use. Since the use of a brand name is restrictive of product competition, it may be used only when the Procurement Manager makes a written determination that only the identified brand name item or items will satisfy SWART’s needs.

Competition. The Procurement Manager seeks to identify sources from which the designated brand-name item or items can be obtained. He solicits such sources to achieve the maximum degree of price competition practicable. If only one source can supply the requirement, the procurement is made under Sole Source Procurement.

Geographic Preferences

Prohibition against Geographic Preferences. SWART will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Preparing the Specifications

The following items are provided for guidance in writing specifications:

Specifications have the characteristics of one or more of the following types:

Desirable Specifications:

- Open Specifications -A description of all the PHYSICAL and functional features required. Engineering design should be avoided as long as the required functions are described.
- Design Specifications - Describes in detail a precise configuration measurement, tolerance, material, or standard.
- Performance Specification - Describes a result of capability to be achieved by an item, such as speed, output, maintainability, or reliability.

Less Desirable Specifications:

- Sample Specifications -Requires match of sample submitted to vendors; sometimes entails substantial inspection and testing to determine actual match;
- Equal Product Specification -Uses brand name or trade name as a descriptive term or definition as a requirement, with a phrase "or approved equal." This opens the way to controversy as to what is equal and who will determine equality; and

Undesirable Specifications:

- Single Product Specification - Designates only one manufacturer brand, trade name, or catalog number, which restricts competition. On rare occasions, this may be unavoidable, as in the case of highly technical or specialized products.

Brand Name or Equal Specification:

Using a brand name as a purchase description without specifying an "or equal" is an example of a situation that impermissibly restricts competition: "Specifying only a 'brand name' product instead of allowing an 'or equal' product to be offered or failing to specify the brand name product's salient characteristics" [FTA C 4220.1F, VI, 2.a. (4) (f)]. Further,

- (a) "Detailed product specifications should be avoided if at all possible, in favor of performance specifications." [FTA C 4220.1F, VI, 2.a. (1)]
- (b) "When it is impractical or uneconomical to make a clear and accurate description of the technical requirements of the property... a 'brand name or equal' description may be used as a means to define the performance or other salient characteristics of a specific type of property. The recipient, however, must state the salient characteristics of the named brand that offerors must provide. [FTA C 4220.1F, VI, 2.a. (3)]

Use. Brand name or equal specifications may be used when the Procurement Manager determines in writing that:

- No other design or performance specifications or qualified products list is available.
- Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- The nature of the product or the nature of SWART's requirements makes use of a brand name or equal specification suitable for the procurement; or
- Use of a brand name or equal specification is in SWART's best interest.

Designation of Several Brand Names. Brand names or equal specifications seek to designate as many different brands as are practicable, as "or equal" references and furthers state that substantially equivalent products to those designated will be considered for award.

Required Characteristics. Unless the Procurement Manager determines that the ESSENTIAL characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications include a description of the particular design, function, or performance characteristics that are required.

Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, it contains explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

Brand Name Specification.

Use. Since the use of a brand name specification is restrictive of product competition, it may be used only when the Procurement Manager decides that only the identified brand name item or items satisfy SWART's needs.

Competition. The Procurement Manager seeks to identify sources from which the designated brand name or item (s) can be obtained and will solicit such sources to achieve the maximum degree of price competition practicable.

The technical specifications should describe the minimum standards acceptable for the equipment or service to be purchased. This section requires sufficient detail to provide the prospective bidder with a clear picture of the item and its expected performance.

Some questions to answer in writing specifications:

Description of goods and services:

- Does the specification clearly describe the materials, equipment, or service?
- Are the specifications complete?
- Is the quantity clearly stated?
- Must the provider furnish drawings or proofs? Is such a drawing subject to approval and by whom?
- Must the provider install equipment?
- Which services will the vendor furnish, such as training, maintenance, manuals, etc.

Price and payment terms:

- Have the terms, conditions and items been detailed clearly and concisely?
- Is the price definite? If not, is the method for ascertaining the price clear?
- Is the price subject to adjustment?
- Does price adjustment work both ways?
- Is the date of price basis stated?
- What is the length of time for advance notification of price adjustment?
- Is there an escape clause on price increases?

Packaging, Delivery and Insurance Factors:

- Is the required delivery date stated?

Time and Termination Factors:

- If for services, what period of time does the requisitioned expect the contract cover (one month, six months, one year, two years, etc.)?

Performance Guarantees and Warranties of Quality:

- Should the supplier guarantee performance?
- Should the supplier guarantee quality?
- Warranties?
- Are inspection, test and engineering requirements clearly stated?

Legal Requirements (these questions to be answered by Purchasing):

- Does the specification meet all legal requirements? (Federal law, State of Texas statutes)?
- Is the solicitation ethical and does it meet business standards or practices?

Emergency Purchases

- Only allowed on a case-by-case basis.
- Must be approved by the appropriate manager.
- Contact Purchasing for necessary confirmation of purchase.
- Purchase in the direction of the Procurement Manager.
- Complete paperwork and follow standard procurement guidelines in this manual.

Procurement of Construction, Architect-Engineer & Land Surveying Services

Responsibility for Selection of Methods of Construction Contracting Management

The Procurement Manager and the department head responsible for the construction project have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the department head will consider SWART's requirements, its resources, and the potential contractor's capabilities. The department head executes and includes in the contract file a written statement setting forth the facts that led to the selection of a particular method of construction contracting management for each project.

Procurement of Construction Services

The procedures detailed in Competitive Sealed Bidding are followed for the procurement of construction services with the following additions:

Bid security.

Required for all construction requirements with an estimated cost over \$25,000. For bids that do not exceed \$25,000, this requirement may be added at the discretion of the Procurement Manager.

Bid security is a minimum of 5% of the total bid amount.

The accounting office maintains the bid security.

The Procurement Manager fills out the Invitation to Bid form with the type and amount of bid security provided by the bidder. This information is included on the bid tabulation sheet.

All bids that do not comply with the bid security requirement are rejected.

The bid securities of unsuccessful bidders are released upon award of the contract.

Contract Performance and Payment Bonds

Required in all solicitations for construction services that are expected to exceed \$25,000. Bonding requirement for construction contracts above \$100,000 must meet the following minimums:

- (a.) 5% bid guarantee
- (b.) 100% performance bond, and
- (c.) Payment bonds as follows:

- 50% on contracts under \$ 1 Million,
- 40% on contract between \$ 1 Million and \$ 5 Million, or
- \$2.5 Million on contracts over \$ 5 Million.

Both the performance and payment bonds or letters of credit satisfactory to SWART, executed by a surety company authorized to do business in Texas or otherwise secured in a manner acceptable to SWART, 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 will be in an amount equal to 100% of the contract price.

When the contract is executed and the above bonds are delivered to SWART, then the Procurement Manager will release the bid security for the contractor.

The Procurement Manager can reduce the amount of performance and payment bonds to 50% after providing notice to the SWART Executive Committee, accompanied by a written determination that it is in the best interests of SWART to do so. This written determination will be placed in the contract file.

The Procurement Manager releases the performance and payment bonds 91 days after the satisfactory completion of the contract. A copy of this written determination will be included in the contract file.

Information on the suits on payment bonds brought by suppliers to contractors is contained in SWART Policy SUITS ON PAYMENT BONDS-RIGHT TO INSTITUTE AND SUITS ON PAYMENT BONDS-WHERE AND WHEN BROUGHT.

Copies of bond forms. The Procurement Manager furnishes a copy of a bond upon the written request of any interested party. Payment of the cost of reproduction and postage, if any, is made by the requestor. A copy of a bond is prima facie evidence of the original.

Fiscal Responsibility.

The Procurement Manager is the SWART staff contact for the contract modifications, change orders and contract price adjustments in construction contracts. When these results in a price adjustment exceeding \$25,000, prior approval by the Executive Committee is required. The SWART Board approves changes of less than \$25,000 for Directors if sufficient funds exist within the budget of the relevant projects.

The Procurement Manager furnishes the information regarding the contract modification, change order or contract price adjustment to the SWART Board of Directors.

Suppose the price adjustment exceeds \$25,000 of the contract amount. In that case, the SWART Board of Directors reports to the Executive Committee the effect this change has on the total project budget or the total contract budget.

The Procurement Manager includes the written determination of the SWART Board of Directors/Executive Committee in the contract file.

Procurement of Architect, Engineer, and Land Surveying Services

The Procurement Manager advertises all requirements for architect/engineering and land surveying services in the local newspaper and/or Passenger Transport.

The Procurement Manager formally requests firms to submit qualifications and performance data for evaluation.

The SWART Board of Directors appoints a selection committee to review all the qualifications statements and determine the most qualified firms. This committee reduces the list of firms to no more than five (5) and continues the evaluation. The committee may conduct technical discussions with these firms to help determine the three most qualified firms. The committee lists the three (3) firms in order of preference based on criteria established and published by the selection committee.

Negotiation.

The Procurement Manager negotiates a contract with the firm considered to be most qualified by the selection committee for architect/engineer or land surveying services.

If the Procurement Manager is unable to negotiate a satisfactory contract with the firm considered most qualified at a price determined to be fair and reasonable to SWART, negotiations with that firm will be terminated. A written record of this termination is included in the contract file, and the firm is notified.

If negotiations are terminated with the most qualified firm, then the Procurement Manager undertakes talks with the next most qualified firm. Failing to accord with the second firm, the Procurement Manager then undertakes negotiations with the third most qualified firm.

Procurement of Design-Bid-Build

The design-bid-build procurement method requires separate contracts for design services and construction. For design services, SWART will use qualifications-based procurement procedures, in compliance with applicable Federal, State, and local laws and regulations. For Construction, SWART will use competitive negotiation procurement methods, as appropriate.

Procurement of Design-Build

SWART must procure design-built services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth by FTA when the preponderance of the work to be performed is considered to be for Architectural and Engineering (A & E) services as defined in the circular. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A & E nature as defined in the circular unless required by State law adopted before August 10, 2005.

Bid Security and Performance Bonds

Bid Security

Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts when the estimated price exceeds \$25,000, as determined by the Procurement Manager. Bid security is a bond provided by a surety company authorized to do business in Texas, or the equivalent, or otherwise supplied in a form satisfactory to SWART. Nothing herein prevents the requirement of such bonds on construction contracts under \$25,000 when the circumstances warrant.

Amount of Bid Security. Bid security is in the amount of at least 5% of the bid amount.

Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.

Withdrawal of Bids. Suppose a bidder is permitted to withdraw its bid before award as provided in Competitive Sealed Bidding, Correction or Withdrawal of Bids, and Cancellation of Awards. In that case, no action will be taken against the bidder or the bid security.

Contract Performance and Payment Bonds

When Required Amounts. When a construction contract is awarded in excess of \$25,000, the following bonds or security will be delivered to SWART and will become binding on the parties upon the execution of the contract:

- A performance bond satisfactory to SWART, executed by a surety company authorized to do business in Texas or otherwise secured in a manner acceptable to SWART, in the amount equal to 100% of the price specified in the contract; and
- A payment bond satisfactory to SWART, executed by a surety company authorized to do business in Texas or otherwise secured in a manner acceptable to SWART, for the protection of all people supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond is in an amount equal to 100% of the price specified in the contract.

Reduction of Bond Amounts. After notice to the SWART Board of Directors, the Procurement Manager is authorized to reduce the amount of performance and payment bonds to 20% of the contract price for each bond when a written determination is made that it is in the best interest of SWART to do so.

The Procurement Manager may waive the bonding requirements if the following conditions exist:

- The contract is for \$100,000 or less.
- Progress payments are not made.
- One lump sum payment is made after the project is complete.

Authority to Require Additional Bonds. Nothing in this Section is constructed to limit the authority of SWART to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.

Suits on Payment Bonds- Right to Institute. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this Section, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, has the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that persons. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, has the right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person states in the notice the amount claimed and the name of the party to whom the material was provided or for whom the labor was performed. The notice is served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place where the contractor maintains an office or conducts business.

Suits on Payment Bonds - Where and When Brought. Unless otherwise authorized by law, every suit instituted upon a payment bond will be brought in a court or competent jurisdiction for the county or district in which the construction was to be performed.

Copies of Bond Forms

Any person may request and obtain a certified copy of a bond from SWART upon payment of the cost of reproducing the bond and postage, if applicable. A certified copy of a bond is prima facie evidence of the contents, execution, and delivery of the original.

Fiscal Responsibility

Every contract modification, change order, or contract price adjustment over 10% of the contract amount under a construction contract with SWART is subject to prior approval by the Executive Committee after receiving a report from the SWART Board of Directors as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget. The SWART Board may approve changes of less than 10% of Directors if sufficient funds are available within the relevant project's budget. The SWART Board of Directors may transfer approval authority for change orders of less than 10% to the Procurement Manager.

Architect - Engineer and Land Surveying Services

Public Announcement. It is the policy of SWART to announce publicly all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the Procurement Manager requests firms to submit a statement of qualifications and performance data.

Selection Process. A selection committee appointed by the SWART Board of Directors conducts discussions with at least three firms regarding the proposed contract and the relative utility of alternative methods for furnishing the required services, and selects from among them at least three firms deemed most qualified to provide the required services. The selection is made in order of preference, based on criteria established and published by the selection committee.

Negotiation. The Procurement Manager negotiates a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation, which the Procurement Manager determines in writing to be fair and reasonable to SWART. When making this decision, the Procurement Manager considers the estimated value, scope, complexity, and professional nature of the services to be rendered. Should the Procurement Manager be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at that price the Procurement Manager determines to be fair and reasonable to SWART, negotiations with that firm are formally terminated. The Procurement Manager then undertakes negotiations with the second most qualified firm. Failing to accord with the second most qualified firm, the Procurement Manager formally terminates negotiations. The Procurement Manager then undertakes negotiations with the third most qualified firm. Should the Procurement Manager be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the selection committee selects additional firms in order of their competence and qualifications, and the Procurement Manager continues negotiations in accordance with this Section until an agreement is reached.

Debarment or Suspension

Authority to Debar or Suspend

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the General Manager, after consulting with the General Manager, is authorized to debar a person for cause from consideration for award of contracts. The debarment is for not more than three years. After consultation with the SWART Board of Directors, the General Manager is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity that might lead to debarment. The suspension is for a period not to exceed three months. The causes of debarment include:

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;

Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicates a lack of business integrity or business honesty, which currently, seriously, and directly affects responsibility as a SWART contractor;

Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

Violation of contract provisions, as set forth below, of a character which the Executive Vice President regards to be so serious as to justify debarment action:

- Deliberate failure without good cause to perform by the specifications or within the time limit provided in the contract; or
- A recent record of failure to perform or of unsatisfactory performance by the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor is not considered to be the basis for debarment;

Any other cause the General Manager determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in this Policy; and

For violation of the ethical standards outlined in Ethics in Public Contracting.

Decision to Debar or Suspend

The General Manager issues a written decision to debar or suspend. The decision states the reasons for the action taken and informs the debarred or suspended person involved of their rights concerning judicial or administrative review.

Notice of Decision

A copy of the decision required by the Decision to Debar or Suspend is mailed or otherwise furnished immediately to the debarred or suspended person.

Finality of Decision

A decision under the Decision to Debar or Suspend is final and conclusive unless fraudulent, or the debarred or suspended person, within 10 days after receipt of the decision, takes an appeal to the Executive Committee or commences a timely action in court under applicable law.

Appeals and Remedies

Bid Protests

Protests resulting from the award of a contract through the RFP procedure must be made in writing to SWART's Procurement Manager within three working days of the letter of non-selection to the bidder or proposer. The protest must outline the specific portion of the specification or proposal procedure that has been violated.

As an FTA funding recipient, SWART is required to notify and keep FTA updated about the status of the protest when it receives a third-party contract protest to which this circular applies an award given by SWART.

The protester must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to FTA.

Protests by an interested party, as in a party that is an actual or prospective bidder whose direct economic interest would be affected by the award or failure to award the third-party contract at issue, regarding this procurement shall be made under Chapter 2155 of the Texas Government Code. After all administrative remedies have been exhausted, an interested party may file a protest with the Federal Transit Administration (FTA) or the U.S. Department of Transportation, pursuant to the procedures outlined in 2 CFR 200.318. Alleged violations of specific federal requirements provide a separate complaint procedure. See, for example, Buy America Requirements, 49 CFR 661 and Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, 49 CFR 23.

The non-Federal entity must be solely responsible, under good administrative practices and sound business judgment, for settling all contractual and administrative issues arising from procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a federal concern. Violations of law will refer to the local, state, or Federal authority having proper jurisdiction.

The protester must deliver its appeal to the FTA Regional Administrator within (5) five working days of the date when the protestor has received actual or constructive notice of the recipient's final decision or when the protestor has identified other grounds for appeal to FTA, such as, the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

Failure to comply with the above protest procedures renders a protest untimely and/or inadequate, and it shall be rejected.

In the event of a timely protest received by the Procurement Manager, the following steps are performed:

The Procurement Manager effects a stay of procurement during the protest.

- If the contract has not been awarded, the award is delayed until all administrative and judicial remedies are exhausted. All bidders or proposers on the vendor mailing list are advised of the protest and the resulting delay in the procurement process.
- The SWART Board of Directors may decide, in writing, that the award of a contract without delay is necessary to protect the interests of SWART. This written determination is made part of the contract filed by the Procurement Manager.

The Procurement Manager notifies the SWART Board of Directors and the affected department head that a bid or proposal protest has been received.

The Procurement Manager investigates the protest, assisted by SWART staff or other personnel as required.

The Procurement Manager may meet with the protesting vendor or request additional information from the vendor during the investigation.

The Procurement Manager issues the findings of the investigation in writing to all interested parties, and the written report, including the original protest, is incorporated into the contract file.

In the event of a timely protest received by the SWART Board of Directors, the following steps is performed:

Upon receiving notification of a protest, the Procurement Manager issues a stay of procurement pending the outcome of the protest.

- If the contract is not awarded, then the award is not made until all administrative and judicial remedies have been exhausted.
- The SWART Board of Directors may decide, in writing, that the award of a contract without delay is necessary to protect the substantial interests of SWART. This written determination is made part of the contract filed by the Procurement Manager.

The Grants and Budget Department acts as the direct liaison with FTA. The Procurement Manager supplies any records or documents requested by the Grants and Budget Department for FTA.

The Procurement Manager makes any necessary changes to the procurement process, as they pertain to the protested bid/proposal, resulting from the FTA's decision.

The Procurement Manager includes the written report on FTA, along with all related correspondence, as part of the contract file.

Contract Claims

Decision of the Procurement Manager. All claims by a contractor against SWART relating to a contract, except bid protests, will be submitted in writing to the Procurement Manager for decision. The contractor may request a conference with the Procurement Manager on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification.

Notice to the Contractor of the Procurement Manager's Decision. The Procurement Manager's decision is promptly issued in writing and immediately mailed or otherwise furnished to the contractor. The decision states the reasons for the decision reached and informs the contractor of its appeal rights under Subsection (3) of this Section.

Finality of Procurement Manager's Decision; Contractor's Right to Appeal. The Procurement Manager's decision is final and conclusive unless, within five (5) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the SWART Board of Directors.

Failure to Render a Timely Decision. Suppose the Procurement Manager does not issue a written decision regarding any contract controversy within 10 days after a written request for a final decision, or within such more extended period as may be agreed upon between the parties. In that case, the aggrieved party may proceed as if an adverse decision had been received.

Under the SWART Policy, the Procurement Manager is responsible for addressing all written claims by a contractor against SWART related to a contract.

If a claim is made against a SWART contract, the following steps are taken:

- The Procurement Manager meets with the contractor, if required or requested, to gather any needed information to settle the claim presented.
- The Procurement Manager effects an investigation into the claim as required, utilizing other SWART staff or SWART legal counsel as needed.
- The Procurement Manager issues a written decision regarding any contract controversy within 10 days after a written request for final decision, or within such more extended period as may be agreed upon between the parties. The decision states the reasons for the decision reached and informs the contractor of its appeal rights under the SWART Policy. This written response is included in the contract file, along with any other relevant documentation concerning the claim.

The Procurement Manager's decision is final and conclusive unless, within five (5) calendar days from the receipt of the decision, the contractor mails or otherwise delivers a written appeal to the SWART Board of Directors.

Authority of the Procurement Manager to Settle Bid Protests and Contract Claims

The Procurement Manager is authorized to settle any protest regarding the solicitation or award of a contract, or any claim arising out of the performance of a contract, before an appeal to the SWART Board of Directors.

Solicitations or Awards in Violations of Law

If the Procurement Manager of the Procuring Agency, after consultation with the General Counsel, determines that solicitation or award of a contract violates federal, state, or municipal law, then the following steps are performed.

If prior to bid opening or the closing date for receipt of proposals, then the Procuring Agency Procurement Manager cancels the solicitation or modifies it to comply with the applicable law. A written notice of this action is sent to all vendors on the mailing list. The written determination is made a part of the contract file.

If, after the bid opening or the closing date for receipt of proposals, the Procuring Agency Procurement Manager cancels the solicitation or proposed award. A written notice to that effect is sent to those on the vendor mailing list and included in the contract file.

If after the award of the contract, the following applies:

- The Procuring Agency Procurement Manager determines the action of the contractor related to the violation within the solicitation or contract. This determination is whether the contractor acted in good faith or in a fraudulent manner. A written record of this determination is made as a part of the contract file.
- The Procuring Agency Procurement Manager determines what action concerning the contract would be in the best interests of the SWART. A written record of this determination is made as a part of the contract file.
- If the contractor acted in good faith in the solicitation and award, and it is in the best interests of SWART, then the Procuring Agency Procurement Manager ensures that the contract is ratified and affirmed. Otherwise, the contract is terminated, and the contractor is compensated for actual costs reasonably incurred under the agreement, plus a reasonable profit, before the termination.
- If the contractor acted fraudulently, the contract may be declared null and void or voidable, if such action is in the best interests of SWART.

In all cases, the Procuring Agency Procurement Manager includes all documentation and determines as part of the contract file. The contractors or bidders affected are notified, in writing, by the Procuring Agency's Procurement Manager of all actions taken in regard to the proceeding.

Remedies for Solicitations or Awards in Violation of Law

Prior to the Bid Opening or Closing Date for Receipt of Proposals. If, before the bid opening or the closing date for receipt of proposals, the Procurement Manager, after consultation with the General Counsel, determines that a solicitation violates federal, state, or municipal law, then the solicitation is cancelled or revised to comply with applicable law.

Prior to the Award. If after bid opening or the closing date for receipt of proposals, the Procurement Manager, after consultation with the General Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award is cancelled.

After the Award. If after an award, the Procurement Manager, after consulting with the General Counsel, determines that a solicitation or award of a contract violated applicable law, then:

If the person awarded the contract has not acted fraudulently or in bad faith:

- The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of SWART; or
- The contract may be terminated, and the person awarded the contract will be compensated for the actual costs reasonably incurred under the agreement, plus a reasonable profit, before the termination.

If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of SWART.

Disadvantaged Business Enterprise (DBE) Program

SWART has established a DBE program in accordance with regulations of the U.S. DOT, 49 CFR Part 26. SWART has received Federal financial assistance from the Department of Transportation. As a condition of receiving this assistance, SWART has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of SWART to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT assisted contracts by creating a level playing field for DBEs so that they can compete fairly for DOT assisted contracts, to help remove barriers for DBEs, and to ensure nondiscrimination in the award and administration of DOT-assisted contracts. SWART ensures that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs and to have a DBE Program that is narrowly tailored under applicable law.

SWART assists, upon request, to DBEs by offering guidance on preparing bid specifications, complying with procurement policies, and fulfilling general bid requirements. Additionally, SWART provides information on job performance requirements, procurement opportunities, and bidding prerequisites for contracts.

To the extent legally practicable, SWART ensures that contractors furnishing services, materials, or supplies to SWART provide employment opportunities to socially and economically disadvantaged individuals equal to those offered all other groups or individuals. Such contractors are expected to take positive steps toward utilizing DBEs as subcontractors or suppliers, consistent with sound procurement principles and applicable law.

SWART seeks and uses its best efforts to ensure that DBEs are informed of current and future procurement

activities through newspapers as well as direct notification to the DBE's listed on the TxDOT DBE website. Shirley Richards has been delegated as the DBELO for DOT related projects. In that capacity, Mrs. Richards is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by SWART in its financial assistance agreements with the Department of Transportation (DOT).

Compliance Requirements

Failure to achieve DBE contract goals. Suppose the contractor fails to carry out the contract utilizing the same percentage of DBE participation shown on its successful bid or proposal. In that case, the contract payments may be reduced at SWART's option as a liquidated damage, and not as a penalty, by the amount equal to the mathematical dollar difference between the total contract amount multiplied by the DBE percentage goal and the actual dollar amount of documented DBE participation in the contract. However, any authorized adjustment in the percentage of DBE participation approved by SWART may be substituted in this formula for the DBE percentage goal as established initially.

Breach of Contract. All subcontractors, sub-recipients, or contractors are advised that failure to carry out the requirements set forth in this program constitutes a breach of contract and, after the notification of DOT, may result in termination of the agreement or contract by SWART or such remedy as SWART deems appropriate.

Exception. Where the contract is for procurement of a standard manufactured item or other similar procurement not open to subcontracting opportunities, and no certified DBE has submitted a bid, SWART may consider a bid or proposal that does not fully comply with the DBE requirements.

Compliance with the DBE Policy and Program of SWART is essential for a Bidder to be eligible for the contract under this solicitation. Compliance consists of: (a) meeting or exceeding the DBE percentage participation goals established for this solicitation; or (b) demonstrating good faith efforts to meet such participation goals; or (c) demonstrating that the solicitation comes within the exception to the DBE percentage participation goals as being a procurement for a standard manufactured item, or other similar procurement not open to sub-contracting opportunities.

To demonstrate compliance through its "good faith efforts" to obtain the DBE percentage participation goals, a Bidder or Proposer must submit with its sufficient information to enable SWART to determine that the efforts made by the Bidder or Proposer to obtain DBE participation were such efforts that a Bidder or Proposer actively and aggressively seeking to meet those goals would make. Actions or efforts that are merely "pro forma" or "going through the motions" do not constitute good faith efforts to obtain the participation of DBEs. Similarly, even efforts which are sincerely motivated but which, given all circumstances relevant to the particular solicitation, could not be reasonably expected to produce a level of DBE participation sufficient to meet the goal do not constitute good faith efforts. In determining whether a Bidder or Proposer has made a good faith effort to obtain the DBE participation percentage goal, SWART will look not only at the different kinds of efforts that the Bidder or Proposer has made, but also the quality and intensity of these efforts.

The following kinds of actions would indicate that a Bidder or Proposer has made a good faith effort:

- Bidder or Proposer attended any pre-bid meetings that SWART scheduled to inform DBEs of contracting and sub-contracting opportunities;
- Bidder or Proposer selected portions of the work to be performed by certified DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- Bidder or Proposer advertised in general circulation, trade association, and/or minority focus media concerning the sub-contracting opportunities;

- Bidder or Proposer provided written notice to a reasonable number of specified DBEs that their interest in the procurement was being solicited, in sufficient time to allow such DBEs to participate effectively,
- Bidder or Proposer followed up initial solicitations of interest by contracting DBEs to determine with certainty whether the DBEs were interested;
- Bidder or Proposer provided interested DBEs with adequate information about the plans, specifications, and requirements of the solicitation;
- Bidder or Proposer negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on their investigation of the capabilities;
- Bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by SWART or the Bidder or Proposer as prime Contractor;
- Bidder or Proposer effectively used the services of available minority community organizations; minority contractor groups, local, state, and federal minority assistance offices; and other organizations that assist in the recruitment and placement of DBEs.

Compliance Documentation

In order to demonstrate compliance with the SWART DBE Policy and Program, it is essential that full documentation be submitted at the time of the bid. This documentation consists of completing the required forms included in the bid packet and attaching additional relevant documentation and information where specified.

All Bidders or Proposers must complete the SWART DBE Compliance Statement and the SWART Schedule of DEB Utilization. A Bidder must also complete the SWART Schedule of DBE Unavailability or Proposer who does not meet the DBE percentage participation goals established for this procurement but wishes to demonstrate compliance with the policy and program due to having made "good faith efforts" to meet those goals.

Bidders or Proposers who believe that bid/proposal meets the exception to the DBE Policy and Program as being one for the procurement of a standard manufactured item or other similar procurement not open to sub-contracting opportunities must, in addition, fully explain the facts on which it bases its belief that this solicitation meets the terms of that exception.

Ethics in Public Contracting

The Ethical Code of SWART governs the conduct and ethical behavior of SWART employees involved in the procurement process.

The Procurement Manager, as primary Procurement Manager, ensures that this Policy is adhered to in all SWART procurements. The Procurement Manager reports any violations of this policy to the SWART Board of Directors.

SWART Code of Ethics. Employees involved in the procurement process annually sign the following code of ethics.

Veterans Employment

Recipients and sub recipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the

construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Criminal Penalties

To the extent that violations of the ethical standards of conduct outlined in this Section constitute violations of this policy, they are punishable as provided therein. Such penalties are in addition to the civil sanctions outlined in this Part. Criminal, civil, and administrative sanctions against employees or non-employees that are in existence on the effective date of this Policy are not impaired.

Employee Conflict of Interest

SWART is committed to the highest ethical standards in the performance of our services to the community. The public is entitled to assurances that its officials are guided by the public good and its agency practice policies of openness and transparency. To this end, Chapter 176 of the Texas Local Government Code may require the public disclosure of certain information concerning the SWART Board of Directors, local government officers, and persons doing business or seeking to do business with SWART.

No employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to utilize any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a 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 the award.

The SWART Board member and other local government officers must file a Conflict of Interest Disclosure Statement disclosing the business relationship with a vendor that SWART has contracted with or is considering contracting with if the Board member or local government officer (or his or her family member) has certain business relationships with that vendor.

Vendors doing business with SWART or seeking to do business with SWART are required to file a completed questionnaire disclosing the vendor's affiliations or business relationship with any Board Member or local government officer (or his or her family member).

As required by Chapter 176 of the Texas Local Government Code, disclosure forms will be available online along with the above clause and are attached to this document as an attachment.

Gratuities and Kickbacks

Gratuities. It will be unethical for any person to offer, give, or agree to give any SWART employee or former SWART employee, or for any SWART employee or former SWART 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, or 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.

Kickbacks. It will be unethical 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.

Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section will be conspicuously outlined in each contract and solicitation thereof.

Prohibition against Contingent Fees

It will be unethical for a person to be retained, or to retain a person, to solicit or secure a SWART contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies to secure business.

Contemporaneous Employment Prohibited

It will be unethical for an employee participating directly or indirectly in the SWART procurement process to be employed by any person or firm competing for a contract with SWART. It will also be unethical for an employee who is participating directly or indirectly in SWART's procurement process to become an employee of any person or firm as a result of a firm being awarded a contract with SWART.

Use of Confidential Information

It will be unethical for any employee or former employee to knowingly use confidential information for their own actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Sanctions

Employees. The SWART Board of Directors may impose any one or more of the following sanctions on a SWART employee for violations of the ethical standards in this Section:

- Oral or written warnings or reprimands;
- Suspension with or without pay for specified periods of time; or
- Termination of employment.

Non-employees. The SWART Board of Directors may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards.

- Written warnings or reprimands;
- Termination of contracts; or
- Debarment or suspension as provided in Authority to Debar or Suspend.

Recovery of Value Transferred or Received in Breach of Ethical Standards

General Provisions. The value of anything transferred or received in breach of the ethical standards of this Policy by an employee or a non-SWART employee may be recovered from both a SWART employee and a non-SWART employee.

Recovery of Kickbacks by SWART. Upon 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 hereunder, it will be conclusively presumed that the amount thereof was included in the price of the subcontract or order an ultimately borne by SWART and will be recoverable hereunder from the recipient. Additionally, this amount may also be recovered from the subcontractor that made such kickbacks. Recovery from one offending party will not preclude recovery from other offending parties.

SWART Code of Conduct

Vision

Southwest Area Regional Transit District will continue to involve consumers, families, program staff and other community leaders and neighbors in concerted efforts to:

- Improve the overall quality of services to the general public, including those persons served with mental illness, intellectual and developmental disabilities, and substance use disorders. Expand services to meet the needs of those with mental illness, intellectual and developmental disabilities, and substance use disorders that are unserved or underserved.
- Promote positive work environments in which staff work with pride, integrity, and commitment, and are valued for their worth and contribution.
- Promote effective leadership and management at all levels to improve services and earn public confidence and support.
- Improve public understanding of general public transportation services, and of SWART's responsibility and/or role to persons with these services.
- Build and support positive relationships with consumers, families, advocacy groups, higher education, and other public agencies to better serve persons with mental illness, intellectual and developmental disabilities, and substance use disorders.
- Operate a financially healthy and stable organization for the general public

Values

- Individual Worth: SWART affirms that the individuals served share with all person's common human needs, rights, desires, dignity, and strengths. SWART celebrates cultural and individual diversity.
- Quality: SWART commits itself to the pursuit of excellence in everything it does.
- Integrity: The people of SWART believe that personal and professional integrity is the basis of public trust.
- Dedication: SWART takes pride in its commitment to public service and to the people it is privileged to serve.
- Innovation: SWART is committed to developing an environment that inspires and promotes innovation, fosters dynamic leadership, and rewards creativity among its staff and the people served.

Statement of Purpose

SWART employees will exhibit behavior based on honesty, integrity, and a sense of fairness. It is the responsibility of these individuals to maintain the highest standard of legal and ethical behavior. This includes complying with all local, state and federal laws and regulations designed to ensure adequate and appropriate care and taking timely and responsive positive action to prevent or correct any improper or inappropriate acts. SWART's Board of Directors and Staff are committed to providing avenues through which ethical issues may be raised, reviewed and resolved openly and honestly.

Ethical Standards

The business conducted by SWART will be delivered in an environment with the highest ethical, legal and professional standards. Honesty, integrity and impartiality will be demonstrated when dealing with SWART customers, vendors, community and employees. In addition, any individual who is professionally licensed shall adhere to the code of ethics of that profession. The Board of Directors and employees will make every effort to avoid even the appearance of illegal, unethical or unprofessional conduct.

Leadership Responsibilities

While all SWART employees are obligated to follow the Code of Conduct, we expect our leaders to set the example and be a role model in every respect. They must ensure that those on their team have sufficient information to comply with laws, regulations, and policies, as well as the resources to resolve ethical

dilemmas. They must help to create a culture within SWART that promotes the highest standards of ethics and compliance. The culture must encourage everyone in the organization to share concerns when they arise. We must never sacrifice ethical and compliant behavior in the pursuit of business objectives.

Conflict of Interest / Outside Business and Financial Interests

A conflict of interest may occur if outside activities or personal interests influence or appear to influence objective decision-making in the course of SWART-related responsibilities and duties. A conflict may also exist if the demands of any outside activities hinder or distract your job performance or cause you to use SWART resources for anything other than SWART purposes. Employees are expected to exhibit professional loyalty to the SWART. Employees are expected to avoid conflicts of interest and opportunities for personal gain, both individually and for members of their immediate families and others, that may impede their best judgment.

The following are guidelines for the Board of Directors and employees regarding interests outside of the business conducted by SWART:

- A. Employees, or members of their respective families, should not have substantial financial or business interest with a competitor, customer, or supplier of SWART without first reviewing the nature of the activity with SWART's legal counsel.
- B. Each employee's employment should be his/her first business priority. Any other employment or business activity will be considered secondary and should not interfere with individual employee job performance and responsibilities. Approval of secondary employment requires the approval of the Swart's SWART Board of Directors.

Gifts and Favors

The following are expectations of employees: SWART Employees do not accept gifts or gratuities of any kind.

Compliance

The following are guidelines for compliance with this SWART's Compliance Plan, including the Business Code of Conduct:

- A. Employees are committed to complying with all federal and state laws and regulations, with an emphasis on preventing fraud and abuse.
- B. SWART will conduct audits and other risk evaluations to monitor compliance and assist in reducing identified problem areas.
- C. SWART will maintain processes to:
 - 1. Detect Medicaid/Medicare or other third-party payer compliance offenses
 - 2. Initiate corrective and preventive action;
 - 3. Report to appropriate oversight authorities, both professional and regulatory, when appropriate; and

4. Address consequences for employees for failure to comply with standards, policies and procedures.
- D. Employees are committed to ensuring the privacy of our consumers/clients' protected health information. We are committed to compliance with all privacy and security rules relating to the Health Insurance Portability and Accountability Act (HIPAA), along with other federal and state laws that are integral to matters of privacy, medical records, confidentiality of communications, and identity theft protection of those we serve. SWART shall maintain a process to monitor and detect flags for potential identity theft; appropriately notify those affected and/or those required to be notified by law; and initiate corrective action plans or improvement projects as appropriate.

Accounting and Reporting

It is SWART policy to maintain and submit accurate and honest records related to all billing or reporting, including Medicare and Medicaid, and to comply with all laws and regulations relating to Medicare or Medicaid. All employees who document any service shall do so honestly, describing the services actually rendered. Each employee and contract provider will ensure the integrity of SWART by accurately and truthfully recording all appropriate information, accounting and operational data through strict adherence to established accounting and business procedures.

Corporate Resources

Each employee is expected to utilize resources efficiently and safeguard SWART assets at all times. Care should be taken to treat SWART resources as if they were your own, or better. It is the responsibility of each employee to preserve SWART's assets, including time, materials, supplies, equipment, computers, electronic communications devices, and information. SWART's assets are to be maintained for business-related purposes. As a general rule, the personal use of any SWART asset without the prior approval of your supervisor is prohibited. The postage machine is never available to employees for personal use. Specific policies and procedures should be referenced for the proper use of other SWART resources, such as gasoline credit cards, SWART vehicles, and SWART-issued electronic communication devices. Any community or charitable use of SWART resources must be approved in advance by the SWART Board of Directors. Any use of SWART resources for personal financial gain unrelated to the organization's business is prohibited.

Political Activities

As good citizens, each employee is encouraged to participate in the political process. SWART must, however, ensure that the political activities and contributions of its employees and contract providers do not appear to represent the opinion of SWART. Individuals can support political candidates as they so choose, using their own personal resources.

- A. Only the members of SWART's Board of Directors may engage in attempting to influence decisions of state and local officials. SWART staff are prohibited from lobbying on behalf of SWART.
- B. Staff and SWART's Board of Directors can provide professional opinions, testimony, and input to local and state officials, including State Boards, when invited to participate by the official(s) or participating in political local forums.
- C. Any and all expenses associated by SWART to inform or influence should come from unrestricted local funds.

Confidentiality

Confidential information, including SWART strategies, operations, and clinical data, is a valuable asset. Each employee is expected to diligently safeguard all SWART records deemed confidential, including information about SWART consumers and their families, internal operations, and fellow employees and contract providers as described in SWART policy and/or federal and state law (including the Texas Open Records Act). Although you may use confidential information to perform your job, it must not be shared with others unless the individual(s) have a legitimate, within the limits of the law, need to know the information and have agreed to maintain confidentiality or you have a signed authorization for release signed by the person who can invoke the right. Employees may not access the confidential information of relatives, in-laws, friends or acquaintances unless there is both a legitimate need to know and appropriate procedures are followed. When or if your relationship with SWART ends for any reason, you are still bound to maintain the confidentiality of information viewed during your time with SWART.

Employee Relations/Professional Conduct

Each employee is expected to perform assigned tasks in a reliable and cooperative manner and treat each other with mutual respect, dignity and trust. Examples of prohibited behavior include:

- A. Threatening or abusive behavior
- B. Arguing
- C. Fighting
- D. Harassment

Each employee has the right to work in an environment free of harassment and disruptive behavior. Harassment will not be tolerated. Degrading or humiliating jokes, slurs, or slander. Intimidation, or other harassing conduct, is not acceptable in our workplace.

1. Harassment could be related to race, creed, color, sex, sexual orientation, national origin, ancestry, citizenship status, marital status, pregnancy, age, medical condition, handicap, and/or disability.
2. Verbal or physical conduct of a sexual nature that interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment has no place at SWART.
3. As part of SWART's commitment to staff safety, SWART has a No Weapons policy. Individuals who enter SWART facilities and vehicles are banned from carrying weapons, including guns, explosive materials, switchblades, and a host of other items deemed as weapons per the policy.

Each employee is expected to conduct themselves professionally and maintain a professional and businesslike relationship with co-workers, supervisors, and the general public. Examples of professional conduct include, but are not limited to, the following:

- A. Appropriate dress (See SWART Dress Code)
- B. Punctuality in reporting to work
- C. Answering and returning business calls promptly

- D. Limiting the use of personal communication devices during work hours
- E. Maintaining confidence by not repeating personal or privileged information
- F. Completing assigned duties without dishonesty, fraud, deceit, or misrepresentation

Although SWART is not concerned with conduct and actions of employees during non-work hours, off duty conduct may become a legitimate concern when it has the potential of impacting agency operations. Such off-duty conduct may result in appropriate disciplinary action against the employee concerned. Examples of off-duty conduct that may have ramifications at work include inappropriate social media posts, illegal behavior, and other behavior and conduct that are in conflict with the SWART's mission, vision, and values.

Customer Focus / Consumer Client Relations

Because SWART consumers/clients are the primary focus of every activity, each employee will be committed to continually improving our general public transportation services to meet the individual needs of SWART consumers.

All consumers are treated with dignity, respect, autonomy, and self-esteem, and their civil rights are preserved. Each individual has the right to be involved in his/her care. It is the responsibility of each employee to ensure that the rights of consumers and clients are protected. To that end, each employee must familiarize themselves with consumer/client rights outlined in the policy and procedure manual and rider guides. These structures are based on policies and procedures that form the framework for addressing both consumer/client care and organizational ethics issues. Additionally, SWART has established processes for the prompt resolution of consumer/client complaints and grievances, which include informing individuals of whom to contact regarding complaints and providing them with information on the complaint resolution process. SWART employees will receive training on consumer/client rights to ensure a clear understanding of their role in supporting them.

Controlled Substances

To protect the interests of our employees and clients, we are committed to maintaining an alcohol- and drug-free work environment. All employees must report for work free of the influence of alcohol and illegal drugs. Reporting to work under the influence of any illicit drug or alcohol; having an illegal drug in your system; or using, possessing, or selling illegal drugs while on SWART property may result in immediate termination. We may use drug testing as a means of enforcing this policy. The unlawful use or possession of any controlled substance is unacceptable and will not be tolerated. These acts are illegal and jeopardize the safety of employees, contract providers and consumers/clients; and reduce productivity, reliability and trustworthiness.

Reporting Misconduct

To obtain guidance on an ethics or compliance issue or to report a suspected violation, you may choose from several options. We encourage the resolution of issues, including human resources-related issues at the program level whenever possible. It is expected that, when you are comfortable with it and think it appropriate under the circumstances, you will raise concerns first with your supervisor. If this is uncomfortable or inappropriate, another option is to discuss the situation with the General Manager, as appropriate. SWART will make every effort to maintain, within the limits of the law, the confidentiality of the identity of any individual who reports possible misconduct. There will be no retribution or disciplinary action taken against anyone who reports a potential violation in good faith. Any colleague who deliberately makes a false

accusation to harm or retaliate against another employee will be subject to disciplinary action up to and including termination.

The following are obligations for reporting misconduct:

- A. Each employee is responsible for bringing to the attention of his/her SWART supervisor any situation that appears to violate this Business Code of Conduct. Whether a violation results from an innocent mistake or deliberate planning and intent, it is essential that all employees take responsibility for bringing the breach to the attention of someone who can correct the situation.
- B. Supervisors will suggest appropriate action and contact the SWART General Manager under SWART policy.
 - 1. If it is inappropriate to discuss the issue with an immediate supervisor, the employee may raise the issue directly with the Deputy General Manager or appropriate Executive Management staff.
 - 2. If necessary, the issue may be brought to the attention of the SWART Board of Directors.
 - 3. Reporting violations will remain confidential to the extent possible unless otherwise obliged by professional code of conduct, state or federal law. Employees may, however, be required to substantiate any allegations of wrongdoing.
 - 4. No employee will be punished or subjected to reprisal because he/she, in good faith, reports a violation of this Business Code of Conduct. SWART policy regarding retaliation will be adhered to in all such instances.
 - 5. Employees who deliberately makes false accusations will be subject to disciplinary action up to and including termination.

Accident/ Incident Reporting

- A. Accident/Incident reports will be completed and submitted for all unusual occurrences and incidents. An occurrence is defined as an unusual event that transpires in or on the premises of SWART or in vehicles. The event is considered unusual if the result was unexpected, unintended, undesirable, and/or departs from any other SWART policy and procedure, and/or puts SWART in a position of liability or risk.
- B. Accident/Incident reports will be completed and submitted to the Loss Control Officer within:
 - 1. Twenty-four (24) hours for workers' comp, vehicle accident, or incident.
 - 2. Abuse, neglect, exploitation, etc., or fatality of a customer or employee is reported immediately.
- C. An accident/incident report will be completed by any person involved in or witnessing an incident or unusual occurrence. This incident or occurrence is to be immediately reported to the supervisor or manager of the person(s) completing the RIR.

Conclusion

It is the responsibility of each employee to maintain the highest standards of business ethics. This includes taking positive action to prevent or correct any improper or inappropriate acts. SWART Board of Directors and Staff are committed to providing avenues through which ethical issues may be raised, reviewed and resolved openly and honestly.

The Ethical Code of SWART

PRECEPTS - Employees will never use their authority or office for personal gain and will seek to uphold and enhance the standing of SWART by:

- Maintaining an unimpeachable standard of integrity in all their business relationships both inside and outside SWART;
- Fostering the highest possible standards of professional competence amongst those for whom they are responsible;
- Optimizing the use of resources for which they are responsible to provide the maximum benefit to SWART;
- Complying with both the letter and the spirit of;
 - The laws of the United States, the State of Texas, and the counties located in the Middle Rio Grande Region;
 - Such guidance on professional practice as may be issued by SWART;
 - Contractual obligations; i.e., rejecting any business practice which might reasonably be deemed improper.

GUIDANCE - In applying the precepts, employees should follow the guidance set out below:

Declaration of Interest. Any personal interest which may impinge or might reasonably be deemed by others to impinge on an employee's impartiality in any manner relevant to his or her duties should be declared.

Confidentiality and accuracy of information. The confidentiality of information received in the course of duty should be respected and should never be used for personal gain; information given in the course of duty should be accurate and fair and never designed to mislead.

Competition. While bearing in mind the advantages to SWART of maintaining a continuing relationship with a supplier, any arrangement which might, in the long term, prevent the effective operation of fair competition, should be avoided.

Business gifts. Business gifts, other than items of minimal intrinsic value, such as business diaries or calendars, should not be accepted.

Hospitality. Modest hospitality is a customary courtesy in business relationships. However, the recipient should not allow him or herself to reach a position whereby he or she might be or might be deemed by others to have influenced in making a business decision as a consequence of accepting such hospitality; the frequency and scale of hospitality accepted should not be significantly greater than SWART would be likely to provide in return.

When it is not clear whether a gift or hospitality is acceptable, the offer should be declined or advice sought from the employee's superior.

Signature of Employee

Date