



Austin-San Antonio Intermunicipal Commuter Rail District
PROCUREMENT PROCEDURES POLICY

I. STATEMENT OF GENERAL POLICY

The Austin-San Antonio Commuter Rail District (“Rail District”) is responsible for procurement management functions that ensure the availability of materials, supplies, equipment, construction, professional and general services necessary to support the Rail District’s activities. The Rail District issues purchase orders, requests for bids or proposals and negotiates and administers contracts to deliver goods and services in a timely manner. Primary objectives are to maximize value to the Rail District and provide quality service to meet the goals of the Rail District.

This Procurement Procedures Policy (“Policy”) establishes standards and guidelines for the procurement of goods and services through Contracts. In this Policy, Contracts means a written, legally enforceable agreement between Rail District and one or more other parties, signed by an authorized representative of the Rail District, to provide a product or service.

CFR 49 Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, provides for waiving certain reviews by the Federal Highway Administration (“FHWA”), Federal Transit Administration (“FTA”), and the Texas Department of Transportation (“TxDOT”) if the Rail District has a procurement system that has been certified by those agencies. These procedures are developed to satisfy those certification requirements and to ensure that a qualified contractor is obtained through an equitable selection process, and that work is properly accomplished in a timely manner at a just and reasonable cost.

II. RESPONSIBILITY

The Rail District is responsible, in accordance with good administrative practices and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements for services. These include, but are not limited to, evaluation of proposals and bids, contract awards, protests, disputes, and claims.

III. CONFLICT OF INTEREST

Pursuant to Texas Local Government Code Chapter 171, no member, officer, employee or agent of the Rail District, a subgrantee, or other entity affiliated with the Rail District shall participate in selection, or in the award or administration of a Contract

if such person has a substantial interest in the entity that is party to the Contract. A person would be deemed to have a substantial interest in an entity if:

- (a) the person owns 10% or more of the voting stock, or 10% or \$15,000 of the fair market value of the entity;
- (b) funds received by the person from the entity exceed 10% of the person's gross income for the previous year; or
- (c) a business partner or a family member of the person (within the first degree by consanguinity or affinity) satisfies either (a) or (b) above.

Rail District members, officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, subcontractors, parties or potential parties to agreements or subagreements or other suppliers of goods or services. An exception exists where the financial interest is incidental and not substantial or the gift is an unsolicited item of nominal intrinsic value.

Should such a conflict of interest be found to exist, the affected Contract may be voided at the discretion of the Rail District Board of Directors ("Board"). Any violation of the conflict of interest policy by a Board member, officer, employee or agent of the Rail District may be cause for disciplinary action including, but not limited to, removal from his or her office or position at the discretion of the Board. The Rail District may also cancel any contract or request for bids or proposals affected by conduct determined to be a conflict of interest.

The Rail District is also subject to Texas Local Government Code Chapter 176. This law requires disclosure by the Board of Directors and the Rail District Executive Director ("Executive Director") to determine other business relationships with persons contracting with the District and disclosure of gifts received exceeding \$250 over a preceding 12-month period. A person who contracts or seeks to contract for the sale or purchase of property, goods or services with the Rail District or who is an agent of a person who contracts or seeks to contract shall file a completed conflict of interest questionnaire on a form prescribed by the Texas Ethics Commission not later than the 7th business day after the date the person begins contract discussions or negotiations with the Rail District or submits or proposes documents related to a potential agreement with the Rail District. The conflict of interest questionnaires shall be filed with the Executive Director. Conflict of interest questionnaires are not required if the person is a state, a political subdivision of the state, the federal government or a foreign government, or an employee of one of these entities acting in the employee's official capacity.

IV. PRINCIPLES OF PROCUREMENT

Effective procurement procedures require an understanding and implementation of the fundamental principles of basic procurement. These principles insure that the organization enters into the selection process, the procurement, and the contracting

agreement in an efficient, effective manner, in accordance with applicable Federal and State laws.

The first of these principles requires the Rail District to treat all prospective contractors in an equal and equitable manner. All potential contractors should be given the same treatment in the award and administration of Contracts.

The second principle requires the Rail District to maximize open and free competition. The Rail District will not restrict competition by utilizing exclusionary or discriminatory specifications such as:

- (a) Placing unreasonable requirements on contractors in order for them to qualify to do business;
- (b) Allowing noncompetitive practices including collusion and price fixing;
- (c) Allowing conflicts of interest; and
- (d) Requiring unnecessary experience.

The third principle requires that the Rail District and the contractor establish and maintain an "arm's length relationship." The rights of both parties must be clearly established in a contract; there must be a formal offer and acceptance; the parties involved must possess the requisite authority to contract; and there must be adequate consideration for both parties. An "arm's length relationship" prohibits collusion or gratuitous relationships between the Rail District and the contractor, which result in unwarranted benefit or gain to either party.

The fourth principle in sound procurement is that the parties to the Contract must have an opportunity for remedy if either party is harmed in any unlawful manner during the contractual relationship.

V. METHODS OF PROCUREMENT

A. GOODS AND SERVICES HAVING A PURCHASE VALUE OF \$15,000 OR LESS

The Executive Director may award contracts for goods and services having a value of \$15,000 or less. The method of awarding such contracts shall be determined by the Executive Director. In determining the method of awarding such contracts, the Executive Director shall consider a method that would provide the best value to Rail District and accomplish the purposes of the Rail District.

B. CONSTRUCTION, GOODS AND NON-PROFESSIONAL SERVICES

The Rail District awards contracts for construction, goods and non-professional services through competitive bids or proposals, competitive proposal and negotiation and noncompetitive procurement. Competitive bids or proposals and negotiation

procurement are the preferred methods of procurement by the Rail District. Noncompetitive procurement is only used in the following limited situations:

1. the item or service is available only from a single source. The determination of availability from a single source shall be made by the Executive Director after notice to the Board;
2. public exigency or emergency when the urgency for the requirement will not permit a delay incidental to competitive solicitation;
3. the Federal grantor agency authorizes noncompetitive procurement;
4. after solicitation of a number of sources, competition is determined to be inadequate;
5. acquisition of real property, including improvements located on the real property, by contract or the use of eminent domain;
6. interlocal governmental agreements under Section 791 of the Government Code;
7. personal or professional services;
8. the acquisition of existing rail transportation systems;
9. personal or professional services;
10. the acquisition of existing rail transportation systems;
11. a contract with a common carrier to construct lines and to operate commuter rail service on lines owned in whole or in part by the carrier;
12. exclusive development agreements provided for in Section XII of this Policy;
13. catalogue purchases as provided in Section 2157 of the Government Code and state contract purchases as provided in Local Government Code, Chapter 271; or
14. the reverse auction procedure as defined by Section 2155.062(d) of the Government Code.

C. THE COMPETITIVE BIDDING AND PROPOSAL PROCESSES

For any Contract in excess of \$15,000 for construction of improvements or the purchase of material, machinery, equipment, supplies or other personal property, the

Rail District will place a public notice in the Texas Register, the San Antonio Express-News and Austin American Statesman not less than 15 days prior to the date set for receiving bids or proposals. The Rail District shall provide all bidders with the opportunity to bid or propose on the same items on equal terms and have bids or proposals judged according to the same standards as set forth in the specifications contained in the notice. Bids or proposals may be submitted in either electronic or hard copy format as specified by the Rail District. The Rail District may adopt additional rules governing the taking of bids or proposals and the awarding of Contracts on such terms and in such form considered appropriate by the Executive Director or the Board.

1. TIE BIDS. For any Contract subject to the Competitive Bidding Process in which the Rail District receives two or more bids that are identical in nature and amount as the lowest and best bids, the Rail District shall award the Contract to the bidder that is a resident of Williamson, Travis or Bexar counties and other counties when the counties become a member of the Rail District (the "Territory"). The Territory also shall include any municipality and any county that has elected to become a member of the Rail District. If two or more of the bidders are residents of the Territory, Rail District shall select from the bids by casting of lots in a manner prescribed by and in the presence of the Board. The Rail District may reject all bids in its sole discretion.

For any Contract subject to the Competitive Bidding Process in which the Rail District receives one or more bids from a bidder whose principal place of business is in the Territory and whose bid is within 3% of the lowest bid price received by the Rail District from a bidder whose business is not in the Territory, the Rail District may enter into a Contract with the lowest bidder or the bidder whose principal place of business is in the Territory if the Rail District determines in writing that the local bidder offers the Rail District the best combination of contract price and additional economic development opportunities for the Territory, including employment of residents of the Territory and increased tax revenues to the Territory.

D. PROFESSIONAL SERVICES

Pursuant to Texas Government Code, Chapter 2254, Subchapter A, which provides that Contracts for the procurement of Professional Services may not be awarded on the basis of competitive bids, the Rail District awards Professional Services Contracts on the basis of demonstrated competence and qualifications.

Professional Services for the purposes of Government Code Chapter 2254 are defined as those "services within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing or provided in

connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser or a registered nurse.”

The Rail District retains Professional Services for transportation planning; design and administration; public involvement assistance, and accounting and auditing services. Consequently, the majority of the contractors retained by the Rail District are architectural, engineering or accounting firms. When procuring architectural, engineering or accounting services, the Rail District shall issue a Request for Proposal (“RFP”). Contained in the RFP is a conceptual Scope of Work to which prospective contractors must respond. Upon receipt of solicited proposals, contractors are evaluated based on the competence and qualifications of the prospective contractor, the prospective contractor's understanding of the scope of work, knowledge of the study area, the firm's previous related work experience, and the proposed management plan. Proposers are ranked and authorization from the Board is obtained to initiate contract negotiations with the firms in rank order.

If the Rail District is unable to negotiate a fair and reasonable price with the selected firm, it shall formally end negotiations and proceed to the next most highly qualified firm and repeat the process. Negotiations are carried on in this sequence until an agreement on price is reached and a Contract is executed.

If any agreement or Contract is entered into with one of the above listed professionals on the basis of a competitive bid, it is contrary to public policy and is void.

Typically, all Rail District Professional Services Contracts require that a RFP and/or a Request for Qualifications (“RFQ”) be issued. Exceptions to this general policy are made on a case by case basis by the Executive Director. Factors such as urgency of need and unique expertise will be considered in making the determination to issue formal RFPs/RFQs.

E. REQUESTS FOR PROPOSAL AND REQUESTS FOR QUALIFICATIONS

The Rail District shall develop Requests for Proposals (“RFP”) and/or Requests for Qualifications (RFQs) as described below.

1. Instructions for Proposals. Instructions for proposals should give, in summary fashion, general information about what is required from the consultant. The instructions should include the proposal due date and time, the number of copies of the proposal, the person and address for submission, and information about any pre-proposal meeting(s). Proposers shall be considered "non-responsive" if they fail to conform to the requirements (copies, due date/time) of the solicitation.
2. Purpose. The purpose briefly describes the objective of the study to be performed.

3. Proposal Content. The proposal content describes the specific information to be supplied by the proposer including: a cover letter, methodology, key personnel, management plan, and related work.
4. Criteria for Evaluation. The criteria, and any weight to be given to criteria, to be used in evaluating the proposals must be included in the RFP.
5. Selection Procedure. All Rail District Contracts are awarded by the Board unless the Contracts are for \$15,000 or less. Usually a subcommittee of the Board or a project oversight subcommittee with technical advisors is appointed to review proposals. This review committee will rank proposals and make recommendations to the Board for Contract award.
6. Duration of Contract. The anticipated length of the Contract is described in this section of the RFP.
7. Disadvantaged Business Enterprise Participation. This Section of the RFP describes the Rail District DBE Program.
8. Compliance with Federal Regulations. If required by applicable law or regulations, this section calls the attention of the proposer to the fact that the Contract is funded through financial assistance from the United States and Texas Departments of Transportation. As such, the Contract must comply with all applicable Federal and State regulations.
9. Debarment Certification. All prospective contractors are required to execute a "Certification of Lower-Tier Participant" form as a part of their proposal.
10. Background. This section provides a brief background on the project and the reasons for which contract services are being sought.
11. Scope of Work. The Scope of Work incorporates a clear and accurate description of the technical requirements of the product or service being procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the product or service being procured and shall set forth minimum essential characteristics and standards to which it must conform if it is to satisfy the intended use.

F. EXCLUSIVE DEVELOPMENT AGREEMENTS

1. EDAs Allowed. The Rail District may enter into an Exclusive Development Agreement (“EDA”) with a private entity to construct, maintain, repair, operate, extend, or expand a commuter rail facility or system. The Rail District also is allowed to negotiate provisions relating to professional and consulting services provided in connection with an EDA.
2. Competitive Procurement Process For EDA. The Rail District either may accept unsolicited proposals relating to an EDA or solicit proposals relating to an EDA in accordance with this Policy. The competitive bidding requirements as specified under Chapter 223, Texas Transportation Code, and the Texas Professional Services Procurement Act (Chapter 2254; Texas Government Code) do not apply to an EDA.
3. Unsolicited Proposals
 - (a) The Rail District may accept unsolicited proposals for a project to be developed through an EDA. An unsolicited proposal must be filed with the Rail District and be accompanied by a \$10,000 non-refundable review fee. An unsolicited proposal must include the following information:
 - (1) the proposed commuter rail facility or system location, scope, and limits on service;
 - (2) information regarding the proposing entity’s qualifications, experience, technical competence, and capability to develop the project;
 - (3) a proposed financial plan for the proposed project that includes, at a minimum (i) projected project costs, and (ii) proposed sources of funds; and
 - (4) the identity of any member of, or proposed consultant for, the proposing entity or team who is also performing work, directly or as a consultant, for the Rail District.
 - (b) Unsolicited proposals shall be reviewed by the Rail District staff. The staff may request additional information from the proposer. Based on its review, the staff will make an initial recommendation to the Board (or a designated committee thereof) as to whether the Rail District should authorize further evaluation of the unsolicited proposal.
 - (c) If the Rail District authorizes further evaluation of an unsolicited proposal, then the Rail District shall publish a RFQ in accordance with the requirements of section F.4 below. Evaluation of proposals submitted in response to RFQs shall occur in accordance with the provisions of section F.5 below.

4. Rail District Solicitation of Proposals and Competing Proposals; Requests for Qualifications.

(a) The Rail District may solicit proposals or competing proposals by issuing a RFQ relating to an EDA project. The Rail District shall publish a RFQ in the Texas Register and post it on the Rail District's website. A RFQ issued by the Rail District shall include the following information:

- (1) a description of the project;
- (2) criteria used to evaluate the proposals;
- (3) the relative weight given to the criteria; and
- (4) the deadline by which proposals must be received by the Rail District.

(b) A proposal submitted in response to a RFQ issued under this section F.4, or a competing proposal submitted in response to a RFQ issued under section C above, must include, at a minimum, the following:

- (1) information regarding the proposer's qualifications, experience, technical competence, and capability to develop the project;
- (2) a proposed financial plan for the proposed project that includes, at a minimum, (i) projected project costs, and (ii) proposed sources of funds;
- (3) such additional information that the Rail District requests within the RFQ;
- (4) the identity of any member of, or proposed consultant for, the proposing entity or team who is also performing work, directly or as a consultant, for the Rail District; and
- (5) in the case of a competing proposal submitted in response to a RFQ published by the Rail District after receipt of an unsolicited proposal, a non-refundable proposal review fee determined by the Rail District.

(c) The Rail District may withdraw a RFQ at any time, and may then publish a new RFQ in accordance with this section D.

5. Evaluation of Proposals Submitted in Response to a Request For Qualifications.

(a) The Rail District shall review responses to a RFQ submitted in accordance with section F.4 above based on the criteria described in the RFQ. The Rail District shall evaluate all proposals received, and shall determine which proposers will qualify to submit detailed proposals in accordance with the requirements of section F.6 below. The Rail District may include an interview as part of its evaluation process.

(b) The Rail District must qualify at least two (2) private entities to submit detailed proposals in accordance with the procedures under section F.6, unless the Rail District does not receive more than one (1) proposal in response to a RFQ. If only one (1) entity responds to a RFQ (or no entity submits a response to a RFQ issued after receipt of an unsolicited proposal) the Rail District may request a detailed proposal from, and may attempt to negotiate an EDA with, the sole proposer.

6. Requests For Detailed Proposals.

(a) The Rail District shall issue a request for detailed proposals ("RFDP") from all proposers qualified in accordance with section F.5(b) above. The Rail District shall mail a RFDP directly to the proposer's main address as designated in the response to the RFQ, and such RFDP must contain the following information:

- (1) the criteria that will be used to evaluate the detailed proposals;
- (2) the relative weight to be given to the criteria;
- (3) a stipulated amount to be paid to unsuccessful proposers subject to section F.12 below; and
- (4) the deadline date by which proposals must be received.

(b) A RFDP under this section F.6 may require proposers to provide information relating to the following:

- (1) the proposer's qualifications and demonstrated technical competence;
- (2) the feasibility of developing the project as proposed;
- (3) detailed engineering or architectural designs;
- (4) the proposer's ability to meet schedules;
- (5) costing methodology, and

- (6) any other information the Rail District considers relevant or necessary to fully assess the project.

(c) The Rail District may withdraw a RFDP at any time prior to the submission deadline for detailed proposals. In such event the Rail District shall have no liability to the entities chosen to submit detailed proposals.

(d) In developing and preparing to issue a RFDP in accordance with section F.6, the Rail District may solicit input from entities qualified under section F.5(b) or any other person.

(e) After the Rail District has issued a RFDP under section F.6, the Rail District may solicit input from the proposers regarding alternative technical concepts.

- 7. Evaluation and Ranking of Detailed EDA Proposals. The Rail District shall evaluate and rank each detailed proposal received based on the criteria described in the RFDP and shall identify the proposer whose proposal offers the best value to the Rail District. The Rail District may interview the proposers as part of its evaluation process.

- 8. Post-Submissions Discussions.

(a) After the Rail District has evaluated and ranked the detailed proposals in accordance with section F.7 above, the Rail District may enter into discussions with the proposer whose proposal offers the apparent best value provided that the discussions must be limited to incorporation of aspects of other detailed proposals for the purpose of achieving the overall best value for the Rail District, clarifications and minor adjustments in scheduling, cash flow, similar items, and other matters that have arisen since the submission of the detailed proposal.

(b) If at any point in discussions under section F.8, it appears to the Rail District that the highest-ranking proposal will not provide the Rail District with the overall best value, the Rail District may end discussions with the highest-ranking proposer and enter into discussions with the proposer submitting the next-highest ranking proposal.

(c) If, after receipt of detailed proposals, the Rail District determines that development of a project through an EDA is not in the best interest of the Rail District, or the Rail District determines for any other reason that it does not desire to continue the procurement, the Rail District may terminate the process and, in such event, it shall not be required to negotiate an EDA with any of the proposers.

- 9. Negotiations for EDA. Subsequent to the discussions conducted pursuant to section F.8 and provided the Rail District has not terminated or

withdrawn the procurement, the Rail District and the highest-ranking proposer shall attempt to negotiate the specific terms of the EDA.

(a) The Rail District shall prescribe the general form of the EDA and may include any matter therein considered advantageous to the Rail District.

(b) The Rail District may establish a deadline for the completion of negotiations for an EDA. If an agreement has not been executed within that time, the Rail District may terminate the negotiations, or, at its discretion, may extend the time for negotiating an agreement.

(c) In the event an agreement is not negotiated within the time specified by the Rail District, or if the parties otherwise agree to cease negotiations, the Rail District may commence negotiations with the second-ranked proposer or it may terminate the process of pursuing an EDA for the project that is the subject of the procurement process.

(d) Notwithstanding the foregoing, the Rail District may terminate the procurement process, including the negotiations for an EDA, at any time upon a determination that continuation of the process or development of a project through an EDA is not in the Rail District's best interest. In such event, the Rail District shall have no liability to any proposer beyond the payment provided for under section F.12 below if detailed proposals have been submitted to the Rail District.

10. EDA Projects with Private Equity Investment.

(a) If a project to be developed through an EDA involves an equity investment by the proposer, the terms to be negotiated by the Rail District and the proposer may include, but shall not be limited to:

- (1) methods to determine the applicable cost, profit, and project distribution between the proposer and the Rail District;
- (2) reasonable methods to determine and clarify toll rates or user fees;
- (3) acceptable safety and policing standards; and
- (4) other applicable professional, consulting, construction, operational and maintenance standards, expenses and costs.

(b) The Rail District may not incur a financial obligation for a private entity that constructs, maintains, or operates a commuter rail facility or system. An EDA must include a provision authorizing the Rail District to purchase the interest of a private equity investor in a commuter rail facility or system.

11. Rail District Property Subject to an EDA. A commuter rail facility or system that is the subject of an EDA is public property and belongs to the Rail District, provided that the Rail District may lease rights-of-way, grant easements, issue franchises, licenses, permits or any other lawful form of use to enable a private entity to construct, operate, and maintain a commuter rail facility or system, including supplemental facilities. At the termination of any such agreement, the commuter rail facility or system shall be returned to the Rail District in a state of maintenance deemed adequate by the Rail District and at no additional cost to the Rail District.

12. Payment For Submission of Detailed EDA Proposals.

(a) The Rail District may elect to pay an unsuccessful proposer that submits a detailed proposal in response to an RFDP under section F above a stipulated amount of the final contract price for any costs incurred in preparing that detailed proposal. Such amount may not exceed the lesser of the amount identified in the RFDP or the value of any work product contained in the proposal that can be used by the Rail District as determined by the Rail District, in the performance of its functions. Use by the Rail District of any design element contained in an unsuccessful detailed proposal is at the sole risk and discretion of the Rail District and does not confer liability on the recipient of the stipulated amount under this section.

(b) After payment of the stipulated amount, the Rail District shall own the exclusive rights to, and may make use of, any work product contained in the detailed proposal, including technologies, techniques, methods, processes, and information contained in the project design. In addition, the work product contained in the proposal becomes the property of the Rail District.

13. Confidentiality of Negotiations for EDA. The Rail District shall use its best efforts to protect the confidentiality of information generated and/or submitted in connection with the process for entering into an EDA to the extent permitted by Transportation Code §370.307. The Rail District shall notify any proposer whose information is submitted in connection with the process for entering into an EDA is the subject of a Public Information Act request received by the Rail District.

14. Performance and Payment Security. The Rail District shall require any private entity entering into an EDA to provide a performance and payment bond or an alternative form of security in an amount sufficient to insure the

proper performance of the agreement and protect the Rail District and payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material. A performance or payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project, provided that if the Rail District determines that it is impracticable for a private entity to provide security in such amount, the Rail District shall set the amount of the bond or alternative form of security.

An alternative form of security may not be utilized unless requested by the private entity proposing to enter into an EDA. Such request shall include an explanation as to why an alternative form of security is appropriate, the form of alternative security to be utilized, and the benefits and protections provided to the Rail District through use of the requested form of alternative security. A decision on whether to accept alternative forms of security, in whole or in part, shall be at the sole discretion of the Rail District.

A payment or performance bond or alternative form of security is not required for that portion of an EDA that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

In no event may the amount of the payment security be less than the performance security.

Alternative forms of security may be permitted or required in the following forms:

- (a) a cashier's check drawn on a financial entity specified by the Rail District;
- (b) a U.S. Bond or Note;
- (c) a revocable bank letter of credit; or
- (d) any other form of security determined suitable by the Rail District.

VI. SCOPE OF WORK

A Scope of Work shall be developed for any Contract based on the primary objective and tasks as outlined by the Board. The Scope of Work should be sufficiently definite and clear to permit the preparation of proposals on a common basis to obtain the benefit of full and free competition. The Scope of Work should include general conditions, special conditions, and technical specifications for the work to be accomplished. Special conditions include the procedures by which contractor proposals will be evaluated and selected.

VII. COST AND PRICE ANALYSIS

In order to properly evaluate the contractor's cost proposal, the Rail District shall perform a cost or price analysis in connection with every negotiated procurement action, including Contract modifications.

A cost analysis is a detailed evaluation of the cost elements in the potential contractor's offer to perform. It is conducted to form an opinion as to the degree to which the contractor's proposed costs represent what his or her performance should cost. A cost analysis is generally conducted to determine whether the contractor is applying sound management in proposing the application of resources to the contracted effort and whether costs are proper, allowable, and allocable. A cost analysis is performed in these situations:

1. When an offeror is required to submit the elements of his estimated cost.
2. When adequate price competition is lacking.
3. For sole-source procurements (including Contract modifications or change orders), unless price reasonableness can be established on the basis of a market price or based on prices set by law or regulation.

A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all separate cost elements and the profit factors that comprise a price proposal. Price analysis is a broad term that includes whatever actions the Rail District takes to reach a price decision without using cost analysis methods. These actions may include:

1. A comparison of competitive price quotations submitted to the Rail District.
2. A comparison of prior quotations and Contract prices with current quotations for the same or similar projects.
3. The use of yardsticks to point up apparent gross inconsistencies.

Documentation of any cost or price analysis will be included in the Contract file.

VIII. PROSPECTIVE CONTRACTORS

After development of the Scope of Work, the Rail District shall select a list of prospective contractors from a file of contractors, maintained by the Rail District, including any who have asked to be considered for this or similar projects. The list shall include sufficient prospective contractors to assure an open process for selecting a contractor. The scope of certain projects, because of the specialized technical nature, may limit the list of qualified contractors. In such cases, at least three (3) contractors will be asked to submit proposals.

IX. DISADVANTAGED BUSINESS ENTERPRISE AND HISTORICALLY UNDERUTILIZED BUSINESS

The Rail District makes a firm commitment to maximize participation by Disadvantaged Business Enterprise (“DBE”) and Historically Underutilized Business (“HUB”) in its Contract opportunities. The Rail District asks that recipients of Contracts involving subcontracts make reasonable efforts to award at least a percentage of the Contract amount for participation to socially and economically disadvantaged individuals and businesses. Joint ventures with contractors are encouraged. The goal for each Contract awarded to which a DBE, HUB or both is applicable shall be determined by the Rail District at the time bids or proposals are requested. The Rail District seeks to create a level playing field on which DBEs, HUBs or both can compete fairly for Rail District Contracts, to help remove barriers to the participation of DBEs and HUBs and to assist in the development of firms that can compete successfully in the marketplace outside the DBE or HUB program.

X. PROTEST PROCEDURES

At any point in the procurement process, any dispute, protest, or claim may be filed. The dispute, protest, or claim should be directed to the Executive Director within seven (7) days after the aggrieved party knows or should have known of the facts or events giving rise to the complaint.

In order for an above mentioned party to enter the protest process, a written complaint must be sent to the Executive Director by certified mail within seven (7) days which identifies the following:

- Name, mailing address and business telephone number of the complainant.
- Appropriate identification of the procurement being questioned.
- A precise and concise statement of reasons for the protest.
- Supporting exhibits, evidence or documents to substantiate any claims.

The dispute, protest, or claim must be based on an alleged violation of the Rail District's Procurement Procedures, a violation of State or Federal law (if applicable), or a violation of applicable grant or contract agreements to which the Rail District is a party. Failure to receive a procurement award from the Rail District in and of itself does not constitute a valid complaint.

Upon receipt of a complaint, the Executive Director will forward a copy of the written protest to the Board.

A Rail District representative appointed by the Executive Director shall contact the complainant and attempt to resolve the allegations informally. If the representative successfully resolves the allegations by mutual agreement, the representative will

forward written documentation to the Executive Director of the resolution with specifics on each point addressed in the original complaint.

If the Rail District representative is not successful in resolving the allegations, the complaint along with the representatives' comments, will be forwarded to the Executive Director. At the next regularly scheduled meeting of the Board, the Executive Director will appoint members and a chairman of a procurement protest subcommittee. Prior to the next regularly scheduled Board meeting, the procurement protest subcommittee shall meet to review all documents, interview the complainant, and prepare a written decision for consideration by the full Board. The representative shall place the complaint on the next Board meeting agenda for action. The Board may conduct a hearing as a part of their meeting to resolve the appeal. A final written decision shall be forwarded to the complainant. In any event, action by the Board shall be final. The schedule for determination of the complaint may be altered by the Chairman of the Board if necessary to meet the needs of the Rail District.

XI. CONTRACT ADMINISTRATION

For each Contract administered by the Rail District, the following files are maintained throughout the duration of the project and for at least four years after completion:

- A. Project Procurement File. This file contains a copy of the RFP; the mailing list of prospective contractors sent the RFP; a set of original proposals received; documentation of evaluations of the proposals received; and all correspondence associated with the procurement.
- B. Project Contract File. This file contains all correspondence concerning the negotiation and administration of the project Contract; an executed original of the Contract between the Rail District and the contractor; an executed copy of all subcontracts between the contractor and all subcontractors; any Contract modifications and associated documentation; and monthly progress reports as required by the Contract.
- C. Billing Documentation File. This file contains all itemized invoices and documentation for all reimbursed expenses; spreadsheet tracking project billings and reimbursements (including actual expenses, retainage, and profit, if applicable); and correspondence transmitting all reimbursements including copies of all checks issued if checks are issued by the Rail District.
- D. Project File. This file contains a copy of any study design; monthly progress reports; interim and final work products; meeting notes and documentation; and all project related correspondence.

XII. STANDARD FORM OF CONTRACT FOR ENGINEERING AND RELATED PROFESSIONAL SERVICES

Exhibit A to this Policy is the standard form of contract used by the Rail District for engineering, planning, design and related professional services when state of federal funding is used to pay for these services. This form may be altered by the Executive Director to meet the needs of the Rail District.

(Adopted April 7, 2006)

EXHIBIT A
TO
PROCUREMENT PROCEDURES

The following is the standard form for professional services, engineering and related Contracts funded by state or federal sources entered into by the Rail District.

This professional services contract ("Contract") is made, entered into and executed this _____ day of _____, 20__, by and between the Austin-San Antonio Intermunicipal Commuter Rail District, a state authorized agency for intermunicipal rail services in the Austin-San Antonio Corridor, hereinafter called Rail District, and _____, hereinafter called Consultant.

W I T N E S S E T H

WHEREAS, (insert as appropriate)

WHEREAS, the Consultant desires to perform said Work;

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and agreements of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Rail District and the Consultant agree as follows:

A G R E E M E N T

ARTICLE I

PURPOSE

1.01 This Contract stipulates the terms and conditions whereby the Consultant agrees to perform the Scope of Work, affixed hereto as Attachment A and incorporated herein by reference ("Work"), and the terms and conditions whereby the Rail District agrees to reimburse the Consultant for work approved by the Rail District, or its designated representative.

ARTICLE II

TERM

2.01 The term of this Contract shall begin on _____, and shall terminate upon the Rail District's final approval of Work completed by the Consultant or on _____, whichever occurs earlier, unless otherwise terminated or modified as hereinafter provided.

ARTICLE III

WORK TO BE PERFORMED

- 3.01 The Consultant shall undertake with its own personnel and resources or through contractors authorized pursuant to ARTICLE V, Subsection 5.04, the tasks as described in the Scope of Work outlined in Attachment A.
- 3.02 Specifically, the Consultant agrees to perform the tasks described in the Scope of Work and report the Work accomplished under each task in accordance with the Scope of Work.
- 3.03 If the Consultant is of the opinion that any Work it has been directed to perform is beyond the scope of this Contract ("Additional Work"), the Consultant shall promptly notify the Rail District in writing. In the event that the Rail District finds that such work does constitute Additional Work, the Rail District shall so advise the Consultant and provide compensation for doing the Additional Work on the same basis as the Work or the Rail District shall advise the Consultant not to perform the Additional Work.
- 3.04 When the Scope of Work requires a completed work product, the Rail District will review the Work as specified in the Scope of Work. If the Rail District finds it necessary to request changes in previously satisfactorily completed Work or parts hereof, the Consultant will make such revisions as requested and directed by the Rail District. Such work will be considered Additional Work and subject to the requirements established in Article III, Subsection 3.03.
- 3.05 If the Rail District finds it necessary to require the Consultant to revise completed Work to correct errors appearing therein, the Consultant will make such corrections, and no compensation will be paid for the corrections.

ARTICLE IV

PERSONNEL

- 4.01 The Consultant represents that it has or will secure, and agrees to furnish, personnel with qualifications, skills, and expertise required to perform the Scope of Work. The Consultant will provide all necessary supervision and coordination of activities that may be required to complete the Work described in the approved Scope of Work.
- 4.02 The Consultant designates _____ as the Consultant Project Director. The Steering Committee designates _____ as the Rail District Project Director.

ARTICLE V

FISCAL MANAGEMENT & DISBURSEMENT

- 5.01 The maximum amount payable under this contract shall not exceed the amount of _____, as outlined in Attachment B - Budget Summary, which is hereby incorporated in full in this contract by reference. The Rail District will withhold ten percent (10%) of each invoiced amount pending completion of the Scope of Work as described in Attachment A. Upon satisfactory completion of the Scope of Work, the Consultant may invoice for the withheld amount.
- 5.02 The Rail District agrees to reimburse the Consultant for Work approved by a committee designated by the Rail District Executive Director (the "Steering Committee"), or its designated representative, that is performed in accordance with the approved Scope of Work, within fifteen (15) days after the Rail District has received reimbursement for such Work from TxDOT. Reimbursement will not exceed the total amount budgeted for the Consultant in Attachment B.
- 5.03 The Consultant agrees to submit bills monthly utilizing the forms and procedures for submission of bills adopted by the Steering Committee and attached hereto as Attachment C within thirty (30) days of the end of the month within which the work was performed. All bills submitted by the Consultant will be in accordance with the procedures for the submission of bills contained in Attachment C. The Consultant shall include as part of his request for payment a list of all Disadvantage Business Enterprise subcontractors and the amounts to be paid to each of the subcontractors from the request for payment. All costs must be supported by source documents, which comply with generally accepted accounting practices.
- 5.04 In the event the Consultant contracts with an individual and/or an organization to perform certain tasks in order to accomplish the Scope of Work, the Consultant agrees to submit any and all contracts for such Work to the Rail District for approval prior to execution of said contracts and said agreements must contain all required provisions of this Contract and must specify that all bills submitted to the Consultant will be in accordance with the procedures for the submission of bills contained in Attachment C. The Consultant will be responsible for all Work under this Contract even if the Work has been subcontracted to another individual and/or organization.
- 5.05 The Consultant agrees that the Rail District, TxDOT, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the Work, and to audit the books, records, and accounts with regard to the Work. Further, the Consultant agrees to maintain all fiscal records and supporting documentation for

a period of three (3) years after the Rail District makes final payments and all other pending matters are closed. The Consultant further agrees that, in the event, any expenditures under this Contract are found to be ineligible for reimbursement by an audit, and/or any additional audits performed within the three (3) years following acceptance of the original audit, the Consultant will reimburse Rail District for those expenditures declared ineligible within ninety (90) days after being notified in writing of the findings.

- 5.06 Authorization for expenditure of funds under this Contract is contingent upon funding by the appropriate agencies. In the event that appropriated funds are not made available, withdrawn in whole or in part, and/or cancelled for whatever reason such that the Scope of Work will not be completed, this Contract will be terminated effective the date of said termination of funds. In such event:

the Rail District shall give notice to the Consultant in writing within thirty (30) days of being advised of any funding cutback affecting this Contract; and

the Consultant agrees that upon receipt of such notice, the conditions and requirements outlined in ARTICLE VIII, Subsection 8.01, will be accomplished by the Consultant.

- 5.07 In the event that it becomes necessary to amend the Consultant's budget during the course of this Contract, such amendments shall be effective only upon mutual agreement of the Rail District and Consultant. In the event that both parties cannot reach mutual agreement, the provisions outlined in ARTICLE VIII, Subsection 8.01, may be applied.

ARTICLE VI

REPORTING REQUIREMENTS

- 6.01 The Consultant shall submit to the Rail District monthly progress reports. These reports shall outline Work accomplished during the previous month or since the last progress report of the Consultant's Work under this Contract. These reports will include, but not be limited to, the percentage of completion of the overall Work project and each Work phase, special problems or delays encountered or anticipated, changes in the estimated value of each phase of Work, the anticipated Work activities for the next month, and a brief description of Work accomplished for each task.
- 6.02 Upon completion of the Scope of Work, the Consultant will submit _____ copies of the final report which documents all steps of the study process with supporting data to the Rail District. In addition, the Consultant will furnish the Rail District with a camera-ready original of the report. The Rail District will also be furnished all text on 3.5" disk in Microsoft Word 6.0 or greater and all computer generated graphics will be provided in a format compatible with the

following systems/software: Autocad, Version 10 or greater, ARC/INFO, or Intergraph.

ARTICLE VII

DISPUTES

- 7.01 The Consultant shall be responsible for the settlement of all contractual and administrative issues arising out of procurement entered in support of the Work.
- 7.02 The Rail District shall act as referee in all disputes regarding non-procurement issues, and the Rail District's decision shall be final and binding subject to review and approval by TxDOT, FHWA, and FTA.

ARTICLE VIII

TERMINATION

- 8.01 This Contract may be terminated in whole or in part by either party hereto whenever such termination is found to be in the best interests of either party. Termination shall be effected by the conveyance of a written notification thereof to the other party at least thirty (30) days in advance of the effective date of the termination. In the event either party to this Contract terminates this Contract, the Consultant agrees to the following:
- (a) Stop Work under the Contract on the date and to the extent specified in the notice of termination.
 - (b) Place no further orders of subcontracts except as may be necessary for completion of the Work not terminated.
 - (c) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by notice of termination.
 - (d) Submit to the Rail District a termination claim within sixty (60) days of the effective date of termination. The termination claim shall not exceed the total amount of funds authorized under this Contract less the estimated cost of the Work not completed and the amount of payments previously made.
- 8.02 Violation or breach of Contract terms by the Consultant shall be grounds for termination of the Contract, and any increased cost arising from the Consultant's default, breach of Contract, or violation of terms shall be paid by the Consultant.
- 8.03 This Contract shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed by either party and shall be cumulative.

- 8.04 Upon termination of this Contract, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the Consultant shall be covered by the provision of ARTICLE XVIII under this Contract with respect to ownership.
- 8.05 Except with respect to defaults of subcontractors, the Consultant shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Consultant to progress in the performance of the Work) if such failure arises out of causes beyond the control and without the fault or negligence of the Consultant. Such causes include acts of God or of the public enemy, acts of the U.S. government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the Consultant.

ARTICLE IX

NON-DISCRIMINATION

- 9.01 It is mutually agreed that all parties hereto shall be bound by the provisions of Title 49, Code of Federal Regulations, Part 21, which was promulgated to effectuate Title VI of the Civil Rights Act of 1964, Title 23, Code of Federal Regulations, Part 710.405(b). In furtherance of the requirements of Title 49, a copy of "Notice to Contractors--Compliance with Title VI of the Civil Rights Act of 1964 for Federal Aid Contracts" is attached hereto as Attachment D, and made a part hereof.
- 9.02 It is the policy of the US DOT that Minority Business Enterprises as defined in 49 CFR Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, Minority Business Enterprise requirements of 49 CFR Part 26, as amended, apply to this contract as follows:

The Consultant agrees to insure that Minority Business Enterprises as defined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to insure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts.

The Consultant and any subcontractors shall not discriminate on the basis of race, color, national origin, religion, age, sex, or disability in the award and performance of contracts funded in whole or in part with Federal funds. These requirements shall be physically included in any subcontract. Failure to carry out the requirements set forth above shall constitute a breach of Contract and, after written notification from the Rail District, may result in termination of the Contract by the Rail District or other such remedy as the Rail District deems appropriate.

- 9.03 The Consultant, with regard to the Work performed by it during the Contract term, shall not discriminate on the grounds of race, color, national origin, religion, age, sex, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 and Part 710.405(b) of the Code of Federal Regulations (“Regulations”), including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- 9.04 In all solicitations either by competitive bidding or negotiation made by the Consultant for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, religion, age, sex, or disability.
- 9.05 The Consultant shall provide all information and reports required by the Regulations, or directives issues pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TxDOT or the US DOT to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish information, the Consultant shall so certify to the TxDOT or the US DOT, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 9.06 In the event of the Consultant's noncompliance with the non-discrimination provisions of this Contract, the TxDOT shall impose such contract sanctions as it or the US DOT may determine to be appropriate, including but not limited to:
- withholding of payments to the Consultant under this Contract until the Consultant complies, and/or
 - cancellation, termination, or suspension of the Contract in whole or in part.
- 9.07 The Consultant shall include the provisions of Subsections 9.01 through 9.06 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Rail District may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Rail District to enter into such litigation to protect the interests of the Rail District; in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE X

EQUAL EMPLOYMENT OPPORTUNITY

- 10.01 The Consultant agrees to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR 60).

ARTICLE XI

INDEMNITY

- 11.01 The Consultant agrees to be responsible for all claims and liabilities due to the negligent acts or omissions of the Consultant, its agents or employees while performing this Contract. The Consultant also agrees to be responsible for any and all expenses incurred by the Consultant in litigation or otherwise resisting such claims or liabilities as a result of any negligent activities of the Consultant, its agents or employees only.

ARTICLE XII

GOVERNING LAW

- 12.01 This Contract shall be governed by the law of the State of Texas and all obligations hereunder of the parties are performable in Travis County.

ARTICLE XIII

AMENDMENT

- 13.01 No provision of this Contract shall be deemed waived, amended, or modified by either party unless and until such waiver, amendment, or modification is in writing, approved by the Rail District, TxDOT, and the US DOT before Additional Work may be performed or additional costs incurred which will be eligible for reimbursement, and signed by the party against whom it is sought to be enforced.
- 13.02 Changes in the scope, objectives, character, cost or complexity of the Work as approved in the latest approved Scope of Work must be submitted in writing and must be approved by the Rail District and the United States Department of Transportation ("US DOT") before additional work may be performed or additional costs incurred which will be eligible for reimbursement. Said charges must be approved by the Rail District prior to submittal to the US DOT.

ARTICLE XIV

PRECEDENCE OF AGREEMENT

14.01 This Contract constitutes the sole and only agreement between the parties hereto for 23 USC Section 104(f) and 49 USC Section 5301 et seq. funds and supercedes any prior understanding, written or oral, between the parties respecting the matters herein contained.

ARTICLE XV

GENDER

15.01 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

ARTICLE XVI

LEGAL CONSTRUCTION

16.01 In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceable provision shall not affect any other provision hereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE XVII

SANCTIONS

17.01 In the event the Consultant does not accomplish the Scope of Work and is unable or unwilling to provide satisfactory cause to the Rail District as to the reasons and/or justifications for not accomplishing the Work, the Rail District reserves the right to impose one or both of the following sanctions on the Consultant:

- a. Retain a percentage of current and/or future reimbursements to the Consultant until the Consultant satisfactorily completes the Work. The percentage to be retained will be determined by the Rail District.
- b. Require a reimbursement from the Consultant of funds expended under this Contract in an amount not to exceed the amount reimbursed to the Consultant in the work which the Consultant has failed to satisfactorily complete. The exact amount to be

reimbursed to the Rail District will be determined by the Rail District.

ARTICLE XVIII

OWNERSHIP OF WORK PRODUCT

- 18.01 It is agreed that the Rail District, TxDOT, and the US DOT shall own any and all information in whatsoever form and character produced in accordance with this Contract. It is expressly agreed that the information, data, written information, or other Work produced, which is produced pursuant to this Contract shall be considered a work made for hire, having been specifically ordered or commissioned for use as a contribution to a collective work, as a supplementary work, as a compilation, or as an information, and/or other work produced under this contract shall be furnished to the Rail District upon request.
- 18.02 The Rail District, TxDOT, and the US DOT shall, with regard to any reports or other products produced under this Contract, have the royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes.
- 18.03 The Consultant agrees not to release data or information about the results of the work to any person outside the Rail District without first obtaining written authorization to release such information from the Rail District.

ARTICLE XIX

ACKNOWLEDGEMENT OF FUNDING SOURCE

- 19.01 The Consultant shall give credit to the US DOT, TxDOT, and the Rail District as the funding source in all oral presentations, written documents, publicity, and advertisement regarding any activities which ensue from this Contract.

ARTICLE XX

PROHIBITED INTEREST

- 20.01 No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Contract or to any benefit arising therefrom. No member, officer, or employee of the Rail District during his tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

ARTICLE XXI

INSPECTION OF WORK

- 21.01 The Rail District, the State of Texas, and the US DOT, and any authorized representative hereof, have the right at all reasonable times to inspect or

otherwise evaluate the Work performed or being performed hereunder and the premises on which it is being performed.

- 21.02 If any inspection or evaluation is made on the premises of a subcontractor, the Consultant shall provide and require his subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the Work.

ARTICLE XXII

NONCOLLUSION

- 22.01 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. If the Consultant breaches or violates this warranty, the Rail District shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

ARTICLE XXIII

POLITICAL ACTIVITY AND LOBBYING

- 23.01 No funds provided under this Contract may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State and local legislators.

ARTICLE XXIV

DEBARRED BIDDERS

- 24.01 The Consultant, including any of its officers or holders of a controlling interest, is obligated to inform the Rail District whether or not it is or has been on any debarred bidders list maintained by the United States Government. Should the Consultant be included on such a list during the performance of this study, it shall so inform the Rail District.

ARTICLE XXV

ENERGY POLICY

25.01 Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

ARTICLE XXVI

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT REQUIREMENTS

26.01 The Consultant agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and the United States Environmental Protection Agency (US EPA) requirements (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants, or loans, of facilities included on the US EPA list for Violating Facilities. The Consultant shall report violations to FTA and the US EPA Assistant Representative for Enforcement (ENO329).

ARTICLE XXVII

COMPLIANCE WITH LAWS

27.01 The Consultant shall comply with all Federal, State, and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this contract, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Consultant shall furnish the Rail District with satisfactory proof of its compliance therewith.

ARTICLE XXVIII

SUCCESSORS AND ASSIGNS

28.01 The Rail District and the Consultant each binds itself, its successors, executors, assigns and administrators to the other party to this Contract and to the successors, executors, assigns and administrators of such other party in respect to all covenants of this Contract. Neither the Rail District nor the Consultant shall assign, sublet, or transfer his/her interest in this Contract without written consent of the other.

ARTICLE XXIX

SIGNATORY WARRANTY

29.01 The undersigned signatory for the Consultant hereby represents and warrants that he/she is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of his/her organization.

ARTICLE XXX

NOTICES

30.01 All notices hereunder shall be deemed given when, either delivered in person or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the appropriate party at the following address:

If to the Rail District:

If to the Consultant:

EXECUTED IN DUPLICATE ORIGINALS THIS THE _____ DAY OF _____, A.D., 200__.

Rail District

CONSULTANT

BY: _____

TITLE: _____

ATTACHMENT A
SCOPE OF WORK

ATTACHMENT B
BUDGET SUMMARY

ATTACHMENT C

BILLING DOCUMENTATION REQUIRED

<u>CHARGES</u>	<u>DOCUMENTATION REQUIRED</u>
Personnel	Personnel time sheets indicating hours worked per employee per day.
Travel	All receipts must be provided. Mileage for which an employee is reimbursed should be documented with the following information: date and purpose.
Telephone	Copies of bills received from the telephone company.
Postage	Receipts for costs incurred.
Supplies	Vouchers, receipts, requests for payment, bills received, etc. which show the items purchased, number purchased and costs. Items that are purchased and used up on a project are considered expendable and classified as supplies.

Similar documentation is needed for both the Prime consultant and all subcontractors. We must have a copy of your contract with each subcontractor on file in our office prior to reimbursing for subcontractor's work.

ATTACHMENT D

Notice to Contractors – Compliance with Title VI of the
Civil Rights Act of 1964 for Federal Aid Contracts

Document History

May 2, 2003	Procurement Policy adopted
April 7, 2006	Procurement Policy amended