FORT WORTH TRANSPORTATION AUTHORITY

PROCUREMENT POLICY

Revised

SEPTEMBER 2026

TABLE OF CONTENTS

ARTICLE 1 GENERAL PROVISIONS 1
Part A - Purpose and Application 1
1-101 Purpose 1
1-102 Application 1
Part B - Definitions 1
1-201 Definitions 1
Part C - Public Access to Procurement Information 5
1-301 Public Access to Procurement Information 5
ARTICLE 2 OFFICES OF THE PROCUREMENT DEPARTMENT 6
2-101 Establishment, Appointment, and Tenure. 6
2-102 Authority and Duties 6
2-103 Delegation to Other Trinity Metro Officials. 7
2-104 Contracting Approval and Execution Requirements 7
2-105 Delegation of Authority 8
ARTICLE 3 SOURCE SELECTION AND CONTRACT FORMATION 9
Part A - Procurement Methods 9
3-101 Competitive Sealed Bidding 9
3-102 Competitive Sealed Proposals 11
3-103 Contracting for Professional Services 12
3-104 Design-Build 13
3-105 Design/Bid/Build 14
3-106 Small Purchases 14
3-107 Procurements Other Than Full and Open Competition 15
3-108 Single Bid or Proposal 18
3-109 Emergency Procurement 18
3-110 Utilization of Options (Piggybacking) 19
3-111 Joint Procurements. 19
3-112 Tag-Ons 20
3-113 Cancellation of Invitations for Bids or Requests for Proposals. 20
Part B - Bidders and Offerors 20
3-201 Responsibility of Bidders and Offerors. 20
3-202 Cost or Pricing Data 21
Part C - Contracts 23
3-301 Types of Contracts. 23

3-302 Contract Clauses and Their Administration. 25
3-303 Contract Administration. 28
3-304 Approval of Accounting System. 28
3-305 Right to Inspect. 28
3-306 Right to Audit Records. 28
3-307 Reporting of Anti-Competitive Practices. 29
3-308 Trinity Metro's Procurement Records. 29
3-309 Contractor Records. 29
ARTICLE 4 SPECIFICATIONS 31
4-101 Maximum Practicable Competition 31
4-102 Brand Name or Equal Specification 31
4-103 Brand Name Specification 32
ARTICLE 5 BID SECURITY AND BONDING 33
5-101 Bid Security 33
5-102 Contract Performance and Payment Bonds 33
5-103 Copies of Bond Forms 35
ARTICLE 6 DEBARMENT OR SUSPENSION 36
6-101 Authority to Debar or Suspend 36
6-102 Decision to Debar or Suspend 37
6-103 Notice of Decision 37
6-104 Finality of Decision 37
ARTICLE 7 COST PRINCIPLES 38
Part A - Cost / Price Analysis 38
7-101 Introduction 38
7-102 Price Analysis 38
7-103 Cost Analysis 38
7-104 Profit/Fee 39
7-105 Fiscal Responsibility 40
ARTICLE 8 PROCEDURES FOR PROTESTS AND DISPUTE RESOLUTION 41
8-101 Introduction and Purpose 41
8-102 Right to Protest Solicitation, Bid or Award 41

8-103 Procedures to Protest Solicitation, Bid, or Award 41
8-104 Dispute Resolution Procedures 42
ARTICLE 9 ASSISTANCE TO DISADVANTAGED BUSINESSES ENTERPRISES 44
9-101 Disadvantaged Business Enterprises (DBE) Policy Statement....44
ARTICLE 10 ETHICS IN PUBLIC CONTRACTING 45
10-101 Criminal Penalties....45
10-102 Conflict of Interest 45
10-103 Gratuities and Kickbacks 46
10-104 Prohibition Against Contingent Fees 46
10-105 Contemporaneous Employment Prohibited 46
10-106 Use of Confidential Information....46
10-107 Sanctions....47
10-108 Recovery of Value Transferred or Received in Breach of Ethical Standards47
10-109 Application of Ethics to Board 47
10-110 Organizational Conflicts of Interest....47
Attachment A – Delegation and Contracting Authority 49

ARTICLE 1 GENERAL PROVISIONS

Part A - PURPOSE AND APPLICATION

1-101 PURPOSE

The purpose of this Procurement Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the Fort Worth Transportation Authority (Trinity Metro), to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

1-102 APPLICATION

This Procurement Policy applies to contracts for the procurement of supplies, services, and construction entered into by Trinity Metro. It is consistent with and governed by Chapter 452, Texas Transportation Code, 2 CFR 200 and Federal Transit Administration Circular 4220.1 G, as amended, supplemented, or replaced from time to time. It shall apply to every expenditure of public funds for purchasing irrespective of the source of the funds. Nothing in this Procurement Policy shall prevent Trinity Metro from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

Part B - DEFINITIONS

1-201 DEFINITIONS

(1) Architect, Engineer or Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of Texas.

(2) 'After the Fact' Purchase**.** A type of unauthorized procurement that occurs when a Trinity Metro employee orders materials and afterwards requests the Procurement Department to issue a purchase order. Also referred to as an 'unauthorized' procurement/purchase.

(3) Authorizations and Approvals**.** Requestors must obtain the necessary authorizations and approvals based on the type of procurement being made. ATTACHMENT A- Delegation and Contracting Authority matrix establishes the authority levels and identification of employees authorized to procure goods, services and construction and/or to approve procurement requisitions.

(4) Best and Final Offer (BAFO). A formal written offer from proposers, after all negotiations are complete, which includes pricing and terms, and summarizes to what both parties have agreed.

(5) Board Action (BA). A formal written recommendation from the staff to Trinity Metro's Board of Directors to award a contract or other actions that require board approval. Procurements requiring Board approval will be submitted in this format.

(6) Board. Trinity Metro's Board of Directors.

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

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

(9) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, limited liability company, or any other private legal entity.

(10) Change Order. A written order issued by the Procurement Department and signed by the President/CEO or designee and contractor, directing the contractor to make changes authorized by the "Changes" clause of the contract.

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

(12) Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of Trinity Metro and is not a matter of public knowledge or available to the public on request.

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

(14) Contract. All types of agreements between Trinity Metro and other parties, regardless of what they may be called, for the procurement of supplies, services, or construction.

(15) Contractor. Any person having a contract with Trinity Metro or a using agency thereof.

(16) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(17) Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(18) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Procurement Policy, and a fee or profit, if any.

(19) Counsel. Legal counsel representing Trinity Metro regarding the applicable procurement or other matter, whether as a general counsel or other employee or as outside counsel retained under contract.

(20) Employee. An individual drawing a salary or wages from Trinity Metro, whether appointed or not; any uncompensated individual performing personal services for Trinity Metro, or any department, agency, commission, council, board, or any other entity established by the Board.

(21) FTA. The Federal Transit Administration.

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

(23) Invitation for Bid (IFB). All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

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

(25) President/CEO. The President and Chief Executive Officer of Trinity Metro.

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

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

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

(29) Procurement Department. Trinity Metro's Contract Administration and Procurement Department.

(30) Procurement Policy. The Fort Worth Transportation Authority (Trinity Metro) Procurement Policy as it may have been amended and is then in effect.

(31) Qualified Products List. An approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, Trinity Metro has determined will meet the applicable specification requirements.

(32) Request for Proposal (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(33) Request for Qualification (RFQ). All documents, whether attached or incorporated by reference, utilized for soliciting qualifications for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that are directly in support of, directly connected to, directly related to or lead to construction, alteration, or repair of real property.

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

(35) Responsive Bidder. A person that has submitted a bid which conforms in all material respects to the requirements set forth in the Invitation for Bid.

(36) Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

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

(38) Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land. Systems. Trinity Metro Procurement shall be authorized to utilize electronic systems to manage Procurement processes with efficiency and expediency, as needed.

(39) Using Agency. Any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this Procurement Policy.

Part C - PUBLIC ACCESS TO PROCUREMENT INFORMATION

1-301 PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a public record to the extent provided in Chapter 552, Texas Government Code and shall be available to the public as provided in such statute. Nothing in this Procurement Policy shall prevent Counsel for Trinity Metro from requesting a decision from the Attorney General of the State of Texas that certain information is confidential and not subject to public disclosure.

ARTICLE 2 OFFICES OF THE PROCUREMENT DEPARTMENT

2-101 ESTABLISHMENT, APPOINTMENT, AND TENURE.

(1) Establishment of the Position of Director of Procurement. There is hereby created the position of Director of Procurement, who shall be Trinity Metro's principal public procurement official.

(2) Appointment. The Chief Administrative Officer shall appoint, with approval by the President/CEO, the Director of Procurement, and when approved by the Chief Administrative Officer and the President/CEO, shall appoint other staff members in the Procurement Department.

(3) Tenure. The Director of Procurement shall be appointed to serve an indefinite term and may be removed from office by the Chief Administrative Officer following a showing of just cause, and upon approval of the President/CEO.

2-102 AUTHORITY AND DUTIES

(1) Principal Public Procurement Official. Except as otherwise provided herein, the Director of Procurement shall serve as the principal public procurement official for Trinity Metro and shall be responsible for the procurement of supplies, services, and construction in accordance with this Procurement Policy.

(2) Duties. In accordance with this Procurement Policy and subject to the supervision of the Chief Administrative Officer, the Director of Procurement shall:

(a) procure or supervise the procurement of all supplies, services, and construction needed by Trinity Metro;

(b) sell, trade, or otherwise dispose of surplus equipment and supplies belonging to Trinity Metro; and

(c) establish and maintain programs for specifications development, contract administration, and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.

(3) Operational Procedures. Consistent with this Procurement Policy, and with the approval of the Chief Administrative Officer the Director of Procurement may adopt operational procedures relating to the execution of his/her duties.

2-103 DELEGATION TO OTHER TRINITY METRO OFFICIALS.

(1) With the approval of the Chief Administrative Officer, the Director of Procurement may delegate authority to purchase certain supplies, services, or construction items to other Trinity Metro officials, if such delegation is deemed necessary for the effective procurement of those items. Notwithstanding the provisions of Section 2-102 (Authority and Duties), procurement authority with respect to certain supplies, service, or construction may be delegated to other Trinity Metro officials by the Chief Administrative Officer, when he/she deems such delegation necessary for the effective procurement of these supplies, services, or construction.

2-104 CONTRACTING APPROVAL AND EXECUTION REQUIREMENTS

(1) Trinity Metro will not enter into a contract, modification, change order, or make commitment unless it is made in writing and executed by a representative of Trinity Metro acting within the scope of actual authority. Trinity Metro will neither authorize nor permit a person to commence work for Trinity Metro or on behalf of Trinity Metro in contemplation of a contract prior to the execution of a written contract.

(2) Trinity Metro will not enter into a contract, modification, change order, or contract price adjustment unless sufficient funds are authorized and available for expenditure for such purposes in Trinity Metro's current budget. With respect to certain contracts exceeding $250,000, and obligating funds of future fiscal year budgets, Trinity Metro will not execute the contract unless authorized by the Board of Directors. See ATTACHMENT A- Delegation and Contracting Authority. All contract change orders must be approved using the appropriate required Change Control process.

(3) In accordance with Attachment A- Delegation and Contracting Authority, individual to whom Trinity Metro has expressly delegated the authority to make such an obligation must sign or otherwise authorize each contract or procurement action that obligates Trinity Metro to pay a Contractor.

(4) Unauthorized Procurements: Any employee, who initiates a contractual obligation (verbal or otherwise) without proper authorization, may be liable for that obligation and may be subject to disciplinary action, including suspension or termination of employment. An invoice shall not include purchase order or contract services rendered, or goods received "after the-fact".

2-105 DELEGATION OF AUTHORITY

(1) The Trinity Metro Board of Directors has authorized the President & CEO and his designees, the authority to enter into contractual obligations for the Authority and to execute contracts up to $250,000 on behalf of Trinity Metro for equipment, supplies, materials, services, and/or construction.

(2) The Procurement Department is required to conduct procurements in accordance with applicable local, state, and federal requirements, and Trinity Metro procurement policies and procedures, utilizing the best business, purchasing, and contracting practices and the highest standard of ethics.

(3) The authority delegated by the President & CEO is set forth in Attachment A-Delegation and Contracting Authority, which specifies who may authorize and execute contracts.

ARTICLE 3 SOURCE SELECTION AND CONTRACT FORMATION

Part A - PROCUREMENT METHODS

3-101 COMPETITIVE SEALED BIDDING

(1) Conditions for Use. The Competitive Sealed Bid procurement method is Trinity Metro's preferred method when precise specifications are available, two or more responsible bidders are willing and able to compete effectively, the contract will generally be a firm fixed price contract, discussions with bidders are unnecessary, and price is the determination for contract award (taking into account the due diligence for Trinity Metro making a responsive and responsible determination).

(2) Invitation for Bids. An Invitation for Bid shall be issued, and shall include non-restrictive specifications and all contractual terms and conditions applicable to the procurement.

(3) Public Notice. Public notice of the Invitation for Bid shall be given a reasonable time, not less than 15 calendar days, and prior to the date set forth therein for the opening of the bids. Such notice will include publication in a newspaper of general circulation, and/or on the website of Trinity Metro, or other generally accepted publication for bids. The public notice shall state the place, date, and time of bid opening.

(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bid. The amount of each bid, and such other relevant information as the Director of Procurement deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection in accordance with Section 1-301 (Public Access to Procurement Information).

(5) Bid Acceptance. Bids shall be unconditionally accepted electronically, as per the established electronic system method of acceptance, if requested and allowed by Trinity Metro, hard copy submissions that are date stamped prior to the submission date/time are also accepted by delivery or mail to Trinity Metro without alteration or correction, except as authorized in this Procurement Policy.

(6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the Invitation for Bid prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non- judgmental character was made, the nature of the mistake, and the bid

price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of Trinity Metro, fair competition, or full compliance with this Procurement Policy and applicable law shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(a) the mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

(b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director of Procurement.

(7) Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bid. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the Grants and Budget Director , and such bid does not exceed such funds by more than five percent, the Director of Procurement is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Board approval is required to award all contracts in which the aggregate amount in the contract is more than $250,000. Contracts of $250,000 or less may be awarded by the President/CEO, or their designee in accordance with Attachment A- Delegation and Contracting Authority as long as they are within budgeted amounts approved by the Board. The President/CEO may transfer approval authority for contracts of $250,000 or less to the Director of Procurement. If the Chairman of the Board determines a purchase in excess of $250,000 is necessary prior to Board approval, he/she may authorize the President/CEO to make the purchase. Ratification of this decision will be brought to the Board at its next regularly scheduled meeting.

(8) Contract Administration/Procurement Project Management. The Contract Administrator or Procurement Project Manager responsible for a construction project shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Contract Administrator or Procurement Project Manager shall consider Trinity Metro's requirements, its resources, and the potential contractor's capabilities. The Contract Administrator or Procurement Project Manager shall execute, and include in the contract file, a written statement setting forth the facts that led to the selection of a particular method of construction contracting management for each project.

(9) Multi-Step Sealed Bidding. When it is not practical to issue an Invitation for Bid resulting in an award based on price exclusively, an Invitation for Bid may be issued requesting the submission of unpriced technical offers to be followed by an Invitation for Bid limited to those bidders whose unpriced technical offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

3-102 COMPETITIVE SEALED PROPOSALS

(1) Conditions for Use. When the use of competitive sealed bidding is not required by applicable law and is either not practicable (the need for discussions with proposers or price alone is not a determinative) or not advantageous to Trinity Metro, a contract may be entered into by use of the competitive sealed proposals method.

(2) Request for Proposal. Proposals shall be solicited through a request for proposal.

(3) Public Notice. Adequate public notice of the Request for Proposal shall be given in the same manner as provided in subsection 3-101(3) (Competitive Sealed Bidding, Public Notice).

(4) Receipt of Proposals. Proposals may be received electronically, as per the established electronic method of acceptance, if requested and allowed by Trinity Metro, hard copy submissions that are date stamped prior to the submission date/time are also accepted by delivery or mail to Trinity Metro. No proposal shall be handled so as to permit disclosure of the identity of any proposer or the contents of any proposal to competing proposers during the process of negotiation. A register of proposals shall be prepared containing the name of each proposer, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

(5) Evaluation Factors. The Request for Proposal shall identify price and other evaluation factors that will be considered.

(6) Discussion with Responsible Proposers and Revisions to Proposals. As provided in the Request for Proposal, discussions may be conducted with responsive, responsible proposers that submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Proposers shall be afforded fair and equal treatment with respect to any opportunity for discussion, or revision of the identity of competing proposers, or of any information derived from proposals submitted by competing proposers.

(7) Award. Award shall be made to the responsive, responsible proposer whose proposal is determined in writing to be the most advantageous to Trinity Metro, taking into consideration price and the evaluation factors set forth in the Request for Proposals.

No other factors or criteria shall be used in the evaluation. If the Chairman of the Board determines a purchase in excess of $250,000 is necessary prior to Board approval, he/she may authorize the President/CEO to make the purchase. Ratification of this decision will be brought to the Board at its next regularly scheduled meeting.

The contract file shall contain the basis on which the award is made and adequate independent cost estimates documentation that established the award amount is fair and reasonable. Board approval is required to award all contracts in which the aggregate amount in the contract is more than $250,000. Contracts of $250,000 or less may be awarded by the President/CEO, or their designee in accordance with the Delegation of Authority Table in Section 2-105 as long as they are within budgeted amounts approved by the Board. The President/CEO may transfer approval authority for contracts up to $250,000 or less to the Executive Staff and/or the Director of Procurement.

3-103 CONTRACTING FOR PROFESSIONAL SERVICES

(1) Authority. Professional services will be procured in accordance with the qualification-based procurement procedures contained in 40 U.S.C. 1101, *et seq*. (the "Brooks Act") to acquire architectural and engineering services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that are directly in support of, directly connected to, related to, and/or lead to construction, alteration, or repair of real property. If the services are not directly in support of, directly connected to, related to, and/or lead to construction, alteration, or repair of real property, a **qualifications-based selection procedure shall not be used.**

(2) Solicitation Procedures.

(a) Statement of Qualifications. Persons engaged in providing the designated types of professional services may submit Statements of Qualifications and expressions of interest in providing such professional services. Trinity Metro may specify a uniform format for Statements of Qualifications. Persons may amend these statements at any time by filing a new statement.

(b) Public Announcement and Form of Request for Qualifications. Adequate notice of the need for such services shall be given by Trinity Metro through a Request for Qualifications. The Request for Qualifications shall describe the services required, and list the types of information and data required of each offeror. Qualification submissions may be received electronically, as per the established electronic method of acceptance, if requested and allowed by Trinity Metro, hard copy submissions that are date stamped prior to the submission date/time are also accepted by delivery or mail to Trinity Metro.

(c) Discussions. Trinity Metro may conduct discussions with any offeror that has submitted qualifications to determine such offeror's qualification for further consideration. Discussion shall not disclose any information derived from qualifications submitted by other offerors.

(d) Award. Award shall be made to the offeror determined in writing to be best qualified based on the evaluation factors set forth in the Request for Qualifications, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best-qualified offeror, then negotiations will be formally terminated with the selected offeror. If Statement of Qualifications were submitted by other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable. Board approval is required to award all contracts in which the aggregate amount in the contract is more than $250,000. Contracts of $250,000 or less may be awarded by the President/CEO as long as they are within budgeted amounts approved by the Board. In accordance with Attachment A-Delegation and Contracting Authority, the President/CEO may transfer approval authority for contracts of $150,000 or less to the Department Vice Presidents and contracts of $50,000 or less to the Department Senior Director, including the Director of Procurement. If the Chairman of the Board determines a purchase in excess of $250,000 is necessary prior to Board approval, he/she may authorize the President/CEO to make the purchase. Ratification of this decision will be brought to the Board at its next regularly scheduled meeting.

3-104 DESIGN-BUILD

(1) General. The design-build procurement method is a combination of design elements and construction elements that are procured simultaneously. The contract is awarded to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.

(2) Procurement Method. Separate the activities of the procurement and classify them as design or construction. Calculate the estimated total value for the design elements and the estimated total value for the construction elements. The services having the greatest value determine the procurement type. If construction costs are predominant, then a competitive negotiations or sealed bid procurement would be used for the entire procurement rather than a qualification-based Brooks Act procurement method (unless FTA determines otherwise in writing and/or required by state law adopted before August 10, 2005). If the design services are the predominant cost, then a qualifications-based procurement based on the Brooks Act will be used.

(3) Selection Processes. A design-build procurement can be structured using the following two-step process:

(a) One-Step Method. The design-build procurement can be procured in a single step.

(b) Two-Step Method. The two-step procurement process consists of:

(i) Reviewing the prospective contractors' technical qualifications and technical approach to the project. Narrow the competitive range to the contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.

(ii) The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified.

3-105 DESIGN/BID/BUILD

(1) General. The Design/Bid/Build procurement method requires separate contracts for design services and for construction. Services may be procured through means of sealed bidding or competitive negotiations (FTA C 4220.1G.VI, 3.g)

(2) Design Services. For design services, qualifications-based procurement procedures must be in compliance with applicable federal, state and local law and regulations.

(3) Construction. Qualifications-based procurement procedures may not be used for the actual construction, alteration, or repair of real property. Generally competitive procedures for the construction must be used. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

3-106 SMALL PURCHASES

(1) General. Any contract not exceeding $50,000 may be made in accordance with the small-purchase procedures authorized in this section. No procurement may be divided or reduced in size to avoid the additional procurement requirements applicable to larger acquisitions. Contract requirements shall not be artificially divided so as to constitute a small-purchase or micro-purchase under this section.

(2) Small Purchases. Greater than $10,000 to less than $50,000. Insofar as it is practical prior to the award of small purchases, no less than three qualified sources shall be solicited to submit price or rate quotations. Awards shall be made to the source offering the lowest acceptable quotation. Written determination that the price or rate is fair and reasonable, and a description of how the determination was made, shall be maintained in the purchasing records. The names of the sources submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

(3) Micro Purchases. Less than $10,000. The Director of Procurement shall adopt operational procedures for making micro purchases of less than $10,000. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased. Further, such operational procedures shall require the preparation and maintenance of written records adequate to document fair and reasonable price or rates, competition obtained, properly account for the funds expended, and facilitate an audit for the micro purchase made.

3-107 PROCUREMENT'S OTHER THAN FULL AND OPEN COMPETITION

Normally, Trinity Metro must provide for full and open competition when soliciting bids or proposals. However, under certain circumstances, Trinity Metro may conduct procurements without providing for full and open competition.

(1) When Appropriate. Trinity Metro may use noncompetitive proposals only when the procurement is inappropriate for small-purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

(a) Adequate Competition. After soliciting several sources, the specifications must be reviewed to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After a determination is made that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, Trinity Metro may determine the competition adequate. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

(b) Sole Source. When supplies or services are available from only one responsible source, and no other supplies or services will satisfy Trinity Metro's requirements, a sole source award may be made after a complete analysis, documenting that no other award is feasible.

If changes are made to an existing contract that is beyond the scope of that contract, a sole source award has been made and must be justified, and accompanied by a cost or price analysis when reasonableness is not established on another basis.

(i) Unique Capability or Availability. The property or services are available from one source if one of the conditions described below is present:

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

(B) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

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

(D) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Trinity Metro's needs.

(c) Unusual and Compelling Urgency. The number of sources from which bids or proposals are solicited can be limited when Trinity Metro has such an unusual and urgent need for the property or services that Trinity Metro would be seriously injured unless solicitations were limited. Trinity Metro may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.

(d) Authorized by FTA. Trinity Metro has been granted authority to use noncompetitive proposals but, under this authority, FTA has made the following determinations:

(i) Team, Consortium, Joint Venture, Partnership. With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a team, consortium, joint venture, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects Trinity Metro to use competition, as feasible, to select other participants in the project. Since it can

sometimes be difficult to determine whether a bidder or offeror is submitting its bid or offer as a team or other group with committed parties Trinity Metro should clarify with the bidder or offeror how other entities included in its bid or offer are to be treated.

(ii) FAR Standards. FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by 48 CFR 6.301, *et seq.* (the "FAR"). This subpart authorizes less than full and open competitive procurements in one or more of the following circumstances:

(A) Statutory Authorization or Requirement. To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.

(B) National Emergency. To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.

(C) Protests, Disputes, Claims, or Litigation. To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.

(D) Public Interest. When Trinity Metro determines that full and open competition in connection with a particular acquisition is not in the public interest.

(2) When Prohibited. Less than full and open competition is not justified based on:

(a) Failure to Plan. Trinity Metro's lack of advance planning, or

(b) Limited Availability of Federal Assistance. Concerns about the amount of federal assistance available to support the procurement (for example, expiration of federal assistance previously available for award).

(3) Procurement Procedures. When less than full and open competition is available to Trinity Metro, Trinity Metro is directed to:

(a) Potential Sources. Solicit offers from as many potential sources as is practicable under the circumstances.

(b) Sole Source Justification. If a product or service is solicited from only one source, the decision must be justified adequately in light of the applicable standards of Federal Transit Administration Circular 4220.1 G, as amended,

supplemented, or replaced from time to time. FTA expects this sole source justification to be in writing.

(c) Cost Analysis. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits (See Article 7 (Cost-Price Analysis)).

(d) Pre-award Review. Submit the proposed procurement to FTA for pre-award review if FTA so requests.

3-108 SINGLE BID OR PROPOSAL

If a single bid or single proposal is received in response to a solicitation, determine if competition was adequate. This should include a review of the specifications for undue restrictiveness, and could include a survey of potential sources that chose not to submit a bid or proposal.

(1) Adequate Competition. Competition could be adequate when the reasons for few responses were caused by conditions beyond Trinity Metro's control. Many unrelated factors beyond Trinity Metro's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, the procurement will qualify as a valid competitive award.

(2) Inadequate Competition. Competition will be inadequate when caused by conditions within Trinity Metro's control. For example, if the specifications used were unduly restrictive, competition will be inadequate.

(3) Cost/Price Analysis. A cost/price analysis must be performed (See Section 3-203 (Cost or Price Analysis) and Article 7 (Cost/Price Analysis)) to determine if the submitted cost/price is fair and reasonable. Also cost/price analysis should be performed when negotiating contract modifications.

3-109 EMERGENCY PROCUREMENT

Notwithstanding any other provisions of this Procurement Policy, the Director of Procurement may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances and costs, terms, and conditions negotiated before entering into contract award. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of contract, a listing of the item(s) procured under the contract, and the identification number of the contract files. Once the emergency period has expired, any future procurements must be converted to a non-emergency procurement and follow the standard "full and open competition" requirements.

3-110 UTILIZATION OF OPTIONS (PIGGYBACKING)

The inclusion of options in federally or locally funded procurements is not encouraged since Trinity Metro expects procurements to be limited to the amount of property and services required to meet the needs of Trinity Metro.

However, If Trinity Metro uses options (or assignment of contract rights) from another recipient, the following conditions must be met:

- If the options are for rolling stock, the original contract purchase terms cannot exceed five years, including option years, without prior FTA approval (see Federal Transit Administration Circular 4220.1 G, as amended, supplemented, or replaced from time to time).
- The grantee must have a clause in its solicitation, contract, and/or amendment that allows "assignment of options".
- The option quantities contained in the contractor's bid or offer must be evaluated along with the base amount of the contract in order to determine a contract award. Failure to evaluate options before awarding the underlying contract constitutes a sole source procurement (See Section 3-107 (Procurement's Other Than Full and Open Competition)).
- The Procurement Department must ensure the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded and conforms to the original scope.
- The Procurement Department must verify that the option price is better than current prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

The Procurement Department must have a copy of the solicitation packet from the entity awarding the options to verify the assignment of options clause is included in the contract, and if federally funded, all federally required clauses, forms and certifications were included in the original solicitation packet and have been signed by the contractor.

3-111 JOINT PROCUREMENTS.

A more desirable method of purchasing (except for the methods discussed in Sections 3-101-106 (Small Purchases)) than options would be for Trinity Metro to enter into agreements with other businesses, state governments, federal governments, or local and city governments for procurements made jointly, so long as purchases executed are in the best interest of Trinity Metro. All such purchases shall comply with this Procurement Policy, and all applicable local, state, and/or federal requirements.

The term "joint procurement" means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a state or local government

purchasing schedule, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of that contract.

Procuring supplies and services jointly with other recipients could result in better pricing through larger purchases. Joint procurements offer the advantage of being able to obtain supplies and services that may match each participating recipient's requirements better than those likely to be available through an assignment of another recipient's contract rights.

When Trinity Metro obtains supplies or services in this manner, recipients participating in the joint procurement must ensure compliance with all applicable FTA and federal requirements and include all required clauses and certifications in the joint solicitation and contract documents.

3-112 TAG-ONS.

Tag-ons (sometimes referred to as cardinal changes) are not to be used for any procurement action. Tag-ons are defined as a significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract and are not permitted for use by Trinity Metro. A change within the scope of the contract (*i.e.*, "in-scope changes") is not a tag-on or cardinal change and is permitted for use by Trinity Metro.

3-113 CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS.

Except as provided by applicable law, an Invitation for Bid, a Request for Proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for the good cause and in the best interest of Trinity Metro. The reasons for cancellation shall be made part of the contract file. Each solicitation issued by Trinity Metro shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest of Trinity Metro. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation, and where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

Part B - BIDDERS AND OFFERORS

3-201 RESPONSIBILITY OF BIDDERS AND OFFERORS.

(1) Determination of Non-Responsibility. If a bidder or offeror that otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Contract Administrator or Procurement Project Manager. For example: a firm under active litigation with

Trinity Metro for breach of contract may be considered non-responsible and/or a firm listed on the System for Award Management (SAM) as debarred. The unreasonable failure of a bidder or offeror to supply prompt information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

(2) Determination of Bidders Responsibility. Before making a contract award, the Procurement shall make a determination of a bidder or offeror being a responsible firm possessing the ability, willingness, and integrity to successfully perform under the terms and conditions of the contract. The following criteria will be used to determine responsibility:

(a) The firm has a satisfactory record of integrity and business ethics.

(b) The firm is neither debarred nor suspended from federal and/or state programs (verify using the System for Award Management (SAM) and the Texas debarment web listing).

(c) The firm is in compliance with Trinity Metro's affirmative action policy, Disadvantaged Business Enterprise (DBE) requirements, and public policy.

(d) The firm has the necessary technical, administrative, financial, and production capabilities to complete the requirements of the contract in a timely manner.

(e) The firm has a proven performance record regarding both current and past performance.

(3) Right of Disclosure. Except as required under and in compliance with the Texas Public Information Act (Chapter 552, Texas Government Code) and other applicable "open government" laws, information furnished by a bidder or offeror pursuant to this section shall not be disclosed by Trinity Metro outside of the office of the Director of Procurement, or using agency, without prior written consent by the bidder or offeror.

3-202 COST OR PRICING DATA

(1) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed $50,000 and is to be awarded by competitive sealed proposals (Section 3-102; Competitive Sealed Proposals), or Section 3-107 (Procurement's Other Than Full and Open Competition).

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

(a) the contract is based on adequate price competition;

(b) the contract price is based on established catalogue prices or market prices; or

(c) the contract price is set by law or regulation.

(3) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.

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

(a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.

(5) Certification Required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

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

(7) Advanced Payments. Advanced payments are payments made to contractors before costs are incurred. In the case of federal grant monies, Trinity Metro shall not use advance payments for third-party contracting unless prior written approval has been obtained from FTA.

(8) Progress Payments. Progress payments are payments for contract work in process, but that has not been completed. Any progress payments that are made must:

(a) Have supporting written documentation submitted with the request for payment that supports the work being invoiced (or in the case of construction, the percent of work complete); and

(b) Include in the contract adequate security for the progress payments, such as taking immediate possession of titles, obtaining a letter of credit, including a title clause that states Trinity Metro will immediately own, and such becomes property of Trinity Metro, all title to documents, plans, property, and/or intellectual property and/or anything acquired using progress payments, at the time the payment is made.

Part C - CONTRACTS

3-301 TYPES OF CONTRACTS.

(1) General Authority. Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of Trinity Metro may be used, provided that the use of the cost-plus-a-percentage-of-the-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to Trinity Metro than any other type, or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

(2) Time and Materials. The time and materials type of contract may only be used when a written determination has been made that no other contract is suitable and the contract specifies a "not-to-exceed" contract amount that the contractor shall not exceed except at the contractor's own risk.

(3) Multi-Term Contracts.

(a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of Trinity Metro, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds..

(b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:

(i) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(ii) that such a contract will serve the best interests of Trinity Metro by encouraging effective completion or otherwise promoting economies in Trinity Metro's procurement.

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

(4) Multiple Source Contracting.

(a) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order Trinity Metro's actual requirements is limited by Texas Business and Commerce Code, Section 2-306.

(b) Limitations on Use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 3-101 (Competitive Sealed Bidding), Section 3-102 (Competitive Sealed Proposals), Section 3-106 (Small Purchases), Section 3-107 (Procurement's Other Than Full and Open Competition), and Section 3-109 (Emergency Procurements), as applicable. Multiple source awards shall not be made when a single award will meet Trinity Metro's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

(i) Trinity Metro shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and

(ii) Trinity Metro shall reserve the right to take bids separately if the Director of Procurement approves a finding that the supply of service available under the contract will not meet a nonrecurring special need of Trinity Metro.

(c) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, Trinity Metro shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

(d) Determination Required. The Director of Procurement shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(e) Issuing Orders for Service. All Orders for Service shall originate in the Procurement Department. The procedures for issuing and managing Orders for Service can be found in Chapter XI of Procurements' Procedure Manual.

(5) Revenue Contracts.

A revenue contract is a contract by which Trinity Metro provides access to public transportation assets for the primary purpose of producing revenue in connection with an activity related to public transportation and/or creating business opportunities with the use of FTA-assisted property.

Since Trinity Metro typically awards a contract to an ad agency through a competitive proposal to secure advertising on Trinity Metro's rolling stock, a provision in the procurement documents and contract must stipulate that the ad agency provide an equal opportunity to all qualified advertisers to have access to the advertising opportunities on Trinity Metro's rolling stock.

The following conditions should be taken into account when the procurement and contract documents are prepared:

(a) When limited contract opportunities exist (such as several potential competitors desiring advertising opportunities on the limited space of the side of a bus), include language in the procurement and contract documents that requires a competitive process be used to award such contracts so all interested parties have an equal opportunity in obtaining limited contract opportunities; and

(b) When open contract opportunities exist (such as utility or cable companies desiring access through or over a Trinity Metro asset that has room for a substantial number of such utilities and/or cables) and Trinity Metro is willing and able to provide contracts or licenses to multiple parties (since space is available for a substantial number of such utilities and/or cables without interfering with Trinity Metro's transit operations), then competition is not necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

3-302 CONTRACT CLAUSES AND THEIR ADMINISTRATION.

(1) Contract Clauses. All Trinity Metro contracts for supplies, services, or construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Director of Procurement, after consultation with

Counsel, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

(a) the unilateral right of Trinity Metro to order, in writing, changes in the work within the scope of the contract;

(b) the unilateral right of Trinity Metro to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;

(c) variations occurring between estimated quantities of work in contract and actual quantities;

(d) defective pricing;

(e) liquidated damages: if liquidated damages are to be included because Trinity Metro expects to suffer damages through delay of contract completion, the liquidated damages must be included in the procurement/contract documents and specify how the damages will be accessed. Typically, damages are assessed on a dollar-per-day assessment with the rate and measurement determination reasonably reflecting Trinity Metro's anticipated losses. Any liquidated damages recovered from a contractor must be credited back to the project affected unless FTA permits otherwise.

(f) specified excuses for delay or nonperformance;

(g) termination of the contract for default;

(h) termination of the contract in whole or in part for the convenience of Trinity Metro;

(i) suspension of work on a construction project ordered by Trinity Metro;

(j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:

  (i) when the contract is negotiated;

  (ii) when the contractor provides the site or design; or

  (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions; and

(k) contractors working on capital projects shall give hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. § 2108) who have the

requisite skills and abilities to perform the construction work required under the contract.

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

(2) Price Adjustments.

(a) Adjustments in price resulting from the use of contract clauses required by subsection (1) of this section shall be computed in one or more of the following ways:

(i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(ii) by unit prices specified in the contract or subsequently agreed upon;

(iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(iv) in such other manner as the contracting parties may mutually agree; or

(v) in the absence of agreement by the contracting parties, by a unilateral determination by Trinity Metro of the costs attributable to the events or situations under such clauses with adjustment or profit or fee as computed by Trinity Metro and subject to the provisions of Article 8 (Procedures for Protests and Dispute Resolution).

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contracting price is subject to the provisions of Section 3-202 (Cost or Pricing Data).

(3) Standard Clauses and Their Modification. The Director of Procurement, after consultation with Counsel, may establish standard contract clauses for use in Trinity Metro contracts. If the Director of Procurement establishes any standard clauses addressing the subjects set forth in subsection (1) of this section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the solicitation.

Trinity Metro's contracts shall require each party awarded a contract to require subcontractor(s) to comply with the terms of Trinity Metro's contract including

requirements to extend those local, state and/or federally required clauses and provisions to its subcontractors at the lowest tier required.

3-303 CONTRACT ADMINISTRATION.

A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

3-304 APPROVAL OF ACCOUNTING SYSTEM.

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined by the Director of Procurement that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specified contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

3-305 RIGHT TO INSPECT.

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

3-306 RIGHT TO AUDIT RECORDS.

(1) Audit of Cost or Pricing Data. Trinity Metro may at reasonable times and places, audit the books and records of any contractor that has submitted cost or pricing data pursuant to Section 3-202 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person that receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years (or longer if required by FTA) from the date of final payment under the contract.

(2) Contract Audit. Trinity Metro shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. The contractor shall maintain such books and records for a period of three years (or longer if required by the FTA) from the date of final payment under the prime contract and by the subcontractor for a period of three years (or longer if required by the FTA) from the date of final payment under the subcontract.

3-307 REPORTING OF ANTI-COMPETITIVE PRACTICES.

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

3-308 TRINITY METRO'S PROCUREMENT RECORDS.

(1) Contracting File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for Trinity Metro in a contract file by the Contract Administrator.

(2) Retention of Procurement Records. All procurement records shall be retained and disposed of by Trinity Metro in accordance with records retention guidelines and appropriate regulations.

(3) Procurement History. 49 CFR 18.1, *et seq.* (the "Common Grant Rule") requires Trinity Metro to maintain and make available to FTA written records detailing the history of each procurement. The extent of documentation should be reasonable, *i.e.*, documentation of the procurement history should be commensurate with the size and complexity of the procurement itself. For example, a receipt or bill accompanying a $100 credit card purchase might contain all of the required information to support that procurement. Procurements that are more substantial may require extensive documentation. The written record of procurement history should include the following:

(a) Procurement Method. The procurement history should provide the rationale for the method of procurement used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.

(b) Contract Type. State the reasons for selecting the contract type used (fixed price, cost reimbursement, and so forth);

(c) Contractor Selection. State the reasons for contractor selection or rejection. Include a justification for each noncompetitive award. Include a written responsibility determination for the successful contractor; and

(d) Cost or Price. State the justification for the contract cost or price.

3-309 CONTRACTOR RECORDS.

If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

(a) requiring the contractor and subcontractors at any tier to maintain for three years (or longer if required by such federal agency) from the date of final

payment under the contract all books, documents, papers, and records pertinent to the contract; and

(b) requiring the contractor and subcontractor at any tier to provide to Trinity Metro, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purpose of examining, auditing, and copying them.

ARTICLE 4 SPECIFICATIONS

4-101 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying Trinity Metro's needs, and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications, including, but not limited to, those prepared for Trinity Metro by architects, engineers, surveyors, designers, and drafters.

Contractors who prepare specifications/scope of work or other requirements of the solicitation for Trinity Metro may be disqualified from participating in solicitation for follow-on work as prime contractor or subcontractor as to avoid an unfair competitive advantage.

4-102 BRAND NAME OR EQUAL SPECIFICATION

(1) Use. Brand name or equal specifications may be used when it is determined in writing that:

(a) no other design or performance specifications or qualified products list is available;

(b) time does not permit the preparation of another form of purchase description, not including a brand name specification;

(c) the nature of the product or the nature of Trinity Metro's requirements makes use of a brand name or equal specification suitable for the procurement; or

(d) use of a brand name or equal specification is in Trinity Metro's best interest.

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

(3) Required Characteristics. Unless the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

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

4-103 BRAND NAME SPECIFICATION

(1) Use. Since use of a brand name is restrictive of product competition, it may be used only when the identified brand name item or items will satisfy Trinity Metro's needs, as determined by the Director of Procurement, or designee thereof.

(2) Competition. An effort shall be made to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3-107 (Procurement's Other Than Full and Open Competition).

ARTICLE 5 BID SECURITY AND BONDING

5-101 BID SECURITY

Bid and performance bonds or other security may be requested for supply contracts or service contracts to protect Trinity Metro's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder's or offeror's responsibility

(1) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Procurement Department to exceed $50,000. Bid security shall be a bond provided by a surety company authorized to do business in Texas, or the equivalent in case, or otherwise supplied in a form satisfactory to Trinity Metro. Nothing herein shall prevent the requirement of such bonds on construction contracts under $50,000 when the circumstances warrant.

(2) Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.

(3) Rejection of Bids for Noncompliance with Bid Security Requirements. When the Invitation for Bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in an unsubstantial manner with the security requirements.

(4) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in subsection 3-101(6) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards); no action shall be taken against the bidder or the bid security.

5-102 CONTRACT PERFORMANCE AND PAYMENT BONDS

(1) When Required - Amounts. When a construction contract is awarded in excess of $50,000, the following bonds or security shall be delivered to Trinity Metro and shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to Trinity Metro, executed by a surety company authorized to do business in Texas or otherwise secured in a manner satisfactory to Trinity Metro, in the amount equal to 100% of the price specified in the contract; and

(b) a payment bond satisfactory to Trinity Metro, executed by a surety company authorized to do business in Texas or otherwise secured in a manner satisfactory to Trinity Metro, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance

of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

(2) Reduction of Payment Bond Amount. After notice to the Board, the Director of Procurement is authorized to reduce the amount of payment bond when a written determination is made that it is in the best interest of Trinity Metro to do so, and the reduction of bonds meet the following limits:

(a) Fifty percent of the contract price if the contract price is not more than $1 million;

(b) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(c) Two and one-half million dollars if the contract price is more than $5 million.

(3) Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of Trinity Metro to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (1) of this section.

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

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

5-103 COPIES OF BOND FORMS

Any person may request and obtain from Trinity Metro a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

ARTICLE 6 DEBARMENT OR SUSPENSION

6-101 AUTHORITY TO DEBAR OR SUSPEND

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

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) conviction under state or federal statues of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Trinity Metro's contractor;

(c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) making false certifications to any one of the federally required compliance certifications.

(e) violation of contract provisions, as set forth below, of a character which is regarded by the Director of Procurement to be so serious as to justify debarment action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be basis for debarment;

(f) any other cause the Director of Procurement determines to be so serious and compelling as to affect responsibility as a contractor, including

debarment by another governmental entity for any cause listed in this Procurement Policy; and

(g) for violation of the ethical standards set forth in Article 10 (Ethics in Public Contracting).

6-102 DECISION TO DEBAR OR SUSPEND

The Director of Procurement shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.

6-103 NOTICE OF DECISION

A copy of the decision required by Section 6-102 (Decision to Debar or Suspend) shall be mailed or otherwise furnished promptly to the debarred or suspended person.

6-104 FINALITY OF DECISION

A decision under Section 6-102 (Decision to Debar or Suspend) shall be final and conclusive unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal as provided for in Article 8.

ARTICLE 7 COST PRINCIPLES

Part A - COST / PRICE ANALYSIS

7-101 INTRODUCTION

A price or cost analysis will be made in connection with every procurement action, including contract modifications or change orders, to assure reasonableness of the pricing and/or cost. The amount of the proposed contract and the cost and time needed to accumulate the necessary data for analysis will be considered. Independent Cost Estimates (ICE) are required before receiving bids or proposals and can be used during the analysis. A determination must be made at the time of contract award that the submitted cost and/or price is fair and reasonable and the determination be in written form and made part of the contract file. Refer to 2 CFR 225.5, *et seq.* and 48 FAR 31.001, *et seq.* for a discussion of federal cost principles.

7-102 PRICE ANALYSIS

Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or the proposed profit of the individual prospective proposer/bidder whose price is being evaluated. Price analysis will be performed in a manner appropriate to the procurement by comparison of the price quotations submitted with each other, with other current quotations, with published price lists, or with other available price comparisons.

7-103 COST ANALYSIS

Cost analysis is more complex than a price analysis and should be used when price analysis alone is not sufficient in determining a fair and reasonable price. A cost analysis involves the review and evaluation of a contractor's cost or pricing data and of the factors applied in projecting from such data the estimated costs in order to form an opinion on the degree to which the contract should cost, assuming reasonable economy and efficiency. A cost analysis must be performed when an offeror is required to submit elements (*i.e.*, labor hours, overhead, materials, etc.) of the estimated cost, (*e.g.*, under professional consulting and architectural and engineering services contracts, etc.).

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

A cost analysis includes the appropriate verification of cost data, the evaluation of specific elements of costs, and the projection of this data to determine the effect of prices of such factors as the following:

- The necessity for certain costs (audit for cost that are not allowed such as entertainment, contributions or donations, company-furnished auto). See 48 FAR 31.001, *et seq.* for a comprehensive list of allowed and disallowed cost elements;
- The reasonableness of amounts estimated for the necessary costs;
- Allowances for contingencies;
- The basis used for allocations of particular overhead costs to the proposed contract; or
- The appropriateness of allocations of particular overhead costs to the proposed contract.

Include a memorandum in the contract file reflecting how the cost analysis was conducted, the factors considered in the analysis, and the judgment made.

Negotiations should utilize audited overhead data or negotiated overhead rates, when available, in connection with negotiation of all types of negotiated contracts. The purpose of such data or rates is to assure a reasonable and equitable allocation of indirect costs to individual contracts. Procurement will examine such data or rates to determine whether they include elements of cost which individually are not allocable to the contract under consideration.

7-104 PROFIT/FEE

Profit/fee will be negotiated as a separate element of the price for each contract in which there is no price competition (sole source procurements, contract modifications, or change orders) and in all cases where cost analysis is performed.

Provision for profit or fee will be determined only after the dollar amount of the fee has been established for negotiation purposes and not by applying a predetermined percentage. The amount of profit on a cost-plus-fixed-fee type contract shall not exceed ten percent of estimated cost.

The following factors shall be considered in determining profit or fee in all negotiated contracts:

- Effect of Competition. Unless competition is effective and proposals are on a firm fixed-price basis, Procurement will consider in detail the amount of estimated profit included in the price.
- Degree of Risk. If not otherwise fixed, the degree of risk assumed by the contractor shall affect the amount of profit or fee a contractor is entitled to anticipate.
- Nature of Work to be Performed. A major consideration in the determination of the amount of profit or fee, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed and any unusual demands of the contract.
- Extent of Assistance. Any extraordinary assistance rendered by Trinity Metro shall be considered in determining what constitutes a fair and reasonable profit or fee.

- Extent of Contractor's Investment. The extent of a contractor's total investment (*i.e.*, both equity and borrowed capital) in the performance of the contract shall be taken into consideration in determining the amount of the fee or profits.
- Character of Contractor's Business. Recognition shall be given to the type of business normally carried on by the contractor, the complexity of manufacturing techniques, the amount of research involved, the rate of capital turnover, and the effect of each individual procurement upon the business.
- Subcontracting. In negotiating the profit or fee, subcontracting shall be segregated for separate evaluation. Generally, when subcontractors perform a substantial amount of the work, the prime contractor shall receive a lower profit.

7-105 FISCAL RESPONSIBILITY

Every contract modification, change order, or contract price adjustment in excess of the Board Action (BA) contingency amount under a construction or service contract with Trinity Metro shall be subject to prior approval by the Board, when the modification, change order, or contract price adjustment is greater than $250,000 over the BA approved contingency amount. A report as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget will be submitted to the Board in the form of a Board Action (BA). The President/CEO may award changes of less than the BA contingency amount if sufficient funds exist within the budget of the relevant projects. The President/CEO may transfer approval authority for change orders of less than the BA contingency amount to the Director of Procurement.

ARTICLE 8 PROCEDURES FOR PROTESTS AND DISPUTE RESOLUTION

8-101 INTRODUCTION AND PURPOSE

Third-party contracts above the small purchase threshold must contain administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor. A party who submits to Trinity Metro a response to a solicitation in the form of a bid, proposal, or other response, or a party that contracts with Trinity Metro for supplies or services, expressly agrees to adjudication of its claims through the procedures set forth in this Article 8. It is Trinity Metro's policy to try to resolve all controversies by mutual agreement without litigation; therefore, the following sections contain remedies for aggrieved parties to settle all claims and causes of action prior to commencement of litigation. Nothing contained in this Article is meant to waive any governmental or sovereign immunity for claims or causes of action to which Trinity Metro is immune.

All solicitations for Trinity Metro's contracts shall contain, or be deemed to contain, the following provisions:

"By submission of a bid, proposal, offer, or quotation in response to this solicitation, the bidder or offeror agrees to submission of any dispute under this solicitation (or resulting contract) to procedures for protests and dispute resolution pursuant to Article 8 of Trinity Metro's Procurement Policy".

8-102 RIGHT TO PROTEST SOLICITATION, BID OR AWARD

Any interested party that is aggrieved or adversely affected in connection with the solicitation, bid, or award of a contract may protest to Trinity Metro and appeal any adverse decision in accordance with the provisions of this Article 8.

8-103 PROCEDURES TO PROTEST SOLICITATION, BID, OR AWARD

(1) All protests relating to advertising of solicitation notices, alleged improprieties or ambiguities in solicitation documents, deadlines, bid openings or awards, and all other solicitation, bid or award-related procedures or actions must be made in writing and submitted to the President/CEO, or designee, within ten (10) business days of (1) the bid opening for a construction contract or (2) date of award for other types of contracts. Each protest must include the following:

(a) the name and address of the protester, and the vendor it represents, if different;

(b) the identification number, reference number, or other identifying criteria specified in the solicitation documents to identify the procurement in question;

(c) a statement of the grounds for protest; and

(d) all documentation supporting the protest.

(2) A decision and response to the protest will be prepared by the President/CEO, or designee, within a reasonable time after receipt of a properly prepared written protest.

(3) Appeals of responses and decisions regarding protests must be made to the Board in writing, and must be filed with the President/CEO, or designee, with a copy to the Chairman of the Board, within ten (10) days after the response and decision regarding the original protest are issued. Written appeals shall include all information contained in the original written protest, as well as any newly discovered documentation supporting the protest that was not reasonably available to the protester when the original protest was filed. Subject to all applicable laws governing Trinity Metro, the decision of the Board regarding an appeal shall be final.

8-104 DISPUTE RESOLUTION PROCEDURES

This section contains the procedures for resolving contract disputes under any Trinity Metro contract, including but not limited to, contracts for the purchase of supplies or services, construction contracts, or solicitation or award protests. If disputes or disagreements arise, Trinity Metro is committed to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions.

(1) Trinity Metro and the contractor will attempt to resolve disputes or disagreements promptly. In order to do so, Trinity Metro and the contractor will create an issue resolution ladder which will outline initial responsibility for discussion and resolution, as well as secondary and further responsibility.

(2) If a dispute or disagreement cannot be resolved through discussions between Trinity Metro's representative and the contractor's representative as designated on the issue resolution ladder, the contractor's senior representative and Trinity Metro's senior representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than ten (10) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the senior representatives, Trinity Metro and the contractor shall exchange relevant information that will assist the parties in resolving their dispute or disagreement.

(3) If after the meeting, the senior representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules, or if the dispute or disagreement is not for a construction contract, those mediation rules most applicable to the type of contract. The mediation will be governed by and conducted

pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. The venue for any required mediation shall be Tarrant County, Texas unless otherwise agreed to by the parties.

(4) [Any claims, disputes, or controversies between the parties which have not been resolved in accordance with the procedures set forth in subsections 8-104 (1)-(3) shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) then in effect, or if the dispute or disagreement is not for a construction contract, those mediation rules most applicable to the type of contract. If the matter or matters in dispute exceed $1,000,000, then arbitration proceedings shall be held before three members of an arbitration panel selected pursuant to AAA Rules. The venue for any required arbitration shall be Tarrant County, Texas unless otherwise agreed to by the parties.]

(5) Notwithstanding the procedures identified in subsections 8-104 (1)-(4), Trinity Metro shall have the general ability and authority, when negotiating the terms and conditions of any contract to be entered into with any entity, to negotiate for the inclusion of dispute resolution procedures in such contract. Such dispute resolution procedures may vary from contract to contract, provided that, at a minimum, the procedures require that a meeting of senior representatives, mediation, and/or formal alternative dispute resolution procedures be followed before any party may file suit against, or initiate an arbitration proceeding against, Trinity Metro for an alleged breach of contract claim.

ARTICLE 9 ASSISTANCE TO DISADVANTAGED BUSINESSES ENTERPRISES

9-101 DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY STATEMENT

It is the policy of Trinity Metro that DBEs will be encouraged to participate in the procurement process. Trinity Metro has a written document that fully describes its DBE policy and program. The document is available upon request from Trinity Metro DBE Administrator and Liaison Officer, 801 Grove Street, Fort Worth, Texas 76102.

ARTICLE 10 ETHICS IN PUBLIC CONTRACTING

10-101 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of this Procurement Policy, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Article. Criminal, civil, and administrative sanctions against employees or non-employees arising under applicable laws shall not be impaired by this Procurement Policy.

10-102 CONFLICT OF INTEREST

(1) Business and Real Estate Interests. If a member of the Board owns either ten percent or more or $15,000 or more of the fair market value of a business entity that is seeking to contract with Trinity Metro, or funds received from the business entity exceed ten percent of the Board member's gross income for the previous year, the Board member shall file an affidavit stating the nature and extent of his or her interest and shall abstain from further participation in any procurement decisions affecting the business entity. If a Board member has an equitable or legal ownership interest with a fair market value of $2,500 or more in real property that Trinity Metro is considering purchasing or leasing, the Board member shall file an affidavit stating the nature and extent of his or her interest and shall abstain from participation in any decisions related to the purchase or lease of the real property by Trinity Metro.

(2) Familial Relationships. A Board member, employee, or agent of Trinity Metro may not exercise control over any decisions that could result in the hiring of or a contract with an individual who is related to the Board member, employee, or agent within the second degree of consanguinity or affinity. Regardless of the whether the Board member participates in the decision, Trinity Metro may not hire or contract with an individual who is related to a Board member within the second degree of consanguinity or affinity. Degree of consanguinity or affinity shall be determined according to the criteria set forth in Chapter 573, Government Code.

(3) Conflicts Disclosure. A bidder and a member of the Board shall be required to file a conflicts disclosure statement with Trinity Metro, in the form adopted by the Texas Ethics Commission, disclosing:

(a) any employment or other business relationship between the bidder and the Board member, or the spouse, parent, or child of the Board member, that resulted in the Board member or his or her spouse, parent, or child receiving taxable income (other than investment income) that exceeds $2,500 for the twelve-month period preceding the date on which the bidder sought to contract with Trinity Metro; and

(b) any gifts with an aggregate value of $250 or more given to a board member or his or her spouse, parent, or child during the twelve-month period preceding the date on which the bidder sought to contract with Trinity Metro.

10-103 GRATUITIES AND KICKBACKS

(1) Gratuities. It shall be unethical for any person to offer, give, or agree to give any current or former employee, or for any current or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal thereof.

(2) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in each and every contract and solicitation therefor.

10-104 PROHIBITION AGAINST CONTINGENT FEES

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

10-105 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

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

10-106 USE OF CONFIDENTIAL INFORMATION

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

10-107 SANCTIONS

(1) Trinity Metro Employees. The President/CEO may impose any one or more of the following sanctions on an employee for violations of the ethical standards in this Article:

(a) oral or written warnings or reprimands;

(b) suspension with or without pay for specified periods of time; or

(c) termination of employment.

(2) Non-Trinity Metro Employees. The Board may impose any one or more of the following sanctions on a non-Trinity Metro employee for violations of the ethical standards.

(a) written warnings or reprimands;

(b) termination of contracts; or

(c) debarment or suspension as provided in Section 6-101 (Authority to Debar or Suspend).

10-108 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

(1) General Provisions. the value of anything transferred or received in breach of the ethical standards of this Procurement Policy by employee or a non-Trinity Metro employee may be recovered from an employee and a non-Trinity Metro employee.

(2) Recovery of Kickbacks by Trinity Metro. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by Trinity Metro and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

10-109 APPLICATION OF ETHICS TO BOARD

All members of the Board shall be subject to ethical requirements as set forth in statute and as required by U.S. DOT regulations for recipients.

10-110 ORGANIZATIONAL CONFLICTS OF INTEREST

Organizational conflicts of interest could potentially occur when:

- a contractor does not provide impartial or objective assistance when advising Trinity Metro due to having a potential vested interest in the outcome of such advice.

- a contractor has an unfair advantage due to information obtained during the performance of a contract with Trinity Metro.

- a contractor develops specifications, drawings and/or recommendations in the performance of a contract with Trinity Metro that the contractor believes could lead to a future procurement by Trinity Metro.

Trinity Metro will avoid potential organizational conflicts of interest by reviewing each solicitation in order to identify a potential conflict. A statement will be included in solicitations and/or contracts stating that contractors that develop specifications, requirements, statements of works, scope of work, or invitation for bids are excluded from competing on those procurements. Each planned acquisition must be analyzed in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

ATTACHMENT A-Delegation and Contracting Authority

SIGNATORY AUTHORITY FOR C O N T R A C T EXECUTION BY TYPE OF PROCUREMENT

Competitive Solicitations Invitation for Bids (IFB) Request for Proposals (RFP) Architect-Engineer Services (RFQ)		Sole Source Award, Contract Modifications, Change Orders, or Authorization for Adjustment (AFA)	General Comments
Board Approval			
Greater than $250,000	Standard off-the-shelf supplies, materials, equipment & industry-standard services	over $250,000	1. All contracts, including modifications and Sole Source Awards, greater than $250,000 require approval by the Board of Directors, and require an approved JDE requisition prior to execution. 2. All Contract modifications or renewals that result in a aggregate amount greater than $250,000 require approval by the Board of Directors. 3. All Contract Change Orders, including contract modifications and purchase orders greater than $250,000, must include Change Control Committee approval before Board of Director approval. Acquisition of real property, regardless of the amount, must be approved by the Board of Directors. 4. All Construction services and non-standard Sole Source purchases up to $50,000 must be approved by the Department VP and/or COO in addition to the Director of Procurement. 5. All construction services and non-standard Sole Source purchases between $50,000-$250,000 must be approved by the President & CEO in addition to the Director of Procurement. NOTE: President & CEO can authorize Contract Change Orders utilizing Board approved contingency, regardless of the approved contingency dollar amounts.
Greater than $250,000	Construction services, and nonstandard supplies, materials and equipment.	Emergency: Reported to the Board at next regular scheduled meeting, if over $250,000	
President & CEO			
Up to $250,000	Standard off-the-shelf supplies, materials, equipment & industry-standard services	Sole Source Awards $100,000- $250,000 Emergency: Reported to the Board at next regular scheduled meeting, if over $250,000	
Up to $250,000	Construction services, and nonstandard supplies, materials and equipment.	10% of contract value, not to exceed $250,000	
Vice Presidents and Chief Operating and Financial Officers			
Up to $150,000	Standard off-the-shelf supplies, materials, equipment & industry-standard services	Sole Source Awards Up to $100,000	
Up to $150,000	Construction services, and nonstandard supplies, materials and equipment.	Sole Source Awards Up to $50,000	
Directors			
Up to $25,000	Standard off-the-shelf supplies, materials, equipment & industry-standard services	N/A	
Up to $25,000	Construction services, and nonstandard supplies, materials and equipment.	N/A	
Managers			
Up to $10,000	Standard off-the-shelf supplies, materials, equipment & industry-standard services	N/A	
Up to $10,000	Construction services, and nonstandard supplies, materials and equipment.	N/A	
Supervisors			
Up to $5,000	Standard off-the-shelf supplies, materials, equipment & industry-standard services	N/A	

AUTHORITY TO CONTRACT: STATUTORY REQUIREMENTS FOR FULL AND OPEN COMPETITION

All procurement transactions, regardless of dollar value, shall maximize open and free competition. Trinity Metro's enabling legislation, as amended, contains the following language from the Texas Transportation Code Chapter 452 regarding competitive bidding requirements:

Sec. 452.107. PURCHASES: COMPETITIVE BIDDING.

(a) Except as provided by Subsection (c), an authority may not award a contract for construction, services, or property, other than real property, except through the solicitation of competitive sealed bids or proposals, including the reverse auction procedure, ensuring full and open competition.
(b) The authority shall describe in a solicitation each factor to be used to evaluate a bid or proposal and give the factor's relative importance.
(c) The executive committee may authorize the negotiation of a contract without competitive sealed bids or proposals if:
  (1) the aggregate amount involved in the contract is $50,000 or less;
  (2) the contract is for construction for which not more than one bid or proposal is received;
  (3) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;
  (4) the contract is to respond to an emergency for which the public exigency does not permit the delay incident to the competitive process;
  (5) the contract is for personal or professional services or services for which competitive bidding is precluded by law; or
  (6) the contract, without regard to form and which may include bonds, notes, loan agreements, or other obligations, is for the purpose of borrowing money or is a part of a transaction relating to the borrowing of money, including:
    (A) a credit support agreement, such as a line or letter of credit or other debt guaranty;
    (B) a bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreement;
    (C) an agreement with a securities dealer or investment adviser, broker, or underwriter; and
    (D) any other contract or agreement considered by the executive committee to be appropriate or necessary in support of the authority's financing activities