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Jefferson Transit Authority

PURCHASING POLICY

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PROCUREMENT POLICY PURPOSE AND OVERVIEW

RCW 36.57.080 grants authority to Jefferson Transit Authority (JTA) to determine and prescribe requirements for purchases of goods and services.

This policy is consistent with federal and state requirements that will ensure that JTA receives the best goods and services at the most reasonable price practicable in an open, fair, and competitive manner.

SECTION 1: OBJECTIVES

The purpose of these JTA Purchasing Policies is to establish a broad framework of policies and guidelines to ensure that JTA's purchasing and contracting functions promote administrative flexibility and efficiency, while also maintaining prudent internal controls and compliance with applicable statutes and regulations.

Specific objectives include, but are not limited to the following:

- A. **Fairness and Objectivity**: Providing a fair, objective, and equitable selection and contracting environment for all individuals and firms seeking to do business or contracting with JTA.
- B. **Ensuring Reasonable Costs**: Promoting competition, and negotiating (where applicable), to ensure that JTA receives the most favorable prices and terms in its contracts.
- C. **Efficiency**: Ensuring that supplies and services are obtained efficiently and effectively.
- D. **Accountability**: Promoting accountability of contracting actions by JTA employees and encouraging employees to protect JTA's financial and other interests.
- E. **Value-Added Procurement**: Facilitating a procurement process that provides service and value to JTA in obtaining goods and services.
- F. **Ethical Standards**: Ensuring that JTA's procurement activities are implemented with the highest regard for integrity, avoidance of conflicts of interest, and consistent with applicable ethical standards.
- G. **Legal Considerations**: Complying with all applicable federal, state, and local statutes and regulations.

SECTION 2: SCOPE

- A. JTA receives funds from federal and state funding sources. JTA shall develop purchasing procedures designed to ensure compliance with applicable laws and regulations without necessarily imposing a higher standard than is necessary to ensure compliance.

Where a requirement in these Policies is based only on federal requirements, JTA may, on a case-by-case basis for non-federally funded contracts, apply a less stringent standard than

outlined in the federal requirements, provided it is otherwise consistent with applicable JTA Policies and that all State or other legal requirements are met.

Nothing in these Purchasing Policies will prevent JTA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.

B. **Included in Scope:** The following shall be governed by these Purchasing Policies:

Procuring, Purchasing, Leasing, or Renting:

- Goods, Supplies, Equipment, Materials
- Construction and Maintenance
- Consultant Services
- Architectural and Engineering (A & E) Consultant Services
- Other Services

C. **Excluded from Scope:** The following shall not be governed by these Purchasing Policies:

- Real Estate Purchase and Sale Transactions. (Surveys, appraisals, environmental assessments, and financing analyses are considered Consultant services and governed by these Purchasing Policies.)
- Business and other Insurance
- Banking services, Loan transactions, and related documents
- Sub-recipient or sub-grantee agreements and related change orders.
- Employment matters and employee benefit plans/programs

SECTION 3: POLICY ADMINISTRATION

A. The **Authority Board** is the governing body of JTA. This policy is adopted by the Board for the purposes of establishing the administrative authority of the General Manager (GM).

B. The **General Manager** is responsible for day-to-day operations of JTA involving personnel, finances, payments of invoices, facilities, real and personal property, and other assets. The GM shall retain professional staff which shall operate and manage according to directives and policy from the GM subject to review by the Board. The GM shall regularly inform and consult with the Chair of the Board, the Finance Committee, and the Board as a whole regarding significant information, business transactions and policies through methods mutually agreeable to the Board and the GM. The GM shall be responsible for the day-to-day direction and conduct of business transactions of JTA subject to the policies, limitations, and directives in this Policy.

SECTION 4: DELEGATION OF AUTHORITY

A. The following JTA employees are authorized to purchase or issue purchase orders for supplies, materials, and services up to \$3,500:

- General Manager (GM)
- Finance Manager (FM)
- Fixed/ Mobility Operations Managers
- Fleet & Facilities Manager
- Executive Assistant/Clerk of the Board
- IT Specialist
- Maintenance Clerk

B. The General Manager is delegated additional authority by the JTA Board to execute all procurement documents for goods and/or services and public works contracts up to \$25,000. The provisions of the annual adopted budget limit this procurement authority to those items in adopted budgets.

The Authority Board must approve all purchases over \$25,000.

Purchase documents not executed within the above-delegated authority may become the responsibility of the person originating the transaction.

SECTION 5: BIDDERS AND PROPOSERS

- A. Contract awards may be made only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract (49 U.S.C. Section 5325). The prospective contractor must meet the following criteria as well as any additional criteria described in the solicitation document:
- Is not debarred or suspended from Federal programs per the Excluded Parties List System or equivalent.
 - Is in compliance with applicable licensing, tax laws, and regulations,
 - Has, or can obtain, sufficient resources to perform the contract,
 - Is not, or has not recently been seriously deficient in contract performance, unless it is determined that the circumstances were beyond the bidder or proposer’s control, or unless the bidder or proposer has taken appropriate corrective action.

Purchasing shall ensure there is an IRS form W-9 (or substitute form) on file prior to payment to a vendor.

Prior to the award of any public works contract, Purchasing shall ensure and document that the low bidder meets the mandatory bidder responsibility criteria included in **RCW 39.04.350**. Additionally, JTA may develop supplemental bidder criteria as part of construction bidding documents, which include relevant, specific, and objective qualification requirements for the contractor or sub-contractors that may be used in evaluating whether a contractor is a responsible bidder capable of performing the proposed work.

SECTION 6: CONTRACT DURATION

- A. **Competition:** As a government agency and stewards of the public's money, JTA acknowledges the importance of competition to ensure it receives the best quality of goods and services at the most competitive prices. JTA also acknowledges the importance of spreading public contracting opportunities to the larger business community.
- B. **Efficiency:** JTA acknowledges that longer-term contracts are often beneficial to both the business community and JTA in that they reduce costs necessary to conduct frequent solicitation processes, enable the business community to gain proficiency and knowledge in meeting JTA's needs, and afford economies of financial return for the business community.
- C. **Fairness:** In order to ensure fairness and meet the expectations of the business community, the length of any JTA contract shall be limited to the time specified in the advertised solicitation. JTA shall generally not extend a contract beyond the advertised period, except for good and sufficient reasons as approved by General Manager.
- D. **Length of Contracts:** The following shall govern the length of JTA contracts:
- Generally, a supply or service contract shall be established for one to three years, with options to extend the contract for up to a total of five years. The decision on the length of a contract shall be determined on a case-by-case basis, provided that Purchasing approves the contract length.
 - Solicitation documents and contracts shall include language about the anticipated length of a particular procurement.
- E. **Contract Extensions:**
Price Negotiations: Contracts shall generally include provisions outlining the process or formula to be followed in negotiating the price for an extension of a contract's original term.

SECTION 7: ENSURING REASONABLE COSTS

SECTION 7.1: GENERAL

- A. **Purpose:** The purpose of cost or price analysis is to ensure that JTA pays a reasonable price. Prices which are unreasonably low can be detrimental to JTA as they can indicate a mistake or misunderstanding regarding the work to be performed.
- B. **General:** JTA staff shall exercise their best professional judgment to evaluate the reasonableness of a proposed expenditure. **An independent cost estimate** shall be made prior to solicitations, or prior to starting contract negotiations after making a selection based on a Request for Qualifications. The estimate will be used to evaluate reasonableness or unreasonableness of price and/or the estimated costs to perform the contract.
- C. **Definitions:**

Price Analysis: A written review and evaluation of competitive prices to determine whether the proposed price is reasonable when compared with prices provided by others in the market.

- D. **Cost Analysis:** A written review and evaluation of the proposed cost elements (labor, materials, overhead) and profit of a contract, purchase order, or change order to ensure the price is reasonable. It is usually used for professional consulting and Architectural & Engineering services contracts. A Cost Analysis is necessary whenever a Price Analysis cannot be performed.
- E. **All Procurements over \$10,000 require either a Price Analysis or Cost Analysis:**
- **Small Procurements between \$10,000 and \$150,000** will generally require a Price Analysis (catalog/internet prices or quotes; see 6.2). Occasionally a Cost Analysis will be required.
 - **Public Works** contracts and Change Orders must have a Price Analysis or Cost Analysis, per **RCW 39.04.020**.
 - All **federal grant** funded procurements must have a Price Analysis or Cost Analysis, per FTA Circular 4220.1.f VI.6.
- F. **Extent of Analysis:** The requirements for ensuring reasonable costs in contracting apply to most JTA procurement activities (goods, supplies, construction, consulting, services, and contract changes). The method and degree of analysis depends upon the facts of a particular procurement situation, including the size, nature, and complexity of the contract or change order. The estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as drawings, specifications, and prior data.
- G. **When Not Required:** Transactions defined on the **Direct Payments List** in Section 16.2 of these Policies are exempt from the requirements of this Section.

SECTION 7.2: PRICE AND COST ANALYSIS

- A. An independent estimate of costs (Price Analysis or Cost Analysis) is required for procurements exceeding \$10,000 **EXCEPT:**
- Procurements made through **cooperative purchasing agreements** (i.e., WA State Department of Enterprise Services (DES) contracts) are exempt from this requirement.
 - **Direct Payments** (Section 15) are exempt from this requirement.
 - All procurements using federal funds **must have** a Price or Cost Analysis performed, even if purchases are made through cooperative agreements.

JTA staff are expected to exercise prudent and conservative judgment in evaluating the reasonableness of all proposed expenditures. The independent cost analysis will usually be prepared by JTA staff, however, an independent party may assist in evaluation of reasonableness of costs.

B. Price Analysis

Purpose: The purpose of a Price Analysis is to ensure JTA pays a reasonable price, **based on market prices**.

Accepted forms of Price Analysis techniques are:

- Comparison of catalog or market prices (internet search)
- Comparison to prior purchases
- Comparing vendor quotes
- Adequate price competition (at least 2 offerors respond satisfactorily to solicitation)
- Pricing set by law or regulation (ex: utilities)
- Comparing proposed prices with independently developed cost estimates.
- Value Analysis. This may include consideration of life cycle costs such as productivity gains, services/training provided, or efficiency gains.

C. Cost Analysis

Purpose: The purpose of the Cost Analysis is to ensure that the proposed price is reasonable. It shall include an analysis of a proposal's separate cost elements and profit compared to what the cost of the contract should be, (assuming reasonable economy and efficiency).

When Required: The following situations require a Cost Analysis:

- Price Analysis will not provide sufficient information to determine the reasonableness of the contract cost
- Sole source, including emergency, selections (unless waived by the General Manager)
- Single response to a solicitation
- Contracts based on a Request for Qualifications (A&E)
- Change orders or other modifications that change the contract amount.
- Contracts based on Formal (ITB, RFP) or Informal Solicitations where price is one of the evaluation criteria.

D. **Level of Specificity:** JTA staff (or contractor/consultant) with the relevant experience and knowledge should conduct the Cost Analysis. The analysis must have a level of specificity and independence appropriate to the contract or Change Order under review that describes what was analyzed. For any contract or Change Order subject to a Cost Analysis, JTA shall require that the Contractor/Consultant submit a cost breakdown of their price for use in evaluating reasonableness of price.

E. **Negotiation of Profit:** Profit shall be negotiated separately in all cases where there is no price competition. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

SECTION 7.3: SPECIFIC SITUATIONS

- A. **Time and Materials Contracts:** A Time and Materials contract may be used only after a determination that no other contract payment type is suitable. This is generally when the extent of work is unknown when the work is solicited.
- B. **Prohibited Contracting Methods:** “The ‘cost plus a percentage of cost’ and ‘percentage of construction cost’ methods of contracting shall not be used” (**CFR 48.1.C.102c**).

SECTION 8: PURCHASES UNDER \$10,000

- A. Micro purchase procedures are for the purchases of **goods and services under \$10,000 (General Manager must approve all purchases over \$3,500)**, as defined by FTA Circular 4220.1F Section VI. Employees are expected to use their best professional judgment when making micro-purchases and maximize JTA dollars for value. Although competition is not required, it is expected that the best possible price be obtained and that no favoritism be shown in selecting suppliers.

Micro-purchases:

- Employees shall refer to the Departmental Purchasing Standard Operating Procedures when requesting a purchase of goods or services up to \$10,000.
 - Shall be distributed equitably among qualified suppliers, service providers, consultants, and contractors.
 - Shall not be divided or reduced merely to comply with the micro-purchase limit.
 - Are exempt from FTA’s Buy America requirements.
 - Pricing shall be fair and reasonable.
- B. **All Public Works projects** are subject to Prevailing Wage rules (FTA C4220.1.f) as well as bidding and contract requirements and may only be purchased under this section if in compliance with Section 11.5.

SECTION 9: GOODS, SUPPLIES, EQUIPMENT, AND MATERIALS

SECTION 9.1: GENERAL

This Section deals primarily with the purchase of goods, supplies, equipment, materials, and ancillary services (ex: installation, maintenance packages, etc.), and is frequently referred to as “goods and supplies.”

SECTION 9.2: INFORMAL SOLICITATIONS

- A. **Definition:** 41 USC Section 403(11) specifies that procurements costing \$150,000 or less qualify as “small purchases” that are not subject to formal advertising as part of the selection process. While these procurements may be conducted under less formal selection procedures, obtaining and comparing competitive prices from more than one vendor

represents good public policy, and is required for the purchase of all goods, supplies, equipment, and materials costing \$10,000 or more.

B. Evaluation Criteria:

- Generally, price shall be used as the primary evaluation criterion.
- The geographic location of vendors submitting bids may not be used as an evaluation criterion.

C. Department Responsibilities:

- Department Managers are responsible for ensuring that Procurement Employees develop and provide a clear and accurate description of the technical requirements of the item(s) to be purchased.
- Department Managers shall ensure that product descriptions on Purchase Orders do not unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall describe minimum essential characteristics and standards to which it must conform to satisfy its intended use. Detailed product specifications should be avoided where practicable. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product, or service. The specific features of the named brand which must be met shall be clearly stated.
- For purchases of \$10,000 or more, Department Managers shall have a Price Analysis performed, generally by comparing prices from vendors. If a Price Analysis cannot be performed, an Independent Cost Estimate must be developed for bids or quotations.

D. Finance Manager Responsibilities: Finance Manager shall:

- Review Purchase Orders submitted to ensure that they have been approved by an individual with sufficient Approval Authority.
- Review Purchase Orders to ensure that the goods are described in sufficient detail to price the item(s).
- Review anticipated procurements to identify whether they should be purchased through informal or formal solicitation requirements.

E. Informal Solicitation Requirements:

- To ensure adequate and sufficient competition in obtaining goods and supplies over \$10,000, at least three vendors must be solicited or prices compared. Under special circumstances and for good and sufficient reasons, Finance Manager may approve solicitation of just two vendors.
- Price quotations may be received orally, by fax, e-mail, internet search, or other means. The decision about whether to request and receive price quotations orally or in writing shall be made by Purchasing based on the complexity of the solicitation. Simple solicitations may be handled orally or through an internet search, while more complex ones should be handled in writing. Solicitations and responses for goods which must be manufactured or assembled specifically for JTA, or for which installation is a component, should generally be in writing.

- When soliciting goods valued at \$10,000 or more, Purchasing shall allow sufficient time for vendors to prepare and submit their prices.

F. Price or Cost Analysis:

- Department Managers shall ensure that an adequate Price Analysis or Cost Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 6). A copy of the completed Price Analysis or Cost Analysis will be placed in the procurement file.

G. Non-Competitive Procurements:

- Refer to Section 14.2 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

H. Informal Solicitation Threshold:

- An informal solicitation may be used for buying goods and supplies that will cost \$150,000 or less. A contract, single or multi-year, based on an informal solicitation shall not exceed \$150,000 (including change orders, transportation, and sales tax).
- If goods and supplies in excess of \$150,000 are required under a contract based on an informal solicitation a competitive selection process should be initiated immediately for those goods and supplies. The General Manager may extend the existing contract if termination would adversely affect JTA business operations and the Board of Directors shall be notified of the extension.

SECTION 9.3: INVITATION TO BID

A. **Definition:** An Invitation to Bid (ITB) is a formally advertised and competitive selection process used for obtaining **goods and supplies that will cost more than \$150,000** (41 USC Section 403(11)), where award is made based on the lowest price submitted by a responsible bidder with a responsive bid.

B. **When to use ITBs: Generally, vendors providing goods, supplies, equipment, materials, and some services should be selected based on competitive bids. If the following criteria are met, an ITB should be utilized:**

- The amount of the procurement, including any potential change orders, transportation, and sales tax will cost more than \$150,000.
- A complete, adequate, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the work.
- The project lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on the basis of price.
- An ITB is NOT appropriate when the project does not lend itself to a firm-fixed price contract approach. An ITB would not be appropriate for fleet vehicles, projects where aesthetics are variable and important, and other projects with subjective criteria.

C. Evaluation Criteria:

- Price shall be the evaluation criterion used, provided the bid is submitted by a responsible bidder with a responsive bid
- The geographic location of vendors submitting prices may not be used as an evaluation criterion.

D. Department Responsibilities:

- Department Managers are responsible for ensuring that Procurement Employees develop and write the following for an ITB:
 - Detailed, clear, and accurate description of the product and/or scope of work.
 - Evaluation criteria indicating price is the only selection criteria.
 - List of items to be submitted with the bid.
- Department Managers shall ensure that product descriptions in ITBs do not unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, state minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided where practicable. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product, or service. The specific features of the named brand which must be met shall be clearly stated.
- Department Managers shall ensure that an Independent Cost Estimate is developed for obtaining goods and supplies, provided however, that for standard, commercially available items, the purpose of an Independent Cost Estimate is fulfilled by obtaining and comparing prices from vendors (Price Analysis), and no separate Independent Cost Estimate shall be required.

E. Finance Manager Responsibilities: Finance Manager shall:

- Review and approve each ITB before it is sent to vendors to ensure that it is clear, consistent with requirements, that the goods are described in sufficient detail to price the item(s), and promotes competition.
- Review Purchase Orders submitted to ensure that they have been approved by an individual with sufficient Approval Authority.
- Ensure Procurement Employee Advertises all ITBs.
- Review anticipated annual procurements to identify whether they should be purchased through informal or formal solicitation requirements.

F. Solicitation Requirements:

- ITBs will be publicly advertised in the *appropriate newspaper; Municipal Research and Service Center (MSRC) rosters; or other media as appropriate.*
- ITBs should be advertised and available for review by vendors for a sufficient length of time to prepare and submit bids.
 - The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed or goods provided, and the complexity of the procurement.

- Generally, it is expected that ITBs will be advertised and available for review by vendors for **21 calendar** days before bids are due. However, dependent upon the particular procurement, Purchasing may determine that adequate competition and preparation and submission of bids may be accomplished in a shorter period of time, and the 21 calendar day guideline may be adjusted appropriately.
- Finance Manager, in consultation with the applicable Department Manager, shall make the final decision on the length of time an ITB is advertised.

G. Evaluation and Award:

- Price shall be used as the evaluation criterion. This shall be identified in the ITB.
- Department Managers shall ensure that a Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 6).
- Refer to Section 15.2 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

F. Federal Contract Provisions

Federally funded contracts shall contain, where applicable, contract language required by 49 CFR 19.48 and Appendix A to Part 19, FTA Circular 4220.1.f Section IV, including these items:

- Contract type
- Cost rates and restrictions
- Civil rights,
- Environmental protection,
- Audit requirements
- Breach of Contract
- Termination of Contract
- Claims and litigation
- Settlements and Court and Arbitration awards (C4220.1.f VII(5))
- EEO Requirements: Executive Order 11246, entitled ‘Equal Employment Opportunity,’ as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR 60)
- Copeland “Anti-Kickback” Act: 18 U.S.C. 874 as supplemented in Department of Labor regulations 29 CFR 3.
- Davis-Bacon Act: 40 U.C. 276a as supplemented by Department of Labor regulations 29 CFR 5
- Contract Work Hours and Safety Standards Act (40 USC. 327-330) as supplemented by Department of Labor regulations (29 CFR 5).
- Restrictions on Lobbying: Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR 20.
- Debarment and Suspension: Parties listed on GSA’s debarment list are excluded from participation in federal contracts.
- Third party contracts shall contain provisions extending FTA and State requirements to subcontractors.

SECTION 10: CONSULTANT, OTHER SERVICES AND PROJECTS

SECTION 10.1: GENERAL

- A. **Consultants** provide advice, creative design, recommendations, reports, analyses, evaluations, audits, surveys or other products of cognitive processes or expert or professional services. *Consultants providing architectural, engineering, landscape architectural, or land surveying services are considered A & E Consultants, addressed in Section 11.*
- B. **Service Providers** perform non-consultant work including ongoing management of programs and provision of services. Examples of Service Providers include but are not limited to: armored car service, messengers, services performing routine maintenance, etc. One distinguishing feature of Service Providers is that the work they perform is not normally subject to federal or state prevailing wage requirements.
- C. **Other Projects:** Certain procurements are not appropriate for an ITB as it is not reasonable to define or have knowledge of all possible specifications. Software, technology, or rolling stock are examples of procurements that are appropriately purchased through an RFP. Purchase criteria involves multiple factors with price as only one criteria.
- D. **Terminology:** For ease of reading, this Section will refer to Consultants, Service Providers, and other project offerors as Consultants.
- E. A Two Step Procurement procedure, described in Section 13, may be used for these procurements.

SECTION 10.2: INFORMAL SOLICITATIONS (UNDER \$150,000)

- A. **Definition:** 41 USC Section 403(11) specifies that procurements costing \$150,000 or less qualify as “small purchases,” and are not subject to formal advertising as part of the selection process.
- B. **Informal Solicitation Threshold:** An informal solicitation may be used only for those Consultant services that will cost \$150,000 or less over the life of the contract (including change orders and taxes). Based on selection through an informal solicitation process, no contract may be awarded where the contract amount and/or payments during the life of the contract exceeds \$150,000. A contract based on an informal solicitation shall not exceed \$150,000.
- C. **When to Use Informal Solicitation Process:** While procurements of \$150,000 or less may be conducted under less formal selection procedures, competition, including the use of price as one of the evaluation criteria, represents good public policy, and is required for all Consultant services costing \$25,000 or more. For small contracts under \$25,000, obtaining a price from only one Consultant is acceptable if the price received is considered reasonable. Additionally and where possible, solicitation opportunities for small contracts under \$25,000

shall be equitably distributed among the consultants on JTA's Consultant Roster Program. (JTA participates in the MRSC Consultant Roster.)

D. Evaluation Criteria

- Offers not meeting minimum qualifications will not be considered.
- Price shall be used as an evaluation criterion.
- Experience of the consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
- The geographic location of consultants submitting proposals may not be used as an evaluation criterion.

E. Department Responsibilities

- Detailed, clear, and accurate scope of work.
- Evaluation criteria, including weighting of each criterion, with price as one of the criteria.
- List of items to be submitted with the proposal.
- Department Managers shall ensure that an Independent Cost Estimate (Section 6) is developed prior to receipt of any proposals.
- Department Managers are responsible for appointing an evaluation panel of at least three qualified members (including a chair) to review and rate proposals received. It is recommended that JTA staff be in the majority on panels that include non-JTA members.

F. Finance Manager Responsibilities

- Establish standard JTA informal solicitation documents.
- Review and approve each informal solicitation before it is sent to consultants to ensure that it is clear, consistent with requirements, and promotes competition.
- Review contracts annually to identify whether they should be purchased through informal or formal solicitation requirements.

G. Informal Solicitation Requirements

- In order to ensure adequate and sufficient competition in obtaining consultant services, at least three consultants should be solicited. Under special circumstances and for good and sufficient reasons, purchasing may approve solicitation of just two consultants.
- The requirements and responses relating to most informal solicitations shall be in writing between JTA and the consultants.
- Informal solicitations should be available for review by consultants for a sufficient length of time to provide consultants with adequate time to prepare and submit proposals.
- Procurement Procedures shall outline requirements for receipt of proposals, including, but not limited to, proposal submission, the means of solicitation and proposal submission (electronic or hard copy), and deadlines for submission.

H. Evaluation and Award:

- Evaluation criteria shall be included in the informal solicitation.
- The evaluation panel appointed by the Department Manager shall evaluate proposals received based only on the established criteria.
- The Department Manager and Procurement Employee will jointly develop a written negotiation position. JTA shall enter into negotiations with the highest ranked consultant in an effort to execute a Contract. If negotiations are unsuccessful, JTA may proceed to negotiate with the next highest ranked Consultant.
- Department Managers shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (see Section 6 of these Policies for further information). The Price Analysis or Cost Analysis must be in writing for all contracts of \$25,000 or more.
- Contracts based on an informal solicitation shall normally be either based on a fixed-price, cost-reimbursement, or unit price model.

I. **Federal Contract Provisions:** See Section 9.3.7 below.

J. **Non-Competitive Procurements:** Refer to Section 15.2 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

SECTION 10.3: REQUESTS FOR PROPOSALS (OVER \$150,000)

A. **Definition:** A Request for Proposals (RFP) is a formally advertised and competitive selection process used to obtain consultant services more than \$150,000, and where the evaluation and selection of a Consultant cannot be based on price alone, but is based on established criteria that include price and other factors.

B. Evaluation Criteria:

- Price shall be used as an evaluation criterion.
- Experience of the consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
- The geographic location of Consultants submitting proposals may not be used as an evaluation criterion.

C. Department Responsibilities:

- Department Managers are responsible for ensuring that Procurement Employees develop and write the following for an RFP:
- Detailed, clear, and accurate scope of work.
- Evaluation criteria, with price as one of the criteria.
- List of items to be submitted with the proposal.
- Department Managers shall ensure that an Independent Cost Estimate is developed for the work.
- Specify in the RFP whether a pre-proposal conference will be held.
- Department Managers are responsible for appointing an evaluation panel of at least three qualified members, one designated as the chair, to review and rate proposals

received. Generally, it is in JTA's best interests for JTA staff to hold the majority position on panels that include non-JTA members.

D. Finance Manager Responsibilities: Finance Manager shall:

- Establish standard RFP documents to be used throughout JTA.
- Ensure Procurement Employee Advertises RFP.
- Review and approve each RFP before it is made available to consultants to ensure that it is clear, consistent with requirements, and promotes competition.
- Distribute the RFP and addenda.
- Arrange the pre-proposal conference, if specified in the RFP.
- Receive proposals submitted in response to RFPs.
- Serve as coordinator/facilitator of the evaluation panel, as needed.
- Prepare the Contract based on negotiations.
- Review contracts annually to identify whether they should be purchased through informal or formal solicitation requirements.

E. Solicitation Requirements:

- RFPs will be publicly advertised in the appropriate newspaper, MSRC Consultant Roster, or other media, as appropriate.
- RFPs should be advertised and available for review by consultants for a sufficient length of time to provide consultants with adequate time to prepare and submit proposals.
 - RFPs will usually be advertised and available for review by consultants for 21 calendar days before proposals are due. For a particular procurement, Department Manager may determine that adequate competition and preparation and submission of proposals may be accomplished in a shorter period of time, and the 21 calendar day guideline adjusted appropriately. The length of time can be based on factors, including but not limited to, the estimated dollar value, the complexity of the work, and the extent of developing a proposal or project approach versus merely providing information about qualifications, experience, and availability.
 - Purchasing, consulting with the applicable Department Manager, shall make the final decision on how long an RFP is advertised.
- Procurement Procedures shall outline requirements for receipt of proposals, including, but not limited to, proposal addressee, means of solicitation and proposal submission, and deadlines for submission.

F. Evaluation and Award:

- Evaluation criteria and the relative weight of each criterion shall be included in the RFP.
- Proposers not meeting minimum qualifications will not be considered.
- The evaluation panel appointed by the Department Manager shall evaluate proposals received based only on the established criteria and upon the proposal submitted.
- JTA shall enter into negotiations with the highest ranked consultant in an effort to execute a Contract. If negotiations are unsuccessful, JTA may proceed to negotiate with the next highest ranked Consultant.

- Department Managers shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 6).
- JTA may reject any or all proposals.

G. **Federal Contract Provisions:** Federally funded contracts shall contain, where applicable, contract language required by 49 CFR 19.48 and Appendix A to Part 19, FTA Circular 4220.1.f Section IV; including:

- Contract type
- Cost rates and restrictions
- Civil rights,
- Environmental protection,
- Audit requirements
- Breach of Contract
- Termination of Contract
- Claims and litigation
- Settlements and Court and Arbitration awards (C4220.1.f VII(5))
- EEO Requirements: Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Dept. of Labor regulations(41 CFR 60)
- Copeland "Anti-Kickback" Act: 18 U.S.C. 874 as supplemented in Department of Labor regulations 29 CFR 3.
- Davis-Bacon Act: 40 U.C. 276a as supplemented by Department of Labor regulations 29 CFR 5
- Contract Work Hours and Safety Stds Act (40 USC. 327-330) as supplemented by Department of Labor regulations (29 CFR 5).
- Restrictions on Lobbying: Contractors who apply or bid for an award of \$150,000+ shall file certification required by 49CFR20.
- Debarment and Suspension: Parties listed on GSA's debarment list are excluded from participation in federal contracts.
- Third party contracts shall contain provisions extending FTA and State requirements to subcontractors.

H. **Non-Competitive Procurements:** Refer to Section 15.2 for information on Sole Source, Emergency, and Single Response to a solicitation.

SECTION 11: ARCHITECTURAL AND ENGINEERING (A&E) CONSULTANT SERVICES

SECTION 11.1: DEFINITIONS

A. **Cost Prohibited as a Selection Criterion:** Architectural & Engineering (A & E) Consultant Services are a subset of Consultant Services. The primary distinction between the two is that **JTA may not use cost as an evaluation criterion when selecting a firm for performing A & E work.** Instead, consistent with the requirements of RCW 39.80 and the Brooks Act (40 USC. Sections 1101-1104), the evaluation criteria must be limited to factors that relate to a

Consultant's qualifications and competence to perform the desired work. JTA must select the most highly qualified A & E Consultant to provide the services.

B. Disciplines: The following are included in A & E Consultant Services:

- **Professional Services:** Program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services (**CFR 49 Sec 5325(b)**). Landscape architectural services (**RCW 39.80.020**).
- **Related to Real Property:** Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property. 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. (**40 U.S.C. 1102**).
- **Typically Performed By:** Other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professionals (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services (**40 U.S.C. 1102**).

C. Distinguishing Between A & E Work and Non-A & E Work:

- **General:** Because price may not be used as a criterion for selection of A & E consultants, but price must be used as a one criterion for selecting other consultants, it is important to distinguish what is A & E work and what is non-A & E work. It is to JTA's advantage to use price as one criterion for selection of consultants when permitted, to ensure that JTA obtains the most value for its money.
- **Making a Determination:** Generally, A & E work and non-A & E work is based on the following:
 - If State law requires that the work in question be performed by someone licensed or registered in one of the professions cited above, then the work should be considered as A & E work and price may not be used as an evaluation criterion.
 - As defined in RCW 39.20: "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters **18.08**, **18.43**, or **18.96** RCW."
 - The mere fact that the scope of services for a particular contract is likely to be performed by, or may be performed by, someone who is licensed or registered in one of the professions cited above does not mean that the work is A & E work. To be considered A & E work, the type of service must be as defined in RCW 39.20.

JTA may not use qualifications-based procurement procedures that are not included in the A & E categories noted above.

SECTION 11.2: INFORMAL SOLICITATIONS

- A. **Cost Thresholds:** The Federal simplified acquisition threshold (41 USC 403(11)) specifies that procurements costing \$150,000 or less qualify as “small purchases” that are not subject to formal advertising as part of the selection process. However, Section 39.80 RCW requires **that A & E Consultant services be advertised**, either specifically or generally, regardless of the dollar amount.
- B. **Roster:** JTA may establish through a Request for Qualifications process a Roster of qualified A & E Consultants who may be selected for specific scopes of work under an expedited proposal submittal process (informal solicitation). In establishing such a Roster, JTA shall ensure that the Roster is maintained with current information and that there are a sufficient number of qualified A & E Consultants on the Roster to “ensure maximum open and free competition. JTA may also utilize other government rosters, such as MRSC. Projects that are estimated to cost more than \$150,000.00 over the life of the contract, including any potential change orders, must be formally advertised (Section 11.3).
- C. **Evaluation Criteria:**
- Price may not be used as an evaluation criterion.
 - Experience of the A & E Consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
 - The geographic location of A & E Consultants submitting qualifications may be used as an evaluation criterion provided that its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- D. **Department Responsibilities:**
- Department Managers are responsible for ensuring that Procurement Employees develop and write the following for a proposed informal solicitation:
 - Detailed, clear, and accurate scope of work.
 - Evaluation criteria, including weighting of each criterion. Price or cost may not be used as an evaluation criterion.
 - List of items to be submitted for evaluation.
 - Department Managers shall ensure that an Independent Cost Estimate is developed for procurements greater than \$25,000.
 - Department Managers are responsible for appointing an evaluation panel of at least two qualified members (including one person designated as the chair) to review and rate submittals received.
- E. **Finance Manager Responsibilities:** Finance Manager shall:
- Establish standard informal solicitation documents for JTA use.

- Review and approve each informal solicitation before it is released to A & E Consultants to ensure it is clear, consistent with requirements, and promotes competition.
- Assign Procurement Employee to arrange a pre-submittal conference, if needed.
- Assign Procurement Employee to serve as coordinator and facilitator of the evaluation panel, if needed.

F. Informal Solicitation Requirements:

- To ensure adequate and sufficient competition in obtaining A & E consultant services, at least 3 A & E Consultants on the appropriate Roster category must be solicited. The Department Manager and Procurement Employee shall determine whether a Request for Proposal should be used in lieu of the roster, dependent on the requirements of the work.
- Informal solicitations should be available for review by A & E Consultants for a sufficient length of time to provide them adequate time to prepare and submit qualifications.
- Informal solicitations and responses should be in writing.
- Procurement Procedures shall outline requirements for receipt of submittals, including, but not limited to, proposal addressee, the means of solicitation and submission, and submission deadlines.

G. Evaluation and Award:

- Evaluation criteria and their weight shall be included in the informal solicitation.
- The evaluation panel appointed by the Department Director shall evaluate submittals only on established criteria.
- JTA shall negotiate a contract with the most qualified firm for A&E services at a price which JTA determines is fair and reasonable. In making its determination, JTA shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature of the project (**RCW 39.80.050 (1)**). If those negotiations are unsuccessful, JTA may negotiate with the next highest ranked firm.
- Department Managers shall ensure that an adequate and sufficient Price Analysis or Cost Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 6). The Analysis must be in writing for all contracts of \$25,000 or more.
- Contracts based on an informal solicitation shall normally be either based on a fixed-price or a cost-reimbursement model.

H. Federal Contract Provisions: Federally funded contracts shall contain, where applicable, contract language required by 49 CFR 19.48 as described below in Section 11.3.

I. Non-Competitive Procurements: Refer to Section 15.2 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

SECTION 11.3: REQUEST FOR PROPOSALS (OVER \$150,000)

A. **Definition:** A Request for Qualifications (RFQ) is a formally advertised and competitive selection process used for obtaining consultant services that will cost more than \$150,000, and where the evaluation and selection of an A & E Consultant is based on the consultants' qualifications, and where price is not used as an evaluation criterion. Part of evaluating an A & E Consultant's qualifications may include an evaluation of their proposed approach for performing the work.

B. Evaluation

- **Price may not be used** as an evaluation criterion.
- Experience of the A & E Consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
- The geographic location of A & E Consultants submitting qualifications may be used as an evaluation criterion provided there are an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

C. Department Responsibilities:

- Department Managers are responsible for ensuring that Procurement Employees develop and write the following for an RFQ:
 - Detailed, clear, and accurate scope of work.
 - Evaluation criteria, including weighting of each criterion, where price is not used as one of the criteria.
 - List of items to be submitted with the qualifications.
- Department Managers shall ensure that an Independent Cost Estimate is developed for the work.
- Department Managers are responsible for appointing an evaluation panel of at least two qualified members, including a chair, to review and rate qualifications received.

D. Finance Manager Responsibilities: Finance Manager shall:

- Establish standard RFQ documents to be used throughout JTA.
- Ensure Procurement Employee advertises RFQ.
- Review and approve each RFQ before it is made available to consultants to ensure that it is clear, consistent with requirements, and promotes competition.
- Assign the Procurement Employee to serve as coordinator and facilitator of the evaluation panel, if needed.

E. Solicitation Requirements:

- RFQs should be advertised and available for review by A & E Consultants for a sufficient length of time to provide A & E Consultants with adequate time to prepare and submit qualifications.
 - The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, the degree to which JTA is requesting consultants to develop a proposal or project approach versus

merely providing information about qualifications, experience, and availability.

- Generally, it is expected that RFQs will be advertised and available for review for 21 calendar days before submittals are due. However, dependent upon the particular procurement, Purchasing may determine that adequate competition and preparation and submission of qualifications may be accomplished in a shorter period of time, and the 21 calendar day guideline may be adjusted appropriately.
- Finance Manager, in consultation with the Department Director, shall make the final decision on the length of time an RFQ is advertised.
- Procurement Procedures shall outline requirements for receipt of submittals, including, but not limited to, addressing to whom responses should be submitted, the means of solicitation and submission of responses (electronic or hard copy), and deadlines for submission.
- JTA may establish through a Request for Qualifications process a Roster of qualified A & E Consultants who may be selected for specific scopes of work under an expedited proposal submittal process. In establishing such a Roster, JTA shall ensure that the Roster is maintained with current information and that there are a sufficient number of qualified A & E Consultants on the Roster to ensure maximum open and free competition.

F. Evaluation and Award:

- Evaluation criteria shall be included in the RFQ, along with the weighting to be assigned to each criterion.
- The evaluation panel appointed by the Department Director shall evaluate submittals received based only on the established criteria
- The Department Manager and Procurement Employee shall develop a written negotiation position. JTA shall negotiate a contract with the most qualified firm for A&E services at a price which JTA determines is fair and reasonable. In making its determination, JTA shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature of the project (**RCW 39.80.050 (1)**). If those negotiations are unsuccessful, JTA may negotiate with the next highest ranked firm.
- Department Managers shall ensure that an adequate and sufficient Price Analysis or Cost Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 6).
- Contracts based on an RFQ shall normally be either based on a fixed-price or a cost-reimbursement model.

G. Federal Contract Provisions:

Federally funded contracts shall contain, where applicable, contract language required by 49 CFR 19.48 and Appendix A to Part 19, FTA Circular 4220.1.f Section IV, including these items:

- Contract type
- Cost rates and restrictions
- Civil rights,
- Environmental protection,

- Audit requirements
- Breach of Contract
- Termination of Contract
- Claims and litigation
- Settlements and Court and Arbitration awards (C4220.1.f VII(5))
- EEO Requirements: Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR 60)
- Copeland "Anti-Kickback" Act: 18 U.S.C. 874 as supplemented in Department of Labor regulations 29 CFR 3.
- Davis-Bacon Act: 40 U.C. 276a as supplemented by Department of Labor regulations 29 CFR 5
- Contract Work Hours and Safety Standards Act (40 USC. 327-330) as supplemented by Department of Labor regulations (29 CFR 5).
- Restrictions on Lobbying: Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR 20.
- Debarment and Suspension: Parties listed on GSA's debarment list are excluded from participation in federal contracts.
- Third party contracts shall contain provisions extending FTA and State requirements to subcontractors.

H. **Non-Competitive Procurements**: Refer to Section 15.2 for information on Sole Source, Emergency, and single response to a solicitation.

SECTION 12.1: CONSTRUCTION AND MAINTENANCE (Public Works)

SECTION 12.1: BIDS VS PROPOSALS

A. Bids versus Proposals

Generally, contractors for construction and maintenance projects should be selected based on competitive bids (evaluated solely upon price) instead of proposals (evaluated on price and other factors). Competitive bidding should be utilized if the following criteria are met,:

- A complete, adequate, and realistic specification is available.
- Two or more responsible bidders are willing and able to compete effectively for the work.
- The project lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price.

SECTION 12.2: SELECTION METHODOLOGIES

- A. **Design-Bid-Build** - The design-bid-build procurement method requires separate contracts for design services and for construction. If JTA elects this method, relevant provisions of **RCW 39.04** will be used to establish the minimum procedures.

- **Design Services**. Qualifications-based procurement procedures must be used for design services in compliance with **FTA Circular 4220.1.f**, Section 11 of these Procurement Policies, and applicable Federal, State and local law and regulations.
 - **Construction**. Public Works construction in Washington State does not allow competitive negotiations. This work must be solicited and awarded using an Invitation to Bid.
- B. **Design-build (49 U.S.C. Section 5325(d)(1))** procedures may be used when JTA contracts for design and construction simultaneously with a contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction. **RCW 39.10** generally restricts the use of design-build procedures to **public works projects of over \$10 million** and the agency must be approved by the WA Project Review Committee to use Design-Build. The various contract activities shall be classified as design OR construction and the estimated total value of each will be calculated. The procurement method appropriate for the services having the greatest cost shall be used:
- When **construction costs are estimated to be more than A&E costs**, qualifications-based procurement procedures may **not** be used to acquire A&E services, **unless** the FTA determines otherwise in writing or if required by State law.
 - When **A&E services are estimated to be more than construction costs**, qualifications-based procurement procedures based on the **Brooks Act**, and described in Section 10 shall be used.
- C. **Value Engineering**: Value Engineering, the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost, is one of the tasks that the Contractor may be asked to perform on a Contract.
- D. A Two Step Procurement procedure, described in Section 13, may be used for these procurements.

SECTION 12.3: SMALL WORK ROSTER (Informal Solicitation Under \$150,000)

- A. **Definition**: JTA’s Small Works Roster was established under the authority of RCW 39.04.155. JTA participates in the MRSC Small Works Roster. The Roster permits JTA to select a contractor for certain construction projects without otherwise publicly advertising the work, but by following the process outlined in State law for soliciting bids from contractors on the Roster.
- B. **Annual Advertisement**: MRSC annually publishes an advertisement identifying JTA as a participating Agency (Consistent with of State law requirements), inviting contractors to apply for the Roster. Contractors may apply to the MRSC Roster anytime during the year.
- C. **Construction projects less than \$150,000** may use the informal selection procedures of the Small Works Roster to select a contractor (no advertising required). The federal “simplified acquisition threshold” is currently set at \$150,000 (**41 USC 403(11)**). For non-federally funded

projected estimated to cost less than \$35,000, bids may be solicited from at least three contractors from the Small Works Roster using the limited public works process.

D. Specifications and Contracts:

- **Bid Guarantee:** Specifications shall indicate whether bidders must submit a bid guarantee of 5% with their bid. Projects of \$150,000 or less may waive the bid guarantee requirement and omit in bidding documents.
- **Contract Bond:** Specifications shall require the successful contractor submit a Payment and Performance Bond (Contract Bond) or a separate Payment Bond and a separate Performance Bond for 100% of the awarded contract amount. JTA may waive this requirement, for a project estimated to cost less than \$35,000, in accordance with **RCW 39.04.155**, provided that the selection is made from the Small Works Roster using the Limited Public Works Process in RCW 39.04.155 section 3.
- **Retainage:** JTA shall withhold retainage of 5% of each payment to the contractor (**RCW 60.28**). JTA may waive the requirement to withhold retainage for a project estimated to cost less than \$35,000 (RCW 39.04.155) provided that the selection is made from the Small Works Roster using the Limited Public Works Process prescribed in RCW 39.04.155 section 3. As an alternative to withholding retainage, State law permits the contractor to submit a bond in lieu of retainage.
- **Prevailing Wage: RCW 39.12:** Specifications shall require the payment of applicable prevailing wages. Contracts shall identify the wage schedule applicable to the project by including a copy of the wages or by reference. When the applicable schedule is referenced, the contract shall include instructions for accessing the wage schedule.
- **Federal Contract Provisions:** Federally funded contracts shall contain, where applicable, contract language required by **49 CFR 19.48** as described below in Section 12.4.

E. Non-Competitive Procurements: Refer to Section 15.2 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

F. Department Responsibilities:

- Department Managers are responsible for ensuring that Procurement Employees develop detailed, clear, and accurate drawings and specifications for a project to permit fair and consistent competition, or,
- Department Managers with the assistance of the Procurement Employee must review the drawings and specifications developed by an outside consultant.
- Department Managers shall ensure that the drawings and specifications do not unduly restrict competition to certain brand name products. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product, or service. The specific features of the named brand which must be met shall be clearly stated.

- Department Managers shall ensure that an Independent Cost Estimate is developed for the services sought prior to receipt of any bids.
- Department Managers are responsible for reviewing the bidder evaluation performed by the Procurement Employee to ensure that the bidder under consideration for award is a responsible bidder.

G. Finance Manager Responsibilities: Finance Manager shall:

- Review and approve each informal solicitation before it is made available to contractors to ensure that it is clear, consistent with requirements, and promotes competition.
- Ensure the procurement employee arranges the pre-bid conference, if included in the ITB.
- Ensure that only bids received by the published deadline are considered for evaluation.
- Evaluate bids for responsiveness to the specifications.
- Assist Procurement Employees in evaluating the responsibility of a bidder, and make final decision on bidder responsibility.

H. Solicitation Requirements:

Unless Finance Manager approves of an alternate solicitation method, the Small Works Roster shall be used for obtaining bids for all informal solicitations.

- Bids will be solicited consistent with the procedures in State law regarding the Small Works Roster, and with the requirements of 41 USC 403(11) for “small purchases, which requires that “price or rate quotations...be obtained from an adequate number of qualified sources”.
- Informal Solicitations should be available for review by contractors for a sufficient length of time to provide contractors with adequate time to prepare and submit their bids.
 - The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, and current general market conditions.
 - Generally, an informal solicitation will be available for review by contractors for a minimum of 5 calendar days before bids are due.
 - Finance Manager, in consultation with the applicable Department Director, shall make the final decision on the length of time an Informal Solicitation is under review by contractors.
- Notice for a pre-bid conference shall be stated in the solicitation.
- All bids received by the required deadline will be evaluated.
- Procurement Procedures shall outline requirements for receipt of bids, including, but not limited to, addressing where bids should be submitted, and deadlines for submission.

I. Evaluation and Award:

- Finance Manager shall evaluate whether the bids submitted are responsive to the specifications.

- The Department Manager and Procurement employee shall evaluate whether the bidder submitting the lowest responsive bid is a responsible bidder. Responsibility analysis includes, but is not limited to, verifying contractor compliance with the mandatory bidder responsibility requirements of **RCW 39.04.350** as well as issues related to the capability of the bidder to successfully complete the work (based on any supplemental bidder responsibility criteria that may have been established for the project).
- If a contract is to be awarded, it shall be awarded only to a responsible bidder submitting the lowest responsive bid.
- The geographic location of contractors **may not** be used as an evaluation factor.
- JTA shall reserve the right to reject any or all bids if there is a sound documented reason.
- Contracts shall be for a firm fixed-price based on either a lump sum amount or the summation of unit prices. On a unit price contract, JTA shall pay the contractor only for actual quantities installed, and so the awarded contract amount may vary from the actual amount paid to the contractor.

SECTION 12.4: FORMAL SOLICITATION (ITB)

A. **Definition:** An Invitation to Bid (ITB) method is a formally advertised competitive selection process used for obtaining construction and maintenance services that will cost more than \$150,000.

B. Specifications and Contracts:

- Each bidder must provide a **bid guarantee** equivalent to five (5%) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will honor their bid upon acceptance.
- Specifications shall require the successful contractor to submit a Payment and Performance Bond (**Contract Bond**) or a separate Payment Bond and a separate Performance Bond for 100% of the awarded contract amount.
- **Prevailing Wages:** Specifications shall require the payment of applicable prevailing wages. Contracts shall include a copy of or reference to wage rates.
- **Federal Contract Provisions:** Federally funded contracts shall contain, where applicable, contract language required by **49 CFR 19.48** and Appendix A (Part 19), **FTA Circular 4220.1.f** Sec. IV, including these items:
 - Contract type
 - Cost rates and restrictions
 - Copy of prevailing wage rates
 - Civil rights,
 - Environmental protection,
 - Audit requirements
 - Breach of Contract
 - Termination of Contract

- Claims and litigation
- Settlements and Court and Arbitration awards (**C4220.1.f** VII(5))
- EEO Requirements: Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and supplemented in Department of Labor regulations (41CFR 60)
- Copeland "Anti-Kickback" Act: 18 U.S.C. 874 as supplemented in Department of Labor regulations 29 CFR 3.
- Davis-Bacon Act: 40 U.C. 276a as supplemented by Department of Labor regulations 29 CFR 5
- Contract Work Hours and Safety Standards Act (40 USC. 327-330) as supplemented by Dept. of Labor regulations (29 CFR 5).
- Restrictions on Lobbying: Contractors applying or bidding for an award more than \$150,000 shall file certification in 49 CFR 20.
- Debarment and Suspension: Parties listed on GSA's debarment list are excluded from participation in federal contracts.
- Third party contracts shall contain provisions extending FTA and State requirements to subcontractors.

C. **Non-Competitive Procurements**: See Section 14.2 for information about Sole Source, Emergency, and Single Response to a solicitation.

D. **Department Responsibilities**:

- Department Managers are responsible for ensuring that Procurement Employees develop detailed, clear, and accurate drawings and specifications for a project to permit fair and consistent competition, or that the Procurement Employee reviews the drawings and specifications developed by an outside consultant.
- Department Managers shall ensure that the drawings and specifications do not unduly restrict competition to certain brand name products. "The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product, or service. The specific features of the named brand which must be met shall be clearly stated.
- Department Managers are responsible for reviewing the evaluation performed by the Procurement Employee of the bidder under consideration for award to ensure that the bidder is a responsible bidder.

E. **Finance Manager Responsibilities**: Finance Manager shall:

- Establish standard general conditions for construction to be used in all of JTA's construction specifications.
- Ensure the Procurement Employee advertises the solicitation opportunity.
- Review and approve the solicitation prior to release to ensure that it is clear, consistent with requirements, and promotes competition.

- Distribute solicitation documents and addenda to contractors.
- Ensure the procurement employee arranges the pre-bid conference, if specified in the ITB.
- Accept ITB bids received by the bid submittal deadline and publicly open and read bids.
- Evaluate bids for responsiveness to the specifications.
- Assist Department Managers in evaluating the responsibility of a bidder.

F. Solicitation Requirements:

- ITBs will be publicly advertised in the *appropriate newspaper* and other media, as appropriate.
- ITBs should be advertised and available for review by contractors for enough time to prepare and submit bids or proposals.
- The length of time shall be determined by various factors, including but not limited to, the estimated dollar value of the work, the complexity of the work, and general market conditions.
- While ITBs will usually be advertised and available for review by contractors for 21 calendar days before bids are due, Finance Manager may determine that adequate competition, preparation, and submission of bids may be completed in less time, and the 21 day guideline may be adjusted accordingly. Finance Manager, in consultation with the Department Director, shall determine how long a solicitation opportunity is advertised.
- Notice for a pre-bid conference shall be stated in the ITB.
- All ITB bids received by the required deadline will be publicly opened at the time and place prescribed in the invitation for bids.
- Procurement Procedures shall outline requirements for receipt of bids or proposals, including, but not limited to, addressing where bids or proposals should be submitted, and deadlines for submission.

G. Evaluation and Award:

- JTA shall evaluate whether the bids submitted are responsive to the specifications.
- JTA shall evaluate whether the bidder submitting the lowest responsive bid is a responsible bidder. Responsibility analysis includes, but is not limited to, verifying contractor compliance with the bidder responsibility requirements of RCW 39.04.350, as well as issues related to the capability of the bidder to successfully complete the work, based on supplemental bidder responsibility criteria that may have been established for the project.
- If a contract is to be awarded, it shall be awarded only to a responsible bidder submitting the lowest responsive bid.
- Geographic location of contractors **cannot** be used as evaluation criteria.
- No changes in price or other provisions of bids after opening shall be permitted unless an error is obvious. An obvious error can be clearly determined from math extensions or calculations shown in documents submitted with the bid. An error in a math extension, reported by a bidder but not shown in the bid documents, does not constitute an obvious error. Bidders are presumed to submit correct calculations and specifications.

- Immaterial irregularities in a bid may be waived by JTA as an informality.
- JTA shall reserve the right to reject any or all bids if there is a sound documented reason.
- Contracts shall be for a firm fixed-price based on either a lump sum amount or the summation of unit prices. On a unit-price contract, JTA shall only pay the contractor for actual quantities installed, so the awarded contract amount may vary from the actual amount paid to the contractor.

SECTION 12.5: PREVAILING WAGES

- A. The **hourly wages** to be paid to laborers, workers, or mechanics, on all construction projects, shall not be less than the local **prevailing wage** (RCW Ch. 39.12). Maintenance, when performed by contract, is also subject to prevailing wage requirements. When federal funds are used, a project is subject to both state prevailing wages and federal prevailing wages, and the contractor must pay the higher of the two wages for a given classification.
- B. Applicability of **Federal** Prevailing Wage Requirements: Prevailing wage requirements shall apply only to construction projects of more than \$2,000 that contain federal funds (40 USC 276a to 276a-7).
- C. Records Disclosure of Contractor Payroll Reports: Payroll reports received by JTA from contractors and subcontractors on construction projects, for the purpose of monitoring prevailing wage requirements, shall not be released to outside parties *unless* the employees' personal identifiers (e.g., name, address, social security number) are first deleted.

SECTION 13: TWO STEP PROCUREMENT PROCEDURES

- A. **Two-Step** Procurement Procedures (41 U.S.C. Section 253.m) may be used in **competitively negotiated procurements**, such as rolling stock or technology, provided the opportunity for full and open competition is retained, consistent with RCW and FTA requirements.
- B. **Step 1: Review of Technical Qualifications and Approach.** The first step is a review of the prospective offerors' technical approach to JTA's request and technical qualifications to carry out that approach. The competitive range may be narrowed to prospective offerors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- C. **Step 2: Review of Bids and Proposals Submitted by Qualified Prospective Contractors.** The second step consists of soliciting and reviewing complete proposals, including price, submitted by each prospective offeror determined to be qualified. Proposals should be solicited from at least three qualified prospective offerors, absent exceptional circumstances. Unlike qualifications-based procurement procedures required for A&E services (Section 10.1), and other contracts covered by CFR 49 Section 5325(b) discussed in Section 8 (ITBs),

proposal prices of all proposers in the competitive range are to be considered along with evaluation factors relating to qualifications and technical factors.

In the interests of efficiency, JTA may elect to obtain submittals of both steps with a single solicitation.

SECTION 14: INTERGOVERNMENTAL AGREEMENTS

- A. To promote efficiency and competition in the procurement of goods and services, the General Manager is authorized to enter into agreements with other governmental agencies and intergovernmental purchasing networks or associations. **The purpose of a cooperative intergovernmental agreement is to take advantage of a competitive selection process already conducted by another agency and save JTA the time and expense of conducting its own selection process.** In evaluating the use of a cooperative intergovernmental agreement, Finance Manager shall review the other agency's standards in the competitive selection process for reasonableness. To facilitate cooperative purchasing, JTA may include the consolidated requirements of other public entities in its procurement actions.

JTA may utilize "existing contract" rights, which are the post award use of contract rights that allows someone who was not contemplated in the original contract to purchase the same supplies and/or equipment through that contract (i.e., "piggybacking"). These purchases shall meet the requirements of **FTA Circular 4220.1.f V.7.**

Utilizing Intergovernmental Agreements does not eliminate the requirement for a Price Analysis or Cost Analysis.

JTA may purchase government excess and surplus property in lieu of purchasing new equipment and property, if project costs are significantly reduced and use is practicable and feasible.

B. **Government Competition with Private Sector**

JTA may enter into an intergovernmental agreement with other government agencies to procure goods and services when these are not available from the private sector. If the private sector also offers such goods or services, the General Manager or designee shall evaluate on a case-by-case basis what would be in the best interests of JTA, and whether to contract directly with the agency or to conduct a competitive selection process.

SECTION 15: NON-COMPETITIVE PROCUREMENTS

SECTION 15.1: PROHIBITED PRACTICES

Procurement practices that restrict competition are prohibited (49 USC Section 5325(h)). Examples of such practices, include the following:

- A. Unreasonable Requirements. Placing unreasonable requirements on firms in order for them to qualify to do business.
- B. Improper Prequalification. Using prequalification procedures that conflict with prequalification standards described in the FTA Circular 4220.1.f VI-1c.
- C. Retainer Contracts. A noncompetitive award to any person or firm on a retainer contract if that award is not for the property or services specified for delivery under the retainer contract.
- D. Excessive Bonding. Experience and Bonding: Requiring unnecessary experience and excessive bonding.
- E. Brand Name Specificity: Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement.
- F. Conflict of Interest: An organizational conflict of interest occurs when any of the following circumstances arise:
 - Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
 - Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
 - Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or proposers.
 - Arbitrary Action. Any arbitrary action in the procurement process.

SECTION 15.2: PERMISSIBLE NON-COMPETITIVE PROCUREMENTS

In certain instances and situations, the procurement of goods and services without adequate competition is permissible:

- A. **Sole Source**: The service or item is available only from a single source, based on a documented good faith review of available sources.

- B. **Emergency:** An emergency exists that seriously threatens the public health, welfare, or safety, endangers property, or would otherwise cause serious injury to JTA. This may occur through flood, earthquake, epidemic, fire, riot, equipment failure, or other event. Needs arising from this event will not permit a delay resulting from competitive solicitation.
- C. **Inadequate Competition:** After solicitation from a number of sources, only a single response is received, or competition is determined to be inadequate.
- D. **Justifications:**
- **Selection:** Department Managers shall submit in writing to Finance Manager a recommendation justifying the reasons why competitive selection requirements should be waived.
 - **Price Reasonableness:** Consistent with the requirements of Section 6, Department Managers are responsible for ensuring that a Price or Cost Analysis is prepared for all non-competitive procurements to ensure that the proposed price is reasonable.

SECTION 16: COMPETITIVE EXCEPTIONS (DIRECT PAYMENTS)

SECTION 16.1 GENERAL

- A. **Definition:** Competitive Exceptions, or Direct Payments, are **transactions which, by their nature, are impractical or impossible to competitively bid because of market or other conditions**, and are thus exempt from competitive bidding requirements. These transactions do not have to be justified as a Non-Competitive Procurement (Section 15) but may be obtained directly by an employee with adequate Approval Authority (per Section 4). Depending on the item, there may or may not be a contract or Purchase Order outlining the terms and conditions.
- B. **Modifications to Direct Payments List**
The General Manager may approve modifications to the Competitive Exceptions list without seeking approval of the Board of Directors, provided that the changes are consistent with applicable statutory and regulatory requirements and that the current list is made readily available to JTA employees.
- C. **Interpretation of Direct Payments List**
In the event of ambiguity or uncertainty as to whether an item is or is not subject to competition and whether it should be included on the Direct Payments List, the Finance Manager shall review the matter and make the final decision.

SECTION 16.2: DIRECT PAYMENT LIST

The following do not require competitive processes: (Direct Payment List) includes the following:

- Utility bills (Water, Sewer, Electricity, Gas, other regulated utilities)
- Postage and other purchases from the U.S. Postal Service
- Licenses, permits, and fees from governmental or regulatory entities
- Purchases from other governmental entities for goods or services not available from the private sector.
- Fees paid to governmental cooperative purchasing organizations.
- Charges for official JTA business on personal credit card while on JTA travel status.
- Legal services such as arbitration fees, litigation fees, witness fees, court costs, and related expenses (but not the cost of outside counsel, investigations, or related matters), when endorsed by General Counsel.
- Legal settlements of disputed matters, and judgment claims against JTA (for use only with endorsement by General Counsel).
- Payments for existing annual maintenance, service, or support agreements for computer, telecommunication-related services, and existing software license agreements.
- Travel expenses for JTA employees, program participants, volunteers, or the Board of Directors necessary to conduct JTA business.
- Training registration fees and tuition for pre-established, non-JTA specific, off-site classes, seminars, workshops, etc. for JTA employees, program participants, volunteers, and the Authority Board.
- Testing and travel expenses of employment applicants (including moving expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants. Travel expenses of job applicants must be approved by the General Manager.
- Conference and convention expenses and fees for JTA employees, program participants, volunteers, or members of the Authority Board conducting JTA business.
- Advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements and outreach, etc. (all media). This exception does not include printing, design, or graphics services.
- Freight bills, express shipping, common carriers, and delivery services.
- Honoraria and stipends.
- Insurance deductible and/or retained losses
- Taxi, public transportation, and toll fares; mileage and incidental parking expenses for employees on agency business.
- Publications, books, and subscriptions.
- Mailing lists.
- Professional association dues, fees, licenses, and certifications.
- Petty cash purchases and reimbursements less than \$200.
- Transactions not subject to these Purchasing Policies as noted in Section 2: Scope.

SECTION 17: DISADVANTAGED BUSINESS ENTERPRISE

JTA invites and encourages small and disadvantaged business enterprises to participate in the procurement process for all purchases as detailed in JTA's Disadvantaged Business Enterprise Policy/Program.

SECTION 18: CONTRACT ADMINISTRATION AND RECORDKEEPING

The JTA shall maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of contracts or purchase orders and applicable Federal, State and local requirements. All contracts shall include provisions adequate to form a sound and complete agreement.

- A. **Formal Solicitation Records** shall include, at a minimum:
- The rationale for the method of procurement
 - Proof of advertising
 - Bidder's lists with names, email and mailing addresses and telephone numbers
 - All communication with potential contractors prior to bid opening date
 - The bid opening minutes or the proposal tabulation worksheet
 - All bids or proposals received.
 - The basis for the contract price
 - The selection of contract type
 - Contractor selection or rejection, and rationale
- B. **Informal solicitation** records shall include, at a minimum:
- Rationale for procurement
 - Price analysis or cost analysis
- C. **Contract records** shall include, at a minimum::
- Vendor information
 - Award identification and notification
 - Documents recording compliance with terms, conditions, and specifications of contracts
 - Correspondence

All records shall be retained in accordance with the Record Retention Policy.

SECTION 19: PUBLIC RECORDS

- A. All procurement information generated and acquired through any of the procurement processes shall be open to public inspection following the Intent to Award a contract through either:

- The JTA Public Records Officer, in accordance with RCW 42.56
- Request to Procurement Employee after contract award. Each proposal shall be open to public inspection. JTA shall not be responsible for the protection of information marked “proprietary” submitted by proposers.

SECTION 20: PROTECTS, APPEALS, DISPUTES

- A. **Filing a Protest** An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by JTA. The protest must be submitted in writing to JTA Finance Manager, and include the following information:
- Name, address, email address, and telephone number of the protester;
 - Signature of the protester or their representative;
 - Identification of the solicitation;
 - Detailed statement of the legal and factual grounds of the protest;
 - Copies of all relevant documents; and
 - The form of relief requested.

Issues and facts not stated in the Notice of Protest will not be considered.

All communications with involved parties shall be in writing and open for public inspection.

- B. **Time for Filing a Protest.** A protest based on alleged improprieties or ambiguities in a **solicitation** must be filed at least 7 days before the due date of the bid or proposal. A protest based upon alleged improprieties in an **award** of a contract or a **proposed award** of a contract must be filed within 3 days after notification to an unsuccessful proposer or bidder that they were not selected.
- C. **Notice of Protest.** Finance Manager shall immediately give notice of a protest to the contractor if a contract has been awarded. If no award has been made, notice will be provided to all interested parties.
- D. **Stay of Award.** If a protest is filed, the award may be made unless the Finance Manager determines in writing that a
- Reasonable probability exists that the protest will be sustained; or
 - Stay of the award is not contrary to the best interests of JTA.
- E. **Review of Protests**
- **Review:** The Finance Manager shall review and investigate properly filed protests and issue a written decision to the protester.
 - **Appeal:** A Protestor may appeal the Finance Manager’s formal decision to JTA’s General Manager. The written appeal must be received by JTA within two business days after receipt of the written decision by the Protestor, or the appeal will not be considered. Properly filed appeals of the decisions of the Finance Manager shall be

reviewed and investigated by the General Manager who shall issue JTA's final decision no later than 21 days after receipt.

- F. **FTA Funded Projects** In general, FTA will not substitute its judgment for that of JTA unless the matter is primarily a Federal concern. Protests of solicitations, intent to award, or contracts funded with any FTA grants will be managed in accordance with FTA Circular 4220.1.f Ch VII guidelines.
- G. **Federal Assistance in Contract Disputes** If JTA intends to request FTA permission to use Federal assistance to support payments to a third party contractor to settle a dispute, or intends to request increased Federal assistance for that purpose, JTA must comply with the requirements pertaining to notification of FTA, documentation, audit, and other requirements set forth in FTA Circular 4220.1 VII(e).

SECTION 21: ETHICS AND CONFLICT OF INTEREST

The following rules apply to members of the JTA Authority Board (Board Member), Employees, both represented and non-represented, and the Immediate Family of Authority and Employees.

Immediate family means a spouse or domestic partner, child, child of a spouse or domestic partner, sibling, sibling of a domestic partner, brother-in-law, sister-in-law, part, parent of a spouse or domestic partner of an Employee or Board Member; a person for whom the Board Member or Employee is a legal guardian; or a person claimed as a dependent on the Board Member's or Employee's most recently filed federal income tax return.

JTA employees, officers, board members or agents are prohibited from using their positions for the purpose that constitutes or presents the appearance of person or organizational conflict of interest or personal gain.

- A. **JTA Board Members and Employees may not use their position for personal gain.** This includes seeking or agreeing to outside contracts through the influence of a JTA position, accepting compensation from someone other than JTA for performing duties of the Board Member's or Employee's position, taking action that affects a matter in which a Board Member, Employee or Immediate Family member has a personal or financial interest, or using JTA time or property for personal or financial interests.
- B. **JTA Board Members and Employees and their Immediate Family members may not accept improper gifts.** This includes presents, entertainment, travel, favors, etc. of any dollar value if a reasonable person might think it was intended to influence an individual in the performance of the duties of their job or if there might be a perception that the gift might influence a Board Member or Employee in the performance of the duties of their job.
- C. **Board Members and Employees may not improperly use or disclose information.** This includes information that could result in a benefit to a Board Member, Employee, or

Immediate Family unless the information is also available to the public. It also includes confidential information of any kind, unless disclosure is authorized by appropriate personnel or required to be disclosed by law or regulation.

- D. **No** Board Member, Employee, or Immediate Family member may have a **personal or financial interest in any JTA contract** in which that Board Member or Employee plays or may play a role in the award or administration of the contract.
- E. A Board Member or Employee **may not advise or assist** someone for compensation on any matter pending before JTA.
- F. **An Employee may not have outside employment if it is incompatible with performing JTA duties.** All outside employment or changes in outside employment must be reported to Human Resources and Finance Manager for review and approval.
- G. **Employees may not publicly endorse** a product or service without written approval by the General Manager.
- H. Employees **violating** this Ethics Section may be subject to disciplinary action, up to and including termination. Board Members violating this Ethics Section will be subject to Board action to the extent permitted by State or local law or regulations.

SECTION 22: FTA SELF-CERTIFICATION OF PROCUREMENT SYSTEM

The Finance Manager is authorized to file a self-certification with the FTA Regional Office that JTA's procurement system and procedures comply with the federal requirements and standards set forth in FTA Circular 4220.1.f. Self-certification limits mandatory FTA review of the procurements listed in Section III of FTA Circular 4220.1. The Finance Manager shall self-certify JTA's procurement system in the FTA Annual Certification/ Assurance Process or as otherwise required by FTA.

SECTION 23: WAIVER, REPEAL AND EFFECTIVE DATE

The Authority Board may waive these requirements by motion or resolution except when prohibited by federal or state law or regulation.

All former Purchasing policies and procedures are repealed upon adoption of this document. These Rules and Policies are effective when adopted by the JTA Authority Board.

SECTION 24: POLICY APPLIES TO:

The JTA Authority Board, the General Manager, all Employees, and any contractor, consultant, or vendor bidding, proposing, or contracting with JTA.

SECTION 25: APPLICABLE LAWS, REGULATIONS AND REFERENCES

A. Applicable Laws and Regulations:

- 49 CFR 19.40-19.48 – US Dept. of Transportation, Procurement
- FTA Circular C 4220.1 (current version)
- FTA Best Practices Procurement Manual
- RCW 36.57A.080 Grants Authority to Procure
- RCW 39 Public Contracts and Indebtedness
- RCW 42.56 Public Disclosure
- RCW 60.28 RCW Liens for Labor, Materials, Taxes on Public Works
- WAC 296-127 Prevailing Wages
- JTA Resolution 209-04 - Identification & Disposal of Surplus Property.
- Other laws and regulations as appropriate.

Procurement procedures and contract language adopted by the General Manager or designee must also comply with all applicable laws and regulations. JTA recognizes FTA Handbooks and Guidelines as non-regulatory, non-binding advice, except to the extent that Handbooks or Guidelines articulate statutory or regulatory requirements.

- B. Conflicts Between Policies and Other Laws or Regulations:** In the event of a conflict between these Purchasing Policies and any applicable law or regulation, the law or regulation will prevail.
- C. Changes in Laws and Regulations:** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Purchasing Policies, automatically supersede these Purchasing Policies, and Finance Manager shall make appropriate modifications to the Policies.