



## 1.0 PROCUREMENT AND CONTRACTING

### 1.1 Overview

The purpose of this Procurement and Contracting Policy is to establish procedures for the procurement of goods and/or services by the Atlanta-region Transit Link Authority (the "ATL").

The ATL is organized as a governmental authority of the State of Georgia (the "State") and, as such, is exempt from the State of Georgia's purchasing requirements.

#### 1.1.1 Statement of Policy

The policies and procedures stated in ATL Procurement and Contracting Policy shall apply to all procurement and contracting activities undertaken by the ATL. Where a policy or procedure contained herein expressly references FTA requirements or FTA financial assistance, such policy or procedure shall be deemed to only apply to procurement and contracting activities where FTA financial assistance is a source of funding for the product or service that is being procured.

Exceptions to the requirements stated in the ATL Procurement and Contracting Policy may only be made for procurement actions that do not involve FTA financial assistance. All such exceptions, unless specifically stated in this policy, must be approved in writing by the ATL Executive Director and shall state the duration and extent to which the exception is authorized.

#### 1.1.2 Federal Laws and Regulations

The ATL must comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements. The FTA regulations and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements include, but are not limited to:

- a. Common Grant Rules – The Common Grant Rules for Governmental Recipients that apply to the ATL are stated in "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" 2 CFR Part 200.
- b. Federal Acquisition Regulations (FAR) – The FAR does not apply to federally assisted procurements, absent Federal laws or regulations to the contrary; however, in the case of FTA programs, FAR cost principles in Part 31 apply to grants and cooperative agreements with private for-profit entities. Audits of Architectural and Engineering services listed in 49 U.S.C. Section 5325 must be carried out under FAR Part 31 cost principles.
- c. Other Federal Requirements – In addition to the Common Grant Rules, the ATL must comply with applicable Federal transit laws and implementing regulations not addressed in the Common Grant Rules, and with other Federal cross cutting statutes and regulations that affect what the ATL may acquire.



- (a) The FTA Master Agreement – Citations to most Federal requirements are included in the latest edition of the FTA’s Master Agreement, typically issued at the beginning of each Federal fiscal year, which includes comprehensive information about Federal laws and regulations that may apply to an FTA assisted project.
  - (b) The FTA Procurement Circular 4220.1F- The contents of this circular apply to projects financed in part or in whole with FTA funds.
  - (c) Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly known as “The Super Circular.” This affects entities receiving and administering federal awards as well as auditors responsible for auditing federal awards programs.
- d. Waivers – Requests for waivers of Federal requirements should be addressed to the Federal Transit Administrator.

### **1.1.3 State and Local Laws and Regulations**

In accordance with the Common Grant Rules, the ATL will use its own procurement procedures that comply with applicable State and local laws and regulations, and also comply with applicable Federal laws and regulations.

- a. Inadequate State and Local Requirements – If state or local laws or regulations do not adequately address a particular aspect of procurement, Federal direct procurement principles may provide useful guidance.
- b. Conflicts Between Federal Requirements and State or Local Requirements – If Federal requirements conflict with State or local requirements, the ATL should provide written notification promptly to either the FTA Regional Counsel or the FTA Assistant Chief Counsel for General Law in the case of projects administered by FTA headquarters staff. FTA will then work with the ATL to make appropriate arrangements to proceed with the project. If unsuccessful, then FTA reserves the right to amend or terminate Federal assistance for the underlying Project.

## **1.2 Statement of Policy**

The ATL shall conduct all procurement transactions in a manner that provides full and open competition as required by the Federal Transit Administration (FTA) and the State of Georgia.

However, the following acquisitions that do not involve the use of Federal Transit Administration funds are hereby declared exempt from competitive bidding or competitive proposals:

- i. The acquisition or leasing of real property
- ii. Sole source purchases or acquisitions that meet the sole source justification requirements of this Policy
- iii. Personal or professional services
- iv. Emergency purchases

## **1.3 Standards of Ethical Conduct for Procurement**



### 1.3.1 Statement of Policy

- a. ATL employees are bound by the Georgia Governor's Executive Order dated January 14, 2019 for "Establishing a Code of Ethics for Executive Branch Officers and Employees". The Executive Order prohibits ATL employees, or any person acting on their behalf, from accepting, directly or indirectly, any gift from any person with whom the employee interacts on official ATL business. Therefore, it is unlawful for a potential offeror, or its subcontractors or suppliers, to make gifts or favors to any ATL employee. It is also unlawful for any ATL employee to accept any such gift or favor.
- b. The ATL Board of Directors is subject to its own set of ethics provisions and reporting requirements. Any involvement that a ATL Board Member might have in the procurement process will be specifically governed by those policies and procedures.

### 1.3.2 General Standards of Ethical Conduct

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust. In order to fulfill this general prescribed standard, ATL employees must also meet the specific standards set forth below.

### 1.3.3 Definition of Key Terms

- a. Conflict of Interest – A situation in which an employee has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between an employee's private interests and his or her professional obligations to the ATL such that an independent observer might reasonably question whether the employee's professional actions or decisions are determined by considerations of personal gain, financial or otherwise and/or are potentially to the detrimental to the ATL.
- b. Financial Interest – An employee or their immediate family is considered as having a financial interest in a contract to awarded or executed by the ATL if: 1.) the employee or an immediate family member holds an interest greater than 5% or with a fair market value of over \$10,000 in corporate stock, stock options, bonds or similar interests in the company to be awarded a contract with the ATL; 2.) or the employee or an immediate family member owns a majority interest in a company to be awarded a contract with the ATL; 3.) or the employee or an immediate family member received more than \$10,000 in consulting income, salaries, or equity from the company to be awarded a contract with the ATL; 4.) or the employee or an immediate family member has intellectual property rights in or receive royalties from the company to be awarded a contract with the ATL; 5.) or the employee or an immediate family member serves as a director, officer, partner, trustee, manager or employee of the company to be awarded a contract with the ATL; or 6.) the employee or an immediate family member holds an interest in or position with the company to be awarded a contract with the ATL that could conflict with the ATL's interests, create a perception of impropriety, or could adversely affect the ATL's reputation.
- c. Immediate Family – Immediate Family includes an employee's spouse, partner, grandparent, parent, brother, sister, child or grandchild.



### **1.3.4 Employee Conflict of Interest**

- a. Conflict of Interest – It shall be a breach of ethical standards for any ATL employee to participate directly or indirectly in a procurement when the employee knows:
  - (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
  - (2) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - (3) Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
  
- b. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver) – Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:
  - (1) Promptly file a written statement of disqualification with the ATL Executive Director; and
  - (2) Withdraw from further participation in the procurement.

The employee may, at the same time, request from the ATL Executive Director an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the ATL Executive Director to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

### **1.3.5 Employee Disclosure Requirements**

An ATL employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as an ATL employee or by the official acts or actions of the ATL, shall disclose the precise nature and value of such interest in a written disclosure statement to the ATL Executive Director. The employee's disclosure statement will be reviewed by the ATL Executive Director and the ATL Executive Director will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the ATL Executive Director has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as an ATL employee or by the official acts or actions of the ATL, he/she shall disclose the precise nature and value of such interest in a written disclosure statement to the ATL Administrative Committee. The ATL Executive Director's disclosure statement will be reviewed by the Administrative Committee and the Administrative Committee will respond to the ATL Executive Director in writing with an opinion as to the propriety of said interest.

### **1.3.6 Confidential Information**



An ATL employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with the ATL.

### **1.3.7 Solicitation Provision**

The ATL shall insert the following provision in all formal competitive solicitation documents for products and services:

It is a breach of ethical standards for any ATL employee to participate directly or indirectly in procurement when the employee knows:

- a. The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- b. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- c. Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

ATL employees are bound by the Georgia Governor's Executive Order dated January 14, 2019, for "Establishing a Code of Ethics for Executive Branch Officers and Employees". The Executive Order prohibits ATL employees, or any person acting on their behalf, from accepting, directly or indirectly, any gift from any person with whom the employee interacts on official ATL business. Therefore, it is unlawful for a potential offeror, or its subcontractors or suppliers, to make gifts or favors to any ATL employee. It is also unlawful for any ATL employee to accept any such gift or favor.

Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of the Evaluation Committee, ATL Board of Directors, or ATL employees other than ATL Issuing Officer."

## **1.4 ATL Responsibilities Under Federal Law**

### **1.4.1 Written Standards of Conduct**

The ATL must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. The ATL's Standards of Ethical Conduct for Procurement are included as Section 1.3 above. Failure to adhere to the Standards outlined in Section 1.3 may result in verbal counseling, written counseling, suspension, termination, and or civil/criminal penalties.

### **1.4.2 Self-Certification**



The ATL must self-certify that its procurement system complies with Federal requirements for any FTA assisted third party contract that the ATL undertakes and administers. The ATL shall self-certify its procurement system annually to the FTA by submission of its Annual Certifications and Assurances.

### **1.4.3 Third-Party Contracting Capacity for FTA-assisted Projects**

The ATL must maintain adequate technical capacity to carry out its FTA assisted projects and comply with Federal Common Grant Rules. The ATL's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. Specific requirements include:

- a. Contract Administration System – The ATL must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements.
- b. Written Procurement Procedures – The ATL must maintain and follow written procurement procedures that address:
  - (1) Solicitations – Requirements for ATL solicitations are addressed in Section 1.6 below.
  - (2) Necessity – Requirements related to ATL's need for products or services are addressed in Section 1.4.4(b) below.
  - (3) Lease Versus Purchase – Requirements related to the use of lease or purchase alternatives to achieve an economical and practical procurement are addressed in Section 1.4.4(e) below
  - (4) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement are addressed in Section 1.4.5(d)(2) below.
  - (5) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient are addressed in Sections 1.4.5c(3) and 1.4.5c(4) below.
  - (6) Veteran's Preference- Requirement related to preference for hiring veterans who have the skills and abilities to perform construction work required under a third party contract in connection with a capital project supported with FTA assistance is addressed in Section 1.4.5(h)(11) below.
  - (7) Procurement Methods – Descriptions of the procurement methods that ATL may use are included in Section 1.6 below.
  - (8) Legal Restrictions – Descriptions of Federal and State restrictions on ATL's acquisitions are included in Section 1.4.5 below.
  - (9) Third Party Contract Provisions – Specific third-party contract provisions required for each third party contract and flow down requirements to subcontracts are included in Section 1.4.5 below.
  - (10) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 1.5.2 below.
  - (11) Resolution of Third-Party Contracting Issues – Procedures related to the resolution of third party contracting issues are included in Section 1.4.5(b)(3) below.

- c. Adequate Third Party Contract Provisions – The ATL must include provisions in all of its third party contracts that are adequate to form a sound and complete agreement.
- d. Industry Contracts – The ATL shall not use an industry developed contract or a contract that is provided by a bidder or offeror unless it has first evaluated the benefits of the contract. The ATL shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to the ATL.
- e. Record Keeping – The ATL must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. The ATL must maintain these records for three (3) years after the ATL and its subrecipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:
  - (1) Written Record of Procurement History – The ATL must maintain and make available to FTA written records detailing the history of procurement. For all procurements above the micro-purchase level the ATL must maintain records relating to:
    - (a) Procurement Method – The ATL must 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;
    - (b) Contract Type – The ATL must state the reasons for selecting the contract type it used;
    - (c) Contractor Selection – The ATL must state its reasons for contractor selection or rejection;
    - (d) Contractor Responsibility – The ATL must provide a written determination of responsibility for the successful contractor;
    - (e) Cost or Price – The ATL must evaluate and state its justification for the contract cost or price; and
    - (f) Reasonable Documentation – The ATL must retain documentation commensurate with the size and complexity of the procurement.
  - (2) Access to Records – The ATL must provide FTA and DOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.
- f. Use of Technology / Electronic Commerce – The may use an electronic commerce system to conduct third party procurements. If the ATL uses an electronic commerce system then the following requirements apply:
  - (1) Sufficient System Capacity – The ATL’s system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
  - (2) Written Procedures – Before any solicitation takes place the ATL must establish adequate written procedures to ensure that all information FTA requires for project administration is entered into the system and can be made readily available to FTA as needed.



- (3) Uses – The ATL may use its system to undertake the following types of third-party procurements (as defined in Section 1.6 below):
- (a) Micro-purchases
  - (b) Small purchases, and
  - (c) Competitive Proposals.

#### **1.4.4 Determination of Needs**

The ATL must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. The ATL shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

- a. Eligibility – All products and services to be acquired with FTA funds must be eligible under the Federal law authorizing the FTA assistance award and any regulations there under. All products and services to be acquired with FTA funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA assistance to be used is derived.
- b. Necessity – The ATL shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does need.
  - (1) Unnecessary Reserves – The ATL shall limit the acquisition of federally assisted property and services to the amount it needs to support its operations.
  - (2) Acquisition for Assignment Purposes – The ATL shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
    - (a) If the ATL chooses not to exercise all of its contract options for a particular contract, it may assign its unneeded contract authority to another entity that would like to acquire the products or services.
    - (b) The general limit on assignments does not preclude the ATL from participating in joint procurements or purchasing from State Government Purchasing Contracts.
- c. Procurement Size – For procurement, the ATL shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, the ATL shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- d. Options – The ATL shall justify as needed all option quantities included in every solicitation and contract.
- e. Lease Versus Purchase – The ATL shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If the ATL chooses to lease an asset, then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.





- f. Specifications – The ATL’s procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. The ATL’s procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or State laws or regulations.

#### **1.4.5 Federal Requirements That May Affect the ATL’s Acquisitions**

The ATL shall not use FTA assistance to support acquisitions that do not comply with all applicable Federal requirements. For every procurement and contract that is funded with FTA assistance, the ATL shall reference all applicable Federal and State requirements that shall apply to the procurement and contract. The ATL shall consult the Common Grant Rules, the FTA Master Agreement and the FTA Best Practices Procurement Manual as sources of Federal requirements that may apply to its procurements and contracts.

Specific federal requirements that may apply to the ATL’s procurements and contracts and that are not referenced elsewhere in this Procurement and Contracting Policy, include, but are not limited to the following:

- a. Contractor Qualifications – The following Federal laws and regulations may affect contractor selection:
- (1) Debarment and Suspension – United States Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” [2 CFR Part 1200] apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount. The ATL must apply DOT’s debarment and suspension requirements to itself and each third party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” [2 CFR Part 180].
  - (2) Lobbying Certification and Disclosure – If a third-party contract will exceed \$100,000, before awarding the contract, the ATL must obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third party contractor [DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352].
  - (3) Federal Civil Rights Laws and Regulations – The ATL agrees that it and its third-party contractors at each tier will comply with:
    - (a) Federal Equal Employment Opportunity (EEO) Requirements – These include, but are not limited to:
      - i. Nondiscrimination in Federal Public Transportation Programs [49 U.S.C. Section 5332] covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed,

- national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- ii. Prohibition Against Employment Discrimination [Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, and implementing Federal regulations] that prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
    - (b) Nondiscrimination on the Basis of Sex [Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Sections 1681 *et seq.* and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25] prohibit discrimination on the basis of sex.
    - (c) Nondiscrimination on the Basis of Age – The Age Discrimination in Employment Act (ADEA) [29 U.S.C. Sections 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625] prohibit employment discrimination against individuals on the basis of age. The “Age Discrimination Act of 1974, as amended [42 U.S.C. Sections 6101 *et seq.*, and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 90], also prohibit discrimination against individuals on the basis of age.
    - (d) Federal Protections for Individuals with Disabilities – The Americans with Disabilities Act of 1990, as amended (ADA) [42 U.S.C. Sections 12101 *et seq.*], prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.
  - (4) Sensitive Security Information – Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. Section 114(s) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.
  - (5) Seat Belt Use – In compliance with Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, the ATL shall encourage each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate the Authority owned, rented, or personally operated vehicles, and to include this provision in any third-party subcontracts, involving the project.
- b. Administrative Restrictions on the Acquisition of Property and Services – The following Federal laws and regulations impose administrative requirements, many of which will affect specific third-party procurements.



- (1) Federal Cost Principles – The Common Grant Rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the ATL. The Federal cost principles that are applicable to the ATL are OMB Guidance for Grants and Agreements, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” [2 CFR Part 225].
- (2) Payment Provisions – The ATL may use its own funds to finance its contracts; however, if the ATL intends to use FTA assistance, expects to be reimbursed with FTA assistance, or dedicates its local share funds to support contract costs it has financed, then the following requirements shall apply to its contract payment provisions:
  - (a) FTA Support for the Project – The FTA must indicate its general interest in the project before the ATL may use FTA assistance to finance or reimburse project costs, or use local share funds for project costs. FTA expresses its general interest in the project when it has taken one of the following actions:
    - i. Award Made – The FTA has awarded Federal assistance through a grant or cooperative agreement for the underlying project;
    - ii. Pre-award Authority – The FTA has provided pre-award authority for the underlying project through a *Federal Register* notice;
    - iii. Letter of No Prejudice – The FTA has issued a letter of no prejudice for the underlying project.
  - (b) Advance Payments – Advance payments are payments made to a contractor before the contractor incurs contract costs. The ATL may use its local share funds for advance payments; however, if there is no automatic pre-award authority for its project, then advance payments made with local share funds before the FTA assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before the FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:
    - i. Use of FTA Assistance Prohibited – The ATL may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.
    - ii. Exceptions for Sound Business Reasons – The ATL may make an exception to the prohibition against advance payments if it can provide sound business reasons for doing so and has obtained FTA’s advance written concurrence.
      - Adequate Security – Adequate security for the advance payment is an essential pre-condition to FTA’s concurrence in the use of FTA or local share funds.
      - Customary Advance Payments – FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the ATL may use FTA assistance to support or

reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

- (c) Progress Payments – Progress payments are payments for contract work that has not been completed. The ATL may use FTA assistance to support progress payments provided the ATL obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.
- i. Adequate Security for Progress Payments – Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the ATL’s financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances.
  - ii. Adequate Documentation – Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
  - iii. Percentage of Completion Method – The Common Grant Rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. The ATL, however, may not make progress payments for other than construction contracts based on this percentage method.
- (3) Protections Against Performance Difficulties – The ATL shall include provisions in its third-party contracts that will reduce potential problems that might occur during contract performance. The ATL shall include provisions in its third-party contracts that address the following:
- (a) Changes – The ATL shall include provisions that address changes and changed conditions in all third-party contracts except for routine supply contracts.
  - (b) Remedies – The ATL shall include provisions that address remedies in its third-party contracts. Provisions related to remedies may include provisions for:
    - i. Liquidated Damages – The ATL may use liquidated damages if the ATL reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect the ATL’s costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract’s delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.

- ii. Violation or Breach – Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor.
  - iii. Suspension of Work – The ATL may include provisions pertaining to suspension of work in its third-party contracts.
  - iv. Termination – Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$10,000.
- c. Socio-Economic Requirements for the Acquisition of Property and Services – The following Federal laws and regulations imposing socio-economic requirements may affect a specific procurement:
- (1) Labor – The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:
    - (a) Wage and Hour Requirements – For contracts in excess of \$100,000 that include labor performed by mechanics and/or laborers, the ATL shall include contract provisions related to wage and hour requirements. The ATL shall include provisions in its third-party contracts requiring the contractor to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. These provisions are required for compliance with Sections 102 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3702, and Department of Labor (DOL) regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.
    - (b) Fair Labor Standards – The Fair Labor Standards Act [29 U.S.C. Sections 201 et seq.] applies to employees performing work involving commerce.
  - (2) Civil Rights – The following Federal civil rights laws and regulations may affect the types of property and services that may be acquired with FTA assistance:
    - (a) Nondiscrimination in Federal Public Transportation Programs – Federal transit law at 49 U.S.C. Section 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
    - (b) Title VI of the Civil Rights Act – In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d et seq. and DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21.

- (c) Environmental Justice – Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. Section 4321 note, and DOT Order 5610.2, “Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 FR 18377, April 15, 1997, protect minority populations and low-income populations against disproportionately high and adverse effects of federally assisted programs.
  - (d) Limited English Proficiency (LEP) – This guidance clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. [Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. Section 2000d-1 note, and DOT “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” December 14, 2005.]
  - (e) Nondiscrimination on the Basis of Disability – The ATL agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
    - i. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) [29 U.S.C. Section 794], prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
    - ii. The Americans with Disabilities Act of 1990, as amended (ADA), [42 U.S.C. Sections 12101 *et seq.*], prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.
    - iii. DOT Public Transportation Regulations implementing Section 504 and the ADA – These regulations include DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.
  - (f) Electronic Reports and Information – Reports and other information prepared in electronic format developed in connection with a third party contract that the ATL intends to provide to FTA, among others, whether as a contract end item or in compliance with contract administration provisions, must comply with the accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794d, and ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194.
- (3) Environmental Protections – Federal laws and regulations require the ATL to comply with applicable environmental requirements and implement them as necessary through third party contracts, including:



- (a) Environmental Mitigation – The ATL shall include adequate third party contract provisions to facilitate compliance with environmental mitigation measures it has agreed to implement.
- (b) National Environmental Policy Act (NEPA) – Certain acquisitions and the timing of certain acquisitions can adversely affect the environmental review process required by the NEPA [42 U.S.C. Sections 4321 through 4335] for a project constituting a major Federal action.
  - i. Property – The ATL may not enter into binding arrangements for the acquisition of property that may or would affect environmental impact determinations with respect to the underlying project or otherwise interfere with any required environmental impact reviews until applicable environmental impact determinations have been made.
  - ii. Services – Council on Environmental Quality regulations, “Other Requirements of NEPA” [40 CFR Part 1506, at Section 1506.5(c)], require the ATL to obtain a disclosure statement from the contractor selected to prepare an environmental impact statement specifying that the contractor has no financial or other interest in the outcome of the project.
- (c) Protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites – DOT’s enabling legislation has special requirements designed to protect parks, recreation areas, wildlife and waterfowl refuges, and historic sites [49 U.S.C. Sections 303(b) and 303(c)] that may affect the types and methods of procurement that the ATL may use.
- (d) Clean Air – The Common Grant Rules specifically prohibit the use of facilities included in the Environmental Protection Agency (EPA) “List of Violating Facilities,” in the performance of any third party contract at any tier exceeding \$100,000. The contractor must also comply with all applicable standards, orders, or regulations issued under Section 306 of the Clean Air Act, as amended, [42 U.S.C. Section 7414], and other applicable provisions of the Clean Air Act, as amended, [42 U.S.C. Sections 7401 through 7671q].
- (e) Clean Water – The Common Grant Rules specifically prohibit the use of facilities included in the EPA “List of Violating Facilities,” in the performance of any third party contract at any tier exceeding \$100,000. The contractor must also comply with all applicable standards, orders, or regulations issued under Section 508 of the Clean Water Act, as amended, [33 U.S.C. Section 1368], and other applicable requirements of the Clean Water Act, as amended, [33 U.S.C. Sections 1251 through 1377.]
- (f) Recycled Products – The Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6962, requires governmental recipients to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. EPA guidelines, “Comprehensive Procurement Guideline for Products Containing Recovered Materials” [40 CFR Part 247], direct that third party contracts of \$10,000 or more with governmental recipients specify a competitive preference for products containing recycled materials identified in those EPA guidelines.
- (g) Other Federal Environmental Protection Requirements – Additional third party contract provisions may be needed for compliance with other Federal laws and



regulations. FTA's Master Agreement includes environmental laws and regulations that may affect the acquisition of property or services with FTA assistance.

- (4) Energy Conservation – The Common Grant Rules require third party contract provisions as necessary for compliance with applicable energy efficiency standards and policies of State energy conservation plans issued under the Energy Policy and Conservation Act, as amended [42 U.S.C. Sections 6321 et seq.].
  - (5) Preference for U.S. Property--Buy America – The FTA's "Buy America" regulations apply to procurements in excess of \$150,000 that involve the purchase of iron, steel, manufactured goods, or rolling stock to be delivered to the ATL under the third party contract for incorporation into the FTA project.
  - (6) Shipments of Property--U.S. Flag Requirements:
    - (a) Shipments by Ocean Vessel – The Common Grant Rules require third party contract provisions to ensure compliance with 46 U.S.C. Section 55303 and Maritime Administration regulations, "Cargo Preference-U.S. Flag Vessels," [46 CFR Part 381].
    - (b) Shipments by Air Carrier – Third party contracts involving shipments of federally assisted property by air carrier requires provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, ("Fly America" Act) [49 U.S.C. Section 40118], and GSA regulations, "Use of United States Flag Air Carriers" [41 CFR Sections 301-10.131 through 301-10.143].
  - (7) Project Travel--Use of U.S. Flag Air Carriers – Third party contracts to acquire transportation by air carrier needed by people participating in a federally assisted project require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended ("Fly America" Act) [49 U.S.C. Section 40118], and GSA regulations, "Use of United States Flag Air Carriers" [41 CFR Sections 301-10.131 through 301-10.143].
- d. Technical Restrictions on the Acquisition of Property and Services – The following Federal laws and regulations imposing technical requirements may affect a specific procurement:
- (1) Intelligent Transportation Systems (ITS) – The ITS property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.
  - (2) Metric Measurements – The Common Grant Rules require the ATL to accept property and services with dimensions expressed in metric measurements, to the extent practicable and feasible, in compliance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act [15 U.S.C. Sections 205a *et seq.*]; Executive Order No. 12770, "Metric Usage in Federal Government Programs," July 25, 1991, [15 U.S.C. Section 205a note]; and applicable Federal regulations.
  - (3) Use of \$1 Coins – To comply with Section 104 of the Presidential \$1 Coin Act of 2006, 31 U.S.C. Section 5312(p), FTA assisted property that requires the use of coins or



currency in public transportation service or supporting service must be fully capable of accepting and dispensing \$1 coins.

- e. Rolling Stock--Special Requirements – The following Federal laws and regulations impose requirements that may affect rolling stock procurements.
- (1) Accessibility – Rolling stock must comply with the accessibility requirements of DOT regulations, “Transportation Services for Individuals with Disabilities (ADA)” [49 CFR Part 37], and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles” [36 CFR Part 1192 and 49 CFR Part 38].
  - (2) Transit Vehicle Manufacturer Compliance with DBE Requirements – Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR Section 26.49 requires the TVM to submit a certification that it has complied with FTA’s DBE requirements.
  - (3) Minimum Service Life – The ATL shall maintain satisfactory continuing control of FTA assisted property. For buses and certain other vehicles, FTA has established minimum service life policies that may affect the quantity of vehicles that the ATL may acquire.
  - (4) Spare Ratios – The ATL shall not acquire an excessive number of spare vehicles not regularly used in public transportation service.
  - (5) Air Pollution and Fuel Economy – Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, “Control of Air Pollution from Mobile Sources” [40 CFR Part 85]; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines” [40 CFR Part 86]; and EPA regulations, “Fuel Economy of Motor Vehicles” [40 CFR Part 600].
  - (6) Pre-award and Post Delivery Review – Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable requirements of 49 U.S.C. Section 5323(m) and FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases” [49 CFR Part 663], that do not conflict with 49 U.S.C. Section 5323(m).
  - (7) Bus Testing – Each third party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of FTA regulations, “Bus Testing” [49 CFR Part 665].
  - (8) In-State Dealers – The ATL may not limit third party bus procurements to in-State dealers [49 U.S.C. Section 5325(i)].
  - (9) Basis for Contract Award – As permitted by 49 U.S.C. Section 5325(f), the ATL may award a third party contract for rolling stock based on initial capital costs, or based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.
  - (10) Five-Year Limitation – The ATL may enter into a multi-year contract to buy rolling stock with an option not exceeding five (5) years to buy additional rolling stock or replacement parts [49 U.S.C. Section 5325(e)(1)]. The ATL may not exercise that option later than five (5) years after the date of its original contract.
- f. Public Transportation Services—Special Requirements – Although the Common Grant Rules refer to the following Federal requirements in the context of federally assisted procurements, these requirements will affect how a third party contractor implements its



contract to provide public transportation services financed with Federal assistance. Consequently, the ATL must include provisions in its third party contract ensuring compliance with the following requirements, or the ATL must obtain the third party contractor's agreement in another form, as a matter of contractor responsibility, to ensure compliance with the following:

- (1) Protections for Public Transportation Employees – When the ATL acquires public transportation services from a third party contractor, the terms of The ATL's DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification, which is required by 49 U.S.C. Section 5333(b) and implementing DOL guidelines, "Section 5333(b), Federal Transit Law" [29 CFR Part 215]. Consequently, the third party contractor must comply with the terms of that DOL certification. The Fair Labor Standards Act [29 U.S.C. Sections 201 et seq.] also applies to public transportation employees performing work involving commerce.
  - (2) Drug and Alcohol Testing – A third party contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" [49 CFR Part 655].
  - (3) Accessibility – A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles" [36 CFR Part 1192 and 49 CFR Part 38]. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services.
  - (4) Protection of Animals – A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act [7 U.S.C. Sections 2131 *et seq.*] and Department of Agriculture regulations, "Animal Welfare" [9 CFR Subchapter A, Parts 1, 2, 3, and 4].
  - (5) Charter Service Restrictions – A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. Section 5323(d) and FTA regulations, "Charter Service" [49 CFR Part 604].
  - (6) School Bus Restrictions – A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. Sections 5323(f) or (g) and FTA regulations, "School Bus Operations" [49 CFR Part 605], to the extent consistent with 49 U.S.C. Sections 5323(f) or (g).
- g. Architectural Engineering (A&E) and Related Services—Special Requirements – Federal laws and regulations impose the following requirements on A&E and related procurements:
- (1) Qualifications-Based Requirements – For projects related to or leading to construction, the ATL must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (Brooks Act procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management,

- construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.
- (2) Relation to Construction – The nature of the services to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures may be used.
- (a) Purpose of Services – The FTA interprets 49 U.S.C. Section 5325(b) to authorize the use of qualifications-based procurement procedures only for those services that directly support or are directly connected or related to construction, alteration, or repair of real property.
- (b) Requirements in the Context of a Construction Project – A project involving construction (including an ITS project) does not always require the use of qualifications-based procurement procedures. Whether qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project.
- (c) Type of Contractor Not Determinative – The nature of the firm performing the services does not determine whether it will be selected through the use of qualifications-based procurement procedures.
- (3) Equivalent State Law – As amended by the SAFETEA-LU Technical Corrections Act, 49 U.S.C. Section 5325(b) (1) requires A&E services to be procured using either Brooks Act procedures or an equivalent qualifications-based requirement adopted by a State before August 10, 2005; therefore, the ATL shall comply with the requirements of O.C.G.A. § 50-22-1 through 50-22-9 when selecting contractors using qualifications-based procurement procedures.
- (4) Special Requirements for Indirect Cost Rates – SAFETEA-LU amended 49 U.S.C. Section 5325 to require the acceptance of FAR indirect cost rates for applicable one-year accounting periods if those rates are not currently in dispute. After the indirect cost rates are accepted as required, the ATL must use those indirect cost rates for contract estimates, negotiation, administration, reporting, and payments, with administrative or de facto ceiling limitations.
- h. Construction--Special Requirements – The following Federal laws and regulations impose requirements that may affect FTA assisted construction projects:
- (1) Bonding – The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold unless FTA determines that other arrangements adequately protect the Federal interest. FTA’s bonding policies are as follows:
- (a) Bid Guarantee – Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to five percent (5%) of its bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
- (b) Performance Bond – Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for one hundred percent (100%) of the contract price. A “performance bond” is obtained to ensure completion of the obligations under the third party contract.

- (c) Payment Bond – The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for one hundred percent (100%) of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
- i. Less Than \$1 Million – Fifty percent (50%) of the contract price if the contract price is not more than \$1 million;
  - ii. More Than \$1 Million but Less Than \$5 Million – Forty percent (40%) of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - iii. More Than \$5 Million – Two and one half million dollars (\$2,500,000) if the contract price is more than \$5 million (\$5,000,000).
- (d) Reduced Bonding – The FTA will accept a local bonding policy that conforms to the minimums described Section 1.4.5.h (1) above. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. If the ATL wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project, it should submit its policy and rationale to the FTA Regional Administrator.
- (e) Excessive Bonding – Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval; however, if “excessive bonding” requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements.
- (2) Seismic Safety – The ATL must include seismic safety provisions in its third party contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. Sections 7701 *et seq.*, and DOT regulations, “Seismic Safety” [49 CFR Part 41 at Sections 41.117 and 41.120].
- (3) Value Engineering – The Common Grant Rule for governmental recipients encourages them to use value engineering provisions in contracts for construction projects, and cautions that value engineering can be a pre-requisite for some Federal assistance awards.
- (4) Equal Employment Opportunity – The Common Grant Rules require that third party construction contracts include provisions ensuring compliance with DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor” [41 CFR Parts 60 *et seq.*], which implement Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” October 13, 1967.
- (5) Prevailing Wages – Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction projects. Third party contracts at any tier exceeding \$2,000 must include provisions requiring compliance with the Davis-Bacon Act [40 U.S.C. Sections 3141 *et seq.*], and implementing DOL regulations, “Labor Standards Provisions Applicable to

Contracts Governing Federally Financed and Assisted Construction” [29 CFR Part 5]. The Davis-Bacon Act requires contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. The ATL must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed Section 1.4.5.c (1) (a) above.

- (6) Anti-Kickback – All third party construction and repair contracts exceeding \$100,000 require provisions for compliance with the Copeland “Anti-Kickback” Act, as amended [18 U.S.C. Section 874], and implementing DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States” [29 CFR Part 3]. The Copeland Anti-Kickback Act prohibits a contractor from inducing, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled.
- (7) Construction Safety – All third party construction and repair contracts exceeding \$100,000 require provisions to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act [40 U.S.C. Section 3704], and its implementing DOL regulations, “Safety and Health Regulations for Construction” [29 CFR Part 1926].
- (8) Labor Neutrality – The ATL’s third party contracts may not require or prohibit the use of a project labor agreement (PLA), except if special circumstances require a PLA to be used to avert an imminent threat to public health or safety; however, a third party contractor or subcontractor may voluntarily enter into a PLA. These provisions are needed to ensure compliance with Executive Order No. 13202, “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects,” February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001 [41 U.S.C. Section 251 note].
- (9) Preference for U.S. Property—Buy America – For any FTA assisted third party construction contract exceeding \$150,000, FTA’s Buy America requirements require the third party contractor to provide property produced or manufactured in the United States for use in the construction project that the ATL acquires, unless FTA has granted a waiver authorized by those regulations.
- (10) Accessibility – Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.*, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA)” [49 CFR Part 37], and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles” [36 CFR Part 1192 and 49 CFR Part 38].
- (11) Veterans Preference—For any FTA assisted third party construction contracts in connection with a capital project supported with FTA funds, the ATL shall include a provision in its contracts which requires contractors to give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform work required. However, such provision shall not require the contractor 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.



- i. Research, Development, Demonstration, Deployment and Special Studies--Special Requirements – Procurements of research-type services can involve circumstances that bring special Federal requirements into effect, including:
- (1) Patent Rights – The ATL’s third party contracts require provisions consistent with Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms” [37 CFR Part 401 (implementing 35 U.S.C. Sections 200 *et seq.*)], unless the Federal Government requires otherwise. Except in the case of an “other agreement” in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive royalty free license to use the resulting invention or patent to the invention for Federal Government purposes.
  - (2) Rights in Data – The following conditions shall apply to rights in data requirements for FTA assisted research, development, demonstration, or special studies projects:
    - (a) Publication Restrictions – Except for its own internal use, neither the ATL nor the third party contractor may publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the Federal Government, unless the Federal Government has released or approved the release of that data to the public.
    - (b) Distribution of Data – Except for contracts for adaptation of automatic data processing equipment or data provided in support of an FTA capital project, the ATL and third party contractors must agree that, in addition to the rights in data and copyrights that they must provide to FTA, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA’s license in the copyright to the subject data or a copy of the subject data. If, for any reason, the project is not completed, all data developed under the project is expected to be delivered as FTA may direct. In certain circumstances, however, FTA may determine that it is in the public interest to take only those rights in data identified in the Common Grant Rules.
  - (3) Export Control – If data developed in the course of a third party contract is subject directly or indirectly to U.S. Export Control regulations, that data may not be exported to any countries or any foreign persons, without first obtaining the necessary Federal license or licenses and complying with any applicable Department of Commerce, Export Administration Regulations [15 CFR Part 730].
  - (4) Protection of Human Subjects – A third party contractor providing services involving the use of human subjects must comply with 42 U.S.C. Sections 289 *et seq.*, and DOT regulations, “Protection of Human Subjects” [49 CFR Part 11].
  - (5) Protection of Animals – A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 *et seq.*, and Department of Agriculture regulations, “Animal Welfare” [9 CFR Subchapter A, Parts 1, 2, 3, and 4].
- j. Audit Services – In general, the procurement procedures in ATL Procurement and Contracting Policy apply to the acquisition of audit services financed with FTA assistance; however, the following considerations are especially important in procurements of audit services:



- (1) Single Audit Act – Each recipient that spends \$500,000 or more in Federal awards in a single year must obtain an audit as required by the Single Audit Act of 1984, as amended [31 U.S.C. Sections 7501 *et seq.*], and must ensure compliance with OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” as revised.
  - (a) Organizational Conflicts of Interest – The auditor selected must be independent of the recipient.
  - (b) Eligibility of Costs – If the ATL spends \$500,000 or more in Federal awards in a single year it may charge the costs for audits required by the Single Audit Act to its project as direct or indirect costs as permitted by applicable Federal Cost Principles.
  
- (2) Other Project Audits – Before procuring audit services for a specific contract or project, the ATL should be aware of the following:
  - (a) Organizational Conflicts of Interest – In general, the ATL must select an auditor that is independent of the third party contractor to be audited.
  - (b) Verification of Indirect Costs – Federal verification of a contractor’s indirect cost rates, such as provisional overhead (burden) and General & Administrative (G&A) rates, may be required. To the extent possible, relevant information available through undisputed audits of the contractor by other recipients should be used.
  - (c) Duplication of Services – To prevent duplication and ensure the eligibility of particular audit services for Federal participation, the ATL should contact FTA before undertaking an audit. 49 U.S.C. Section 5325(b) (3) requires that FAR Part 31 cost principles be used to audit A&E contracts. In addition, 49 U.S.C. Section 5325(b)(3) requires the ATL and its A&E contractors and subcontractors to accept indirect cost rates established under FAR cost principles if those rates are not under dispute. The ATL should not obtain duplicative audits because they are likely to produce disparate indirect cost rates and may be ineligible for Federal assistance. The ATL should seek guidance from the Federal auditor or agency that approved the third party contractor’s indirect cost rates before entering into audit contracts.
  - (d) Eligibility of Costs – Costs of third party contract audits and proposal evaluations are eligible for reimbursement by FTA as a direct or indirect charge as permitted by applicable Federal cost principles. The FTA reserves the right to disallow payments for duplicative audit charges.
  
- k. Buy America Pre-Award Review (Steel or Manufactured Products) – The ATL shall require its contractors or vendors providing steel or manufactured products for a contract with a value of \$150,000 or more to execute a certificate of compliance or non-compliance, as applicable, with Buy America requirements as outlined in 49 CFR 661.6. Such certificate shall be reviewed by the ATL Compliance Manager prior to contract award. Should the contractor or vendor indicate that it is not in compliance with 49 CFR 661.6, the contractor or vendor will be provided with an opportunity to provide proof that it qualifies for an exception to the requirement pursuant to 49 U.S.C. 5232(j)(2).



- I. Revenue Contracts-The ATL shall competitively award revenue contracts in order to give all businesses an opportunity to participate when a FTA funded asset is being utilized as a revenue generating source. The ATL may, but is not required to, utilize the competitive procurement methods outlined in Section 1.5.1 below. In the event that the ATL elects not to use one of the competitive procurement methods outlined in Section 1.5.1, the ATL shall document the record to demonstrate how competition requirements were met using an alternative procurement method.

## 1.5 Solicitation, Evaluation, Award and Contract Administration

### 1.5.1 Competition Required

As a recipient of Federal assistance, the ATL must use third party procurement procedures that provide full and open competition. The ATL may make third party contract awards on the basis of:

- a. Solicitation of Competitive Price Quotes, Bids or Proposals – Compliance with the solicitation procedures described in Section 1.6 below will fulfill FTA requirements for “full and open competition”.
- b. Receipt and Evaluation of Unsolicited Proposals – The ATL may enter into contracts based on an unsolicited proposal when authorized by applicable State law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, the ATL must seek competition. To satisfy the requirement for full and open competition, the ATL must take the following actions before entering into a contract resulting from an unsolicited proposal:
  - (1) Publicize its receipt of the unsolicited proposal
  - (2) Publicize an adequate description of the products or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought
  - (3) Publicize its interest in acquiring the products or services described in the proposal
  - (4) Provide an adequate opportunity for interested parties to comment or submit competing proposals, and
  - (5) Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the products or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought, the ATL may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific products or services proposed.

- c. Prequalification – The ATL may prequalify bidders, offerors and products for procurement purposes; however, the ATL is not required to do so. The decision of whether to require prequalification for eligibility to participate in a procurement shall be made separately for every procurement and shall be approved by the ATL Procurement Officer.





The ATL may prequalify bidders, offerors and products for procurement purposes if:

- (1) The ATL ensures that all prequalification lists it uses are current
- (2) The ATL ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and
- (3) The ATL permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). The ATL is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must the ATL expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

### **1.5.2 Sources of Acquisition**

The ATL may acquire products and services from the following sources.

- a. Open Market – The open market shall be the ATL’s primary source of acquisition. Methods of procurement for acquisition of products and services from the open market are specified in Section 1.6 below.
- b. State Government Purchasing Contracts – The ATL may acquire products and services from State contracts that have been established by the State of Georgia for the purpose of consolidating volume purchases for products and services. The ATL may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the methods of procurement for small purchases and large purchases described in Section 1.6 below. The ATL is not required to purchase from State contracts. When obtaining products and services from State contracts, the ATL is responsible for ensuring compliance with all Federal requirements and inclusion of all required clauses and certifications, whether in the master State contract or in the ATL’s purchase document.
- c. Federal Supply Schedules – Purchases by the ATL from Federal Supply Schedules established by the U.S. General Services Administration (GSA) are limited to the purchase of information technology (IT) products and to products and services to facilitate recovery from a major disaster. The following requirements apply to the ATL purchases from GSA schedules:
  - (1) The ATL is authorized to use GSA schedules for purchases of products and services to facilitate recovery from a major disaster that is declared by the President of the United States. Upon declaration of a major disaster by the President, the ATL may purchase products and services from GSA schedules both in advance and in the aftermath of the emergency event. The ATL shall be responsible for ensuring that the products and services acquired will only be used for recovery.
  - (2) The ATL must ensure that all Federal requirements, required clauses and certifications are properly followed and included, whether in the master intergovernmental contract or the ATL’s purchase document.
  - (3) The ATL is required to evaluate the reasonableness of prices obtained from GSA schedules. The GSA schedule pricing may not be used as a sole or single source for procurement. The ATL may only use GSA schedule pricing as one of multiple pricing



sources solicited in accordance with its requirements for small purchases described in Section 1.6.2 below.

- d. Shared Use – The ATL may enter into agreements for shared use of products and services with other entities. If the ATL shares the use of products and services acquired with Federal assistance then the ATL shall be responsible for ensuring that the agreement complies with all Federal requirements and that the solicitation document and contract for the products and services includes all required clauses and certifications.
- e. Joint Procurements – The ATL may participate in joint procurements whereby the ATL and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract or separate contracts with a vendor for delivery of products or services. The following requirements apply to the ATL’s participation in joint procurements:
  - (1) Solicitation documents must be tailored to the specific quantities that the participants of the joint procurement anticipate they will need.
  - (2) The ATL is responsible for ensuring that the joint procurement solicitation and contract(s) complies with all Federal requirements (when FTA financial assistance is contemplated) and that the solicitation document and contract includes all required clauses and certifications.
- f. Existing Contracts – The ATL may use existing contract rights as an acquisition source. An “existing contract” means a contract that, when formed, was intended to be limited to the original parties thereto. The following requirements apply to the ATL’s use of existing contract rights as an acquisition source:
  - (1) Permissible Actions – Within the conditions set forth below, the ATL may use existing contract rights held by another recipient of FTA assistance:
    - (a) Exercise of Options – The ATL may use contract options held by another recipient of FTA assistance with the following limitations:
      - i. Consistency with the Underlying Contract – The ATL must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
      - ii. Price – The ATL may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
      - iii. Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
        - Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
        - Negotiating a Lower Option Price – Exercising an option after the ATL has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms



of the original contract, or that price results from Federal actions that can be reliably measured.

- (b) Assignment of Contract Rights (“Piggybacking”) – If a recipient of FTA assistance finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to the ATL if the original contract contains an assign ability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. The ATL may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The ATL need not perform a second price analysis if a price analysis was performed for the original contract; however, the ATL must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. The ATL shall be responsible for ensuring the contractor’s compliance with FTA’s Buy America requirements and execution of all the required pre-award and post delivery Buy America review certifications. Before proceeding with the assignment, however, the ATL shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that the ATL seeks, do not exceed the amounts available under the assigning recipient’s contract.

(2) Impermissible Actions – The ATL may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.
- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on”.

### 1.5.3 Solicitation Requirements and Restrictions

Every procurement solicitation that the ATL issues above the micro-purchase level, as defined in Section 1.6 below, must include the following information:

- a. Description of the Property or Services. The solicitation and the contract awarded there under must include a clear and accurate description of the ATL’s technical requirements for the products or services to be acquired in a manner that provides for full and open competition.
- (1) Requirements should be described in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum

- acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.
- (2) Additional quantities or options above the ATL's needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date.
- (3) When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.
- (4) Solicitations with requirements that contain features that unduly restrict competition may not be used. Such features include:
- (a) Excessive Qualifications – Imposing unreasonable business requirements for bidders or offerors.
  - (b) Unnecessary Experience – Imposing unnecessary experience requirements for bidders and offerors.
  - (c) Improper Prequalification – Using prequalification procedures that conflict with the prequalification standards described in Section 1.5.1(c) above.
  - (d) Retainer Contracts – Making a noncompetitive award to any person or firm on a retainer contract with the ATL if that award is not for the property or services specified for delivery under the retainer contract.
  - (e) Excessive Bonding – Imposing unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
  - (f) Brand Name Only – Specifying only a "brand name" product without allowing offers of an "equal" product, or allowing an "equal" product without listing the salient characteristics that the "equal" product must meet to be acceptable for award.
  - (g) In-State or Local Geographic Restrictions – Specifying in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographical preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to the ATL is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
  - (h) Organizational Conflicts of Interest – Engaging in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
    - i. Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to the ATL due to other activities, relationships, contracts, or circumstances.
    - ii. Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
    - iii. Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.



- (i) Restraint of Trade – Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies.
  - (j) Arbitrary Action – Taking any arbitrary action in the procurement process.
- b. Evaluation Factors – The solicitation must identify all factors to be used in evaluating bids or proposals and their relative order of importance.
- c. Contract Type Specified – The solicitation must state the type of contract that will be awarded. The following contract types are prohibited or restricted:
  - (1) Cost plus Percentage of Cost type contracts are prohibited.
  - (2) Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between the ATL and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.
- d. Other Federal Requirements Affecting the Property or Services to be Acquired – The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.
- e. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor – The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.
- f. Reservation of Right to Award to Other Than the Low Bidder or Offeror – The solicitation must specifically reserve the ATL's right to award a contract to other than the low bidder or offeror.
- g. Reservation of Right to Reject All Bids or Offers – The solicitation must specifically reserve the ATL's right to reject all bids or offers.

#### **1.5.4 Evaluation Requirements**

The following standards shall apply to all evaluations of bids or proposals conducted by the ATL:

- a. General - When evaluating bids or proposals received in response to a solicitation, the ATL shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents. The ATL may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.
- b. Sealed Bid Evaluation and Award
  - (1) Evaluation of Bids – The contract shall be awarded to the lowest, responsive
- c. Options – The following standards shall apply when awarding contracts that include options:



- (1) Evaluation Required - In general, the ATL must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.
- (2) Evaluation Not Required – The ATL need not evaluate bids or offers for any option quantities when the ATL does not intend to exercise those options after the contract is awarded or if it determines that evaluation would not otherwise be in its best interests.

### **1.5.5 Contract Award Requirements**

The following standards shall apply to all contract award decisions made by the ATL:

- a. Award to Other Than the Lowest Bidder or Offeror – The ATL may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. The ATL may also award a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, the ATL must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.
- b. Award Only to a Responsible Bidder or Offeror – The ATL may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. The ATL must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. The ATL must also ensure that the contractor is not listed as a debarred or suspended contractor on the Federal System Awards Management System (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on the SAM may not be determined to be responsible contractors by the ATL. The ATL may also treat any prospective contractor or subcontractor listed on a State of Georgia government debarment and suspension list as non-responsible and ineligible for contract award. For every procurement action above the micro-purchase level, the ATL must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file.
- c. Rejection of Bids and Proposals – The ATL may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. The ATL must include a statement in its solicitation document reserving the right to reject all bids or proposals.
- d. Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor's wholly owned affiliates to perform other work in connection with the project.
- e. Approval of Contracts – All contracts must be signed by the Executive Director.

### **1.5.6 Independent Cost Estimate and Cost and Price Analysis**



- a. Independent Cost Estimate – For each procurement the ATL shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.
- b. Cost or Price Analysis – The ATL shall perform a cost or price analysis in connection with every procurement action above the micro-purchase level, including contract modifications.
  - (1) Price Analysis – If the ATL determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.
  - (2) Cost Analysis – the ATL must perform or obtain a cost analysis when:
    - (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost
    - (b) When the offeror submits elements of the estimated cost
    - (c) When utilizing FTA funds and only a sole source is available, even if the procurement is a contract modification, or
    - (d) In the event of a change order for a project involving the use of FTA funds. A cost analysis shall not be required for change orders on those projects that do not involve the use of FTA funds.

### **1.5.7 Contract Administration Requirements and Considerations**

- a. ATL Staff Responsibilities – ATL staff responsibilities for the administration of third party contracts shall include:
  - (1) ATL Project Manager or Technical Lead– Prior to execution of third party contracts, the ATL shall designate a Project Manager or Technical Lead to serve as the ATL's principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; reporting on contract status to the Procurement and Contracts Manager, DBE Compliance Officer and appropriate ATL Department Directors; maintaining complete contract files in conjunction with the Procurement and Contracts Manager; and other contract administration duties that may be necessary.
  - (2) Procurement and Contracts Manager – The Procurement and Contracts Manager shall have responsibility for assisting the ATL Project Manager with contract administration duties as needed; ensuring contractor compliance with insurance requirements; preparing contract modification documents upon recommendation by the ATL Project Manager or Technical Lead; negotiating contract modifications with contractors; securing review and approval of contract modifications by legal and finance staff and the Executive Director; representing the ATL in contract disputes; terminating contracts; enforcing contractor disciplinary actions; securing title to partially completed



- work products before partial payment (if applicable); maintaining complete contract files in conjunction with the ATL Project Manager or Technical Lead; performing contract close-out; and other contract administration duties that may be necessary.
- (3) DBE Compliance Officer – The DBE Compliance Officer shall have responsibility for monitoring and reporting participation in the contract by certified DBE firms; assisting contractor with identifying certified DBE firms to serve as subcontractors; approving replacement DBE subcontractors; maintaining records related to DBE participation in the contract; and other contract administration duties related to DBE compliance that may be necessary.
  - (4) ATL Department or Division Director – The ATL Department or Division Director who supervises Project Manager or Technical Lead shall have responsibility for directing and overseeing the work performed by the contractor through the ATL Project Manager or Technical Lead; final approval of deliverables and approval to pay invoices from the contractor; approving contract changes recommended by the ATL Project Manager; approving contract termination or other contractor disciplinary actions recommended by the ATL Project Manager; and other contract administration duties that may be necessary.
  - (5) ATL Executive Director: The ATL Executive Director shall have signature authority for all ATL contracts. The ATL Executive Director may delegate his signature authority to the ATL Deputy Director by providing a written notice to the General Counsel or Procurement Manager of such delegation.
  - (6) Other ATL Staff – Other ATL staff that may have responsibilities related to contract administration include, but are not limited to: Executive Director, Chief Counsel, CFO and Accounts Payable staff.
- b. Period of Performance – ATL is expected to use sound business judgment and be judicious in establishing and extending the period of performance for contracts. ATL shall specify periods of performance, including start and completion or delivery dates, in every third party contract.
- (1) General Standards – The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. The ATL’s contract files should document its rationale for determining the performance period designated for each contract.
  - (2) Federal Restrictions – Except for procurements of rolling stock and replacement part contracts, which are limited by law to five (5) years, ATL’s other third party contracts are not encumbered by Federal requirements restricting the maximum periods of performance. Nevertheless, the duration of ATL’s other contracts must be reasonable. The ATL shall not generally enter into any third party contracts with a period of performance exceeding five (5) years without sufficient business justification.
  - (3) Time Extensions – Consistent with the requirements of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes as defined in Section 12.5.2.f.2 (b) above. Once the ATL awards a third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.
  - (4) Authority to Extend – The ATL Executive Director has the sole authority to approve and execute contract modifications. The ATL Project Manager or Technical Lead for the contract shall recommend all contract time extensions to the appropriate ATL Department/Division Director. Prior to making a recommendation for a contract time





extension, the ATL Project Manager or Technical Lead shall prepare a written justification and cost analysis (if applicable) for the contract time extension. The ATL Department/Division Director who supervises the ATL Project Manager/Technical Lead shall review and approve all recommendations for contract time extensions and shall forward the recommendation to the Procurement and Contracts Manager. The Procurement and Contracts Manager shall negotiate the appropriate contract modification with the contractor. Upon successful negotiation of the contract time extension, the Procurement and Contracts Manager shall forward the contract modification to appropriate legal and finance staff for review and to the Executive Director for final approval and execution.

- c. Contents of Complete Contract Files – The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:
- (1) Written Record of Procurement History – The ATL shall maintain written records detailing the history of the procurement, including records relating to:
    - (a) Procurement Method – The ATL must 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 and documents related to solicitation.
    - (b) Contract Type – The ATL must state the reasons for selecting the contract type it used.
    - (c) Contractor Selection – The ATL must state its reasons for contractor selection or rejection, including written justification and evaluation documents.
    - (d) Contractor Responsibility – The ATL must provide a written determination of responsibility for the successful contractor.
    - (e) Cost or Price – The ATL must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis.
    - (f) Reasonable Documentation – The ATL must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt and evaluation of offers, and contract award, negotiation and execution.
  - (2) Contract Administration and Close-Out Documents – The ATL shall maintain written records detailing the performance and close-out of the contract, including records relating to:
    - (a) Contractor Performance – The ATL must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions.
    - (b) Contract Deliverables – The ATL must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.
    - (c) Contract Changes – The ATL must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution.
    - (d) Contract Payments – The ATL must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of



contract completion for partial payments (if applicable), and ownership of title to partial work products.

- (e) Contract Close-Out – The ATL must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to the ATL, and contract audit and final reconciliation.

### **1.5.8 Exercise and Evaluation of Options**

Option quantities or periods contained in the offeror's bid or proposal must be evaluated at the time of contract award. Options that exercised and were not evaluated at the time of contract award are considered sole-source procurements. The exercise of an option must be consistent with the terms and conditions of the underlying agreement. In addition, an option may not be exercised unless it has been determined that the option price is consistent with or better than the current market rates or that the option is the more advantageous offer at the time that the option is exercised.

## **1.6 Methods of Procurement**

### **1.6.1 Micro-Purchases**

- a. Definition – Micro-purchases are those purchases of products and services that cost \$10,000 or less.
- b. Approval Authority – Micro-purchases must be approved in writing by one of the following ATL employees:
  - (1) Executive Director
  - (2) Director of the ATL Department that will fund the products or services being acquired
  - (3) Division Director from the ATL Department and Division that will fund the products or services being acquired.

Further delegation of approval authority for micro-purchases may be made in writing by any of the parties listed above to their subordinates.

- c. Required Competition – None. The ATL may acquire products and services valued at \$10,000 or less without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers.
- d. Prohibited Divisions – The size or dollar value of procurements may not be divided or reduced merely to come within the micro-purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBE, small and minority firms and women's business enterprises in the ATL's federally assisted procurements in accordance with subsection 1.8.3b below.
- e. Documentation – Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made.



f. Special Considerations

- (1) Micro-purchases are exempt from FTA's Buy America requirements.
- (2) Davis-Bacon prevailing wage requirements shall apply to FTA-assisted construction contracts exceeding \$2,000, even when micro-purchase procurement procedures are used to acquire construction services.

**1.6.2 Small Purchases**

- a. Definition – Small purchases are those purchases of products and services, including construction services that cost greater than \$10,000, but not more than \$250,000.
- b. Approval Authority – Small purchases must be approved in writing by one of the following ATL employees:
  - (1) Executive Director
  - (2) Director of the ATL Department that will fund the products or services being acquired.

Further delegation of approval authority for small purchases may be made in writing by any of the parties listed above to their subordinates.

- c. Required Competition – Price or rate quotations must be obtained from an adequate number of qualified sources. For small purchases two (2) price quotes shall be an adequate number of qualified sources.
- d. Prohibited Divisions – The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBE, small and minority firms and women's business enterprises in the ATL's federally assisted procurements in accordance with the ATL's DBE Program Policy.
- e. Documentation – Every small purchase must be accompanied by a written independent cost estimate, at least two (2) price quotes (subject to the requirements stated below), a written price analysis, a written determination that the price is fair and reasonable along with a description of how that determination was made and a written determination of the responsibility of the contractor.
  - (1) For purchases of products and services that cost greater than \$10,000 but not more than \$250,000.00, two (2) price quotes (written or summarized verbal quotes) shall be adequate documentation.

f. Special Considerations

- (1) The ATL may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement. If the ATL is using FTA funds to compensate a State contract vendor, the ATL shall be required to have the State contract vendor sign the applicable FTA Clauses and certifications.

- (2) Small purchases are exempt from the FTA's Buy America requirements.
- (3) When not using FTA funds to compensate a vendor or contractor, the ATL may procure goods or services with a total value of or below \$24,999.99 without two or more price quotes. Procurements authorized under this subsection shall not be considered sole-source awards.

### 1.6.3 Large Purchases

- a. Definition – Large purchases are those purchases of products and services that cost greater than \$250,000.
- b. Approval Authority – Large purchases must be approved in writing by the ATL Executive Director.

No further delegation of approval authority for large purchases may be made.

- c. Procurement Methods – There are two primary methods of procurement for large purchases of products and services:
  - (1) Sealed Bid method (described in Section 1.6.4 below), and
  - (2) Competitive Proposal method (described in Section 1.6.5 below).
- d. Required Competition – Formal bids and competitive proposals must be publicly advertised.
  - (1) For large purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.
  - (2) For large purchases by the competitive proposal method of procurement, more than one source should be willing and able to submit an offer or proposal.
- e. Documentation – Every large purchase must, at a minimum, be accompanied by a written independent cost estimate, formal bids or proposals (subject to the requirements stated in Sections 1.6.4 and 1.6.5 below), a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.
- f. Special Considerations
  - (1) The ATL may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement.



#### 1.6.4 Sealed Bids

- a. Definition – The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids, is lowest in price; provided, however, that no contract award shall be made to a bidder with the lowest bidder if the ATL determines that the lowest bidder cannot perform the contract requirements. The vehicle through which bids are solicited is an Invitation for Bids (IFB) also known as an Invitation to Bid. The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid and the forms on which bids must be submitted. Bidder exceptions to any of the IFB may be used as a basis for disqualification.
- b. When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services, including construction services that cost greater than \$250,000. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:
  - (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
  - (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
  - (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
  - (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
  - (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.
- c. Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:
  - (1) Publicity – The Invitation for Bids must be publicly advertised. The following guidelines will generally be followed by the ATL when posting competitive solicitations.

Solicitations valued at \$49,999.99 or less	Minimum of seven (7) calendar days
Solicitations valued from \$50,000.00 to \$99,999.99	Minimum of eight (8) calendar days
Solicitations valued from \$100,000.00 to \$249,999.99	Minimum of ten (10) calendar days
Solicitation valued at \$250,000.00 or more	Minimum of fifteen (15) calendar days



Any solicitation for construction bids	Minimum of thirty (30) calendar days
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The ATL Executive Director may approved the posting of a competitive solicitation for a period less than the guidelines stated above (provided that a solicitation for construction bids must be posted for at least two weeks) when sufficient evidence justifying the reduced posting time period has been established.

- (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
- (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
- (5) Bid Submission- The ATL will either (1) require the vendor to submit its bid in a sealed package or (2) utilize the Georgia Department of Administrative Services’ (DOAS) eQuote, Team Georgia Marketplace, or any other procurement tool available from DOAS which facilitates the receipt of sealed bids. Faxed bids and emailed bids will not be considered sealed bids. Sealed bids shall not be opened until after the closing date and time of the Invitation to Bid.
- (6) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
- (7) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
- (8) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.
- (9) Notice of Award- Within one day of the contract award, the ATL shall post the Contract Award of ATL’s website.

### 1.6.5 Competitive Proposals

- a. Definition – The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to the ATL or that is considered to be the “best value” to the ATL. The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.
- b. When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than \$250,000 when the nature of the procurement does not lend itself to sealed bidding and the ATL expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the



procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:

- (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
- (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
- (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.

c. Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:

- (1) Publicity – The Request for Proposals must be publicly advertised. The following guidelines will generally be followed by the ATL when posting competitive solicitations.

Solicitations valued at \$49,999.99 or less	Minimum of seven (7) calendar days
Solicitations valued from \$50,000.00 to \$99,999.99	Minimum of eight (8) calendar days
Solicitations valued from \$100,000.00 to \$249,999.99	Minimum of ten (10) calendar days
Solicitation valued at \$250,000.00 or more	Minimum of fifteen (15) calendar days
Any solicitation for construction bids	Minimum of thirty (30) calendar days

The ATL Executive Director may approve the posting of a competitive solicitation for a period less than the guidelines stated above (provided that a solicitation for construction bids must be posted for at least two weeks) when sufficient evidence justifying the reduced posting time period has been established.

- (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
- (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
- (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to the ATL or that represents the “best value” to the ATL with price and other factors considered.
- (6) Best Value – The ATL may award a contract to the offeror whose proposal provides the greatest value to the ATL. To do so, the solicitation must inform potential offerors



that the award will be made on a “best value” basis and identify what factors will form the basis for award. The ATL must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

### **1.6.6 Two-Step Procurements**

The ATL may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- a. Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to the ATL’s request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- b. Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors. Bids and proposals shall be evaluated in accordance with the requirements of Sections 1.6.4 or 1.6.5 above respectively.

### **1.6.7 Architectural & Engineering (A&E) Services & Other Services**

- a. Qualifications-Based Procurement Procedures Required – The ATL must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include: program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.
- b. Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property.
- c. Qualifications-Based Procurement Procedures – The ATL shall comply with the requirements of O.C.G.A. § 50-22-1 through 50-22-9 when selecting contractors using qualifications-based procurement procedures.



- d. Audits – Third party contracts and subcontracts for services procured using qualifications-based procurement procedures must be performed and audited in compliance with FAR Part 31 cost principles.

### **1.6.8 Construction Projects – Design-Bid-Build Method**

- a. Definition – Procurement method for construction projects requiring separate contracts for design services and for construction services.
- b. Design Services – For design services, the ATL must use qualifications-based procurement procedures described in Section 1.6.7 above in compliance with applicable Federal and State law and regulation.
- c. Construction – Depending on the estimated dollar value of the construction contract, the ATL must use either the sealed bid method of procurement (described in Section 1.6.4 above) or small purchase procedures (described in Section 1.6.2 above) to procure construction services. All ATL contracts for the construction of any roads or bridges or a system of roads, bridges, and tunnels, or construction of buildings, structures, parking areas on such roads, bridges or tunnels shall be let to the reliable bidder submitting the lowest sealed bid upon plans and specifications approved by the Georgia Department of Transportation (GDOT). The procedures for letting such bids shall conform to those prescribed for GDOT in Georgia Code Sections 32-2-64 through 32-2-72.

### **1.6.9 Construction Projects – Design-Build Method**

- a. Definition – Procurement method consisting of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.
- b. Procurement Method Determined by Value – Because both design and construction are included in a single procurement, the ATL must use the procurement method appropriate for the services having the greatest cost for the entire procurement, even though other necessary services would not typically be procured by that method. If construction costs are predominant then the ATL must use the sealed bid method of procurement to select the contractor. If design costs are predominant then the ATL must use qualifications-based procurement procedures to select the contractor.
- c. Selection Processes – The ATL may structure the design-build procurement using a single step or the two-step procurement method described in Section 1.6.6 above.

### **1.6.11 Construction Projects-Other Methods**

- a. The following procurement methods may also be utilized for the procurement of design and construction services:
  - i. Private-Public Partnerships, including, but not limited to:
    - i. Design Bid Finance
    - ii. Design Bid Finance Operate and Maintain



- ii. Construction Manager/General Contractor
- iii. Construction Management at Risk

b. Irrespective of the procurement method chosen for a construction project, the ATL shall document its rationale for the selected procurement method.

### **1.6.10 Procurement by Other than Full and Open Competition**

a. When Appropriate – Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances is present:

(1) Competition Adequacy – After soliciting several sources and receiving an inadequate response, the ATL shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If the ATL determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the ATL may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

(2) Sole Source – When the ATL requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, the ATL may make a sole source award. In addition, when the ATL requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the ATL has made a sole source award that must be justified.

a. Sole source awards involving the use of Federal Transit Administration funds are only appropriate when one of the following conditions apply:

i. Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:

ii. Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the ATL only from one source and has not in the past been available to the ATL from another source.

iii. Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.

iv. Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

- v. Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the ATL’s needs.
- b. For sole source procurements that do not involve the use of Federal Transit Administration funds, sole source awards are appropriate when one of the following conditions apply:
  - i. When only the proposed source can furnish the services because of its previous State government or the ATL experience and having an alternative source duplicating these capabilities would result in excessive cost to the ATL. (Excessive cost should be quantified.)
  - ii. When only one (1) supplies can satisfy the technical requirements because of unique technical competence or expertise. (Technical requirements must be valid and verifiable.)
  - iii. The item does not satisfy the requirements for Sole Source, but the use of any other manufacturer’s product would result in excessive cost to the ATL. (Excessive cost should be quantified.)
  - iv. When only one (1) source possess patents or exclusive rights to manufacture or to furnish the item of service.
  - v. Other extenuating circumstances or consideration include, as applicable, adverse impacts on the ATL of not using the proposed source, and other considerations not previously stated.
- b. Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, the ATL should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
  - i. Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond the ATL’s control. Under such circumstances, award of the contract shall not be considered a sole source award shall be deemed to have satisfied the adequate competition requirements.
  - ii. Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within the ATL’s control.
- c. Unusual and Compelling Urgency – The ATL may limit the number of sources from which it solicits bids or proposals when the ATL has such an unusual and urgent need for the products or services that the ATL would be seriously injured unless it were permitted to limit the solicitation. The ATL may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.
  - (4) Authorized by FTA – The ATL may request permission from the FTA to allow it to use noncompetitive proposals for a particular procurement.



- b. When Prohibited – Less than full and open competition is not justified based on:
  - (1) Failure to Plan – ATL’s lack of advance planning, or
  - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement.
  
- c. Procurement Procedures – The following requirements apply when the ATL completes a procurement utilizing less than full and open competition:
  - (1) Potential Sources – The ATL must solicit offers from as many potential sources as is practicable under the circumstances.
  
  - (2) Sole Source Justification – The ATL must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why sole source procurement is appropriate, state which of the authorized justifications listed in Section 1.6.10(a) above is applicable, include a cost analysis and be signed by the ATL Executive Director. If the ATL decides to solicit an offer from only one source, the ATL must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 1.6.10(a)(2) above is applicable to the sole source purchase.
  
  - (3) Cost Analysis – For FTA funded sole-source procurements, where competition has been determined to be inadequate, the ATL must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase for FTA funded procurement. However, performance of a price analysis, in lieu of a cost analysis, shall be sufficient for those procurements that do not involve the use of FTA funds.
  
- d. Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the ATL Executive Director to be in the best interest of the ATL, noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA financial assistance. Any such determination must be made in writing and signed by the ATL Executive Director.

## **1.7 Contractor Responsibility, Suspension, and Debarment**

### **Contractor Responsibility**

The ATL shall make purchases from and award contracts to responsible contractor. The ATL shall have the right to conduct investigations and other forms of due diligence into any contractor’s (or potential contractor’s) responsibility status at any time and for any reason. Such due diligence may include investigation into the following:

- a. Whether the contractor has adequate financial resource to perform the contract, or the ability to obtain them. This includes, but is not limited to, the ability to obtain required bonds (if any) and insurance from sureties and insurance companies authorized to do business in Georgia.



- b. Whether the contract is currently listed or has been recently listed on the System Awards Management list of disbarred vendors or has outstanding federal delinquent debt.
- c. Whether the contractor is able to comply with the contract requirements considering the firm's other business obligations.
- d. Whether the contractor is registered to do business in the State of Georgia and is listed as "ACTIVE/COMPLIANCE" with the Office of the Georgia Secretary of State.
- e. Whether the contractor has within a three year period preceding the applicable solicitation document has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- f. Whether the contractor is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above.
- g. Whether contractor has had a contract terminated for default in the last 3 years.
- h. Whether contractor has a satisfactory record of integrity and business ethics.
- i. Whether the contractor has satisfactory organization, accounting and operations controls, and managerial and technical skills.

### **Causes for Debarment or Suspension**

The ATL may debar a vendor/contractor for any of the causes listed below:

- a. Violation of contract provisions of a character which is regarded to be so serious as to justify debarment action.
- b. In the ATL's opinion, the vendor's/contractor's actions amount to:
  - i. A deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
  - ii. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts.
- c. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state vendor.
- d. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposal.

## **1.8 Protest Procedures**

### **1.8.1 Statement of Policy**

The ATL is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third party procurements using good administrative practices and sound business judgment.



In general, the FTA will not substitute its judgment for that of the ATL unless the matter is primarily a federal concern. Nevertheless, the FTA can become involved in ATL's administrative decisions when an ATL protest decision is appealed to FTA, or when the ATL seeks to use FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims or litigation.

The ATL shall give timely notification to FTA when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. The ATL shall disclose all information about any third party procurement protest to FTA upon request.

The ATL's procedure for addressing third party procurement protests is described in Section 1.8.3 below. The ATL shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$250,000 or greater.

### **1.8.2 ATL Staff Responsibilities**

- a. ATL Procurement Officer – Responsibilities include: ensuring that the ATL Protest Procedure or a link to the ATL Protest Procedure is included in all solicitation documents for products and services having an estimated value of \$250,000.00 or greater; and providing information to and assisting the ATL Executive Director and General Counsel with the resolution of protests.
- b. ATL Executive Director – Responsibilities include: receiving and reviewing all procurement protests; issuing the official the ATL response to all procurement protests and appeals.
- c. General Counsel – Responsibilities include: reviewing all procurement protests; and advising and assisting the ATL Executive Director as needed with the resolution of all procurement protests.

### **1.8.3 Solicitation Provision**

The shall insert the following provision or a link to the following provision in all solicitation documents for products and services having an estimated value of \$250,000 or greater:

#### **1.8.3.1 Filing**

- a. An Interested Party is the only part that may file a Protest under this Procedure. An Interested Party shall be defined as any party with a direct economic interest in providing the goods or services sought in the procurement that is the subject of the protest or only those proposers/bidders who actually filed a timely and responsive proposal/bid that complies with the requirement of the procurement that is the subject of the protest.
- b. All protests, and any subsequent pleadings, correspondence or other communications with respect to such protest must be filed, in writing, with a signed original and three (3) copies delivered to the ATL Procurement and Contracts Manager on a business day, which shall not include observed State holidays, between the hours of 9:00 a.m. and 5:00 p.m. local time, at the same address shown for submitting the proposal/bid that is the subject of the protest. The filing or copying of any pleadings, correspondence



or other communications with respect to a protest with any other ATL official other than the ATL Procurement and Contracts Manager shall subject the protest to summary dismissal in accordance with this section.

- c. All protests must be received by the ATL Procurement and Contracts Manager no later than 5:00 p.m. local time on the last day that such protest may be filed with respect to a particular proposal/bid in accordance with the protest policy as outlined below. Protests may be filed only by hand delivery, U.S. mail or commercial carrier. Protests received by email or fax will not be considered.
- d. Failure to timely file the protest or any supporting documents that are required to be filed as a part of the protest will result in the protest being deemed untimely and subject to summary dismissal. Protests will be date and time stamped by the ATL, and timeliness will be determined solely by the ATL with reference to such date/time stamp.
- e. Upon receipt of a protest, the ATL Procurement and Contracts Manager shall review the protest for compliance with the procedures and requirements as set forth in this section and the applicable proposal/bid documents. Protests that fail to comply with any mandatory item in this section shall be subject to summary dismissal in accordance with Section 1.8.3.5-Summary Dismissal below.
  - i. Upon receipt of any subsequent pleadings, correspondence or other communications with respect to a Protest that are permitted by this Procedure or requested by the Protest Decisionmaker from the Protestor, the ATL Procurement and Contracts Manager will forward such materials as expeditiously as possible to the appropriate Protest Decisionmaker for the Protest.
  - ii. Upon receipt of any subsequent pleadings, correspondence or other communications with respect to a Protest that are not permitted by this Procedure, by any other ATL restrictions on communications, or requested by the Protest Decisionmaker from the Protestor, the ATL Procurement and Contracts Manager will forward such materials as expeditiously as possible to the appropriate Protest Coordinator for disposition under Section 1.8.3.5-Summary Dismissal.

#### **1.8.3.2 Form of the Protest**

- a. All protests must be filed in an envelope labeled "PROTEST," which identifies the protestor's name and address, the name of the ATL Procurement and Contracts Manager, and the ATL solicitation number and title assigned to the solicitation or contract.
- b. Protests must be on the protestor's letterhead and shall not exceed ten (10) pages in length (including all attachments and exhibits thereto that contain any written pleadings or argument, but excluding supporting documentation as outlined in the following paragraph. Each page shall have print on only one side of the page with margins no smaller than one inch (1"). The font size shall be no smaller than Courier 10 characters per inch, 12 point (or equivalent).



- c. Any supporting documentation that is cited or specifically referenced in the protest, whether or not it is already in the possession of the ATL (except for copies of the ATL solicitation documents publicly posted and issued by the ATL) or protestor, must be filed simultaneously with the Protest, if such documentation is publicly available at the time of filing. Only supporting documentation that was not publicly available as of the deadline for filing said protest will be accepted as a subsequent filing or pleading from the protestor and will be handled in accordance with Section 1.8.3.1 (e)(i). All other subsequent pleadings, correspondence or other communications with respect to a protest that are submitted by the protestor, but not first requested by the the ATLProcurement and Contracts Manager pursuant to Section 1.8.3.7 will be handled in accordance with Section 1.8.3.1 (e)(ii).
- d. Each protest shall contain the following mandatory information:
- (i) Protestor's name, address, telephone number, and email address.
  - (ii) A signed and notarized affidavit of the protestor's chief executive officer or the protestor's legal counsel, given under oath and expressly stating that it is given under penalty or perjury, that the contents of the protest are true and correct and that the filing of the protest is authorized by the protestor's chief executive officer.
  - (iii) The signature of the protestor's chief executive officer or the protestor's legal counsel, whichever is signing the Protest for or on behalf of the protestor, notarized separately from, and in addition to, the notarized affidavit under Section 1.8.3.2 (d)(ii).
  - (iv) The specific title assigned by the ATL to the procurement and to the specific solicitation document that is the subject of the Protest, and all associated ATL solicitation or contract numbers, must be clearly shown on each page of the protest.
  - (v) A specific detailed statement of all legal and factual grounds relied upon by the protestor in filing its protest. Any grounds not included in the protest that the protestor could have raised when the protest was filed will be deemed irrevocably waived and may not be part of, or grounds for, that or any subsequent protest or other legal action filed by protestor.
  - (vi) Information in the form of signed affidavits or supporting documentation sufficient to show that the protestor qualifies as an interested party for the procurement with respect to which such protest is filed.
  - (vii) Evidence that the filing of the protest is timely along with all supporting documentation.
  - (viii) A specific statement of the form and nature of the relief requested by protestor.





- e. The ATL Compliance Manager will conduct a procedural compliance review to determine whether the protest fails to comply with the mandatory items in Section 1.8.3 Form of Protest, subsection (d). The protestor's failure to include in its protest all of the mandatory items specified in Section 1.8.3-Form of Protest, subsection (d) shall subject the protest to summary dismissal in accordance with Section 1.8.3-Summary Dismissal.

### **1.8.3.3 Time for Filing**

- a. Pre-Proposal/Pre-bid Protests – All protests concerning solicitation specifications, criteria and/or procedures shall be submitted to the ATL within ten (10) calendar of when the basis for protest is known or should have been known to the protestor (whichever is earlier), but in no event later than the proposal/bid submission deadline. Any protest by the protestor with respect to any matter or event first occurring on or before the proposal/bid response date, including any aspect of the procurement process or the solicitation documents issued or occurring prior thereto, must be made within the time frame set forth in herein or will be deemed irrevocably waived and may not be part of, or grounds for, any subsequent Protest or other legal action filed by Protestor. For purposes of this protest filings, interested parties shall be deemed to have knowledge of the form and contents of any solicitation document at the time that such solicitation document is first posted to the Georgia Procurement Registry website or otherwise put on public notice in accordance with the written policies of the ATL.

The ATL Executive Director shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the ATL Executive Director as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the ATL Executive Director shall be the final agency decision on the matter but shall be subject to judicial review as set forth in O.C.G.A. §50-13-19, or review by FTA below.

- b. Pre-Award Protests – With respect to protests made after the deadline for submission of bids/proposals but before contract award by the ATL, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, the ATL's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the ATL Executive Director as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by the ATL.

The ATL Executive Director may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that the ATL shall announce the contract award.



The decision by the ATL Executive Director shall be the final agency decision on the matter but shall be subject to judicial review as set forth in O.C.G.A. §50-13-19 or review by FTA as specified below.

All protests must be directed in writing to:

ATL Procurement and Contracts Manager  
Atlanta-region Transit Link Authority  
245 Peachtree Center Avenue, NE, Suite 2300  
Atlanta, GA 30303

- c. Protest Response - The ATL Executive Director shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, the ATL will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official ATL response to the protest and the ATL will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

Protests not filed in accordance with the deadlines set forth in Section 1.8.3-Time for Filing shall be deemed untimely and subject to summary dismissal pursuant to Section 1.8.3-Summary Dismissal as noted below.

#### **1.8.3.4. Protest Decisionmaker**

- a. Except as specifically set forth in this paragraph and in Section 1.8.3.4 (b), all Protests shall be decided by the atl Procurement and Contracts Manager who is authorized by the Executive Director to resolve or rule on any Protest. The Procurement and Contract Manager's actions, decisions and orders in such capacity as Protest Decisionmaker shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director. If at the time of filing, the ATL does not have a Procurement and Contracts Manager then the Executive Director may designate, in his/her discretion, any other ATL employee (other than the Executive Director, or the Protest Coordinator or Contracting Officer for the particular procurement that is the subject of the Protest) to serve as Protest Decisionmaker until a Procurement and Contracts Manager is appointed or on a case by case basis at any time after receipt of a Protest and prior to the appointment of a Third Party Hearing Officer with respect to such Protest under Section 1.8.3.4 (b).
- b. At the sole and exclusive discretion of the Procurement and Contracts Manager exercised at any time prior to the issuance of a decision with respect to a Protest, the Procurement and Contracts Manager may request that the Executive Director appoint a Third Party Hearing Officer to recommend a resolution or ruling on any Protest in accordance with Section 1.8.3.8-Protest Adjudication Procedures. Upon such appointment of a Third Party Hearing Officer by the Executive Director, the Third Party Hearing Officer's actions, decisions and orders in



such capacity as Protest Decisionmaker shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director, subject, however, to Section 1.8.3.8. Upon the request for and appointment of a Third Party Hearing Officer with respect to a particular Protest, such appointment of a Third Party Hearing Officer with respect to such Protest shall be irrevocable and the Procurement and Contracts Manager shall not thereafter be entitled to rule singly on the Protest.

#### **1.8.3.5 Summary Dismissal**

The ATL Executive Director, may, in his/her sole discretion, summarily dismiss any protest failing to comply with any aspect of this procedure or any aspect of the applicable solicitation documents issued by the ATL. Protester will be notified in writing by facsimile transmission or electronic means, with the original to follow by United States Mail, of the summary dismissal of its protest.

**1.8.3.6 Time for Decision by Protest Decisionmaker:** Protests that are not either summarily dismissed or withdrawn (or deemed withdrawn) shall be forwarded by the Protest Coordinator to the Protest Decisionmaker for a decision, as expeditiously as possible after the end of the Protest Coordinator's procedural compliance review. The Protest Decisionmaker shall issue a decision as expeditiously as practical within Thirty (30) Business Days from the later to occur of:

1. The day the Protest is forwarded by the Protest Coordinator to the Protest Decisionmaker for a decision, or
2. The receipt of any requested information from the Contracting Officer, the Protestor or any other party who has relevant information that the Protest Decisionmaker deems necessary in order to render its decision on the Protest.

#### **1.8.3.7 Protest Decisionmaker's Investigation**

1. The Protest Decisionmaker may request or permit submission of additional statements or documentation from the Contracting Officer, as the Protest Decisionmaker deems necessary in its sole discretion.
2. The Protest Decisionmaker may make a reasonable investigation and is authorized to request any information or documentation it deems necessary in order to render a decision on the Protest.

#### **1.8.3.8. Protest Adjudication Procedures**

1. The Protest Decisionmaker, in its sole discretion, may issue written questions to the Protestor on any issue the Protest Decisionmaker deems necessary for its consideration of the Protest. Such written questions may be issued in lieu of or in addition to a hearing. Unless specifically required or permitted by this Procedure, or otherwise specifically requested by the Protest Decisionmaker in writing to the Protester, the Protester may not file any written pleading, motion or other written documentation with the Contracting Officer or the Protest Decisionmaker after Protester's filing of the initial Protest.

2. The Protest Decisionmaker, in its sole discretion, either at the Protest Decisionmaker's own instance or upon the Protestor's prior written request submitted in accordance with Section 1.8.3.1 (b), may elect to conduct a hearing in connection with the Protest. Any requests for a hearing must include a brief statement demonstrating that the Protest Decisionmaker's decision will be aided by a hearing. In the event that the Protest Decisionmaker schedules a hearing, the notice of the hearing may set forth the scope of the hearing, including, but not limited to, the issues to be addressed, the length of hearing and whether documentary or testimonial evidence will be accepted. Alternatively, the Protest Decisionmaker may conduct a pre-hearing conference concerning the procedures to be followed at the hearing, what issues are under consideration and a list of witnesses who may testify. The issues and evidence considered by the Protest Decisionmaker are within the sole discretion of the Protest Decisionmaker.
3. Subject to Section 1.8.3.8(4), the Protest Decisionmaker may fashion any remedy the Protest Decisionmaker deems consistent with the procurement process and the Solicitation Documents, including without limitation,
  - i. Deny the Protest in whole or in part,
  - ii. Sustain the Protest in whole or in part, or
  - iii. Subject to Section 1.8.3.8(4), order the Contracting Officer to take any measure consistent with the Protest Decisionmaker's remedy, including without limitation,
  - iv. Award the contract in accordance with the Contracting Officer's original decision,
  - v. Suspend Contract Award or other Solicitation Decision and reevaluate the Solicitation Responses,
  - vi. Cancel the procurement or solicitation,
  - vii. Amend the procurement, or
  - viii. Any other remedy the Protest Decisionmaker determines is necessary to protect or maintain the integrity of the ATL's procurement process.
4. The decision of the Protest Decisionmaker shall be final; provided, however, that if a Third Party Hearing Officer is the Protest Decisionmaker, the Third Party Hearing Officer shall only be entitled to make a written recommendation to the Executive Director containing the Third Party Hearing Officer's proposed ruling on the Protest.
  - i. The Executive Director may:
    - a. Accept, modify or reject the Third Party Hearing Officer's recommendation in whole or in part;
    - b. Return the matter to the Third Party Hearing Officer with instruction; or
    - c. Make any other appropriate disposition.
  - ii. The Executive Director's decision shall be deemed the final decision of the Protest Decisionmaker.

### **1.8.3.9 Stay of Procurement During Protest**



The ATL Executive Director may order a stay in the opening of a proposals/bids received or of the contract performance if the Executive Director determines, in the Executive Director's sole discretion, that a stay is in the best interest of the ATL, any affected Agency or the State of Georgia. Should the Executive Director not stay contract performance pending the resolution of any protest to an actual Contract Award, the contract may be awarded on a contingent basis, subject to revocation, revision or other adjustment or modification based on the final decision of the Executive Director in such Protest.

#### **1.8.3.10 Costs**

Neither the protestor, any interested party nor any other third party shall be entitled to recover any costs incurred in connection with the procurement process, the solicitation, the protest, and/or compliance or attempted compliance with this policy, including preparation costs or attorneys' fees.

#### **1.8.3.11 Governing Law**

The laws and regulations of the State of Georgia, without application of its conflicts of laws principles, shall govern any action brought pursuant to this Procedure.

#### **1.8.3.12 Judicial Review**

Any further legal action by the Protestor upon the final decision by the ATL must be filed with the Superior Court of Fulton County and served on the ATL within the time prescribed by Georgia law. The final exhaustion of the procedures set forth in this Policy is a prerequisite to the commencement of any judicial review of a final decision issued by the ATL under this Policy.

#### **1.8.3.13 Review of Protests by FTA**

All protests involving contracts financed with federal assistance shall be disclosed to the FTA in accordance with FTA Circular 4220.1F or the most recent version of FTA Circular 4420.1 available at the time of issuance of the solicitation. Protesters shall exhaust all administrative remedies with the ATL prior to pursuing protests with FTA. FTA limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date the Protester has received actual or constructive notice of the ATL's final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to FTA.

## **1.9 Diversity Participation**

### **1.9.3 State and Local Laws and Regulations**

It is the policy of the State of Georgia and the ATL that small businesses and minority-owned businesses have a fair and equal opportunity to participate in State purchases. The ATL encourages minority-owned businesses to participate in its procurements as both offerors and subcontractors. The ATL further encourages majority-owned businesses to include minority-owned businesses as subcontractors in its bids/proposals when appropriate.



As an incentive to increase utilization of minority-owned businesses as subcontractors on State purchases, the State of Georgia provides for an income tax adjustment on the state tax return of any authority that subcontracts with a State certified minority-owned firm to furnish products, property or services to the State of Georgia, including the ATL. The Tax Incentive Program is codified at O.C.G.A. §48-7-38 and is managed by the Georgia Department of Revenue.

#### **1.9.4 Participation by Small and Minority Firms and Women’s Business Enterprises**

The ATL shall take all appropriate steps to ensure that it uses small and minority firms and women’s business enterprises to the fullest extent practicable, including:

- a. Notice – The ATL shall make information available to potentially qualified firms about procurement opportunities. The ATL will include these contractors on solicitation lists and request their participation when they are potential sources.
- b. Contract Size – To foster greater participation of small and minority firms and women’s business enterprises, the ATL will divide total requirements into smaller tasks or quantities, when economically feasible.
- c. Delivery Schedule – The ATL will specify delivery schedules that encourage the participation of small and minority firms and women’s business enterprises.
- d. Small Business Administration and the Department of Commerce Minority Business Development Agency – The ATL will use the services and assistance of the Small Business Administration and the Department of Commerce’s Minority Business Development Agency to encourage and increase the participation of small and minority firms and women’s business enterprises.
- e. Subcontracting Opportunities – The ATL will require its prime third party contractors to include the preceding provisions (a-d) in FTA assisted subcontracts.

## 2.1 Overview

## 2.2 Purchase Orders (P.O.)

### 2.2.1 Overview

Purchase orders (P.O.) are used to encumber funds in the ATL accounting system so that accounts will not be overspent and so that quarterly federal financial status reports reflect current federal financial obligations.

### 2.2.2 Policy

- a. The Procurement and Contracts Manager must approve all purchases of items and services that have a cost exceeding \$10,000 or involve the use of FTA funds before the purchase is made.
- b. Purchases of items and services that have a cost exceeding \$10,000 are initiated with the contractor through the issuance of a formal contract.
- c. A Purchase Order is used to obligate funds in the ATL accounting system for purchases of items and services for which the entire cost must be obligated at the time of purchase (see Section 2.i below for exceptions).
- d. Contract types that do not require a P.O. are generally contracts for which the entire contract amount is not obligated at the time of execution. These contracts generally contain a maximum, not-to-exceed contract amount rather than a firm, fixed-price contract amount and contain language that permit early termination.
  - (1) Examples of these types of contracts include: real estate leases, retainer contracts (e.g. legal services), on-call and term service contracts, insurance contracts, task order type contracts, etc.
  - (2) For task order type contracts, a P.O. should be issued upon execution of each individual task order rather than for the actual contract.

### 2.2.3 Responsibilities – Approval

- a. The CFO determines which contracts require a P.O. and verifies that the contract has been procured in accordance with ATL policies and procedures.
- b. CFO or designee assigns a P.O. number to the contract.
- c. Procurement and Contracts Manager forwards contract approval documents to the Executive Director for final execution. If a P.O. will serve as the ATL contract then the Executive Director will sign the P.O.
- d. Upon execution of the P.O., the Procurement and Contracts Manager or designee will retain the original executed document in the appropriate contract file and will upload an electronic copy of the executed document and corresponding P.O. to the electronic contract database and provide a copy of the P.O. to the designated ATL technical lead.



#### **2.2.4 Responsibilities – Payment**

- a. ATL Project Manager or Technical Lead for the contract or P.O. supervises receipt of the goods or services specified for purchase on the P.O.
- b. ATL Project Manager or Technical Lead approves invoices for item(s) specified on P.O. by completing the check request form and having his or her Department Manager approve.
- c. The check request form is approved by Department Chief and CFO.
- d. Upon approval, the CFO forwards the check request form to Accounts Payable.
- e. Accountant pays the invoice.