

FLINT HILLS AREA TRANSPORTATION AGENCY, INC.

POLICIES AND PROCEDURES

8/16/2011

Effective Date: _____

Procurement Policy

Article I. GENERAL PROVISIONS

Section 1.01 Purposes, Rules of Construction.

- (a) Interpretation. This Code shall be construed and applied to promote the following purposes and policies.
- (b) **Purposes and Policies:**
- (i) to simplify, clarify and modernize Flint Hills Area Transportation Agency, Inc. (ATA Bus) procurement;
 - (ii) *to permit the continued development of procurement policies and practices;*
 - (iii) *to make as consistent as possible, the procurement procedures within ATA Bus;* (iv) *to provide for increased public confidence in the procedures followed in ATA Bus;* (v) *to ensure the fair and equitable treatment of all persons who deal with the ATA Bus procurement system;*
 - (vi) *to provide increased economy in ATA Bus procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds available to ATA Bus;*
 - (vii) *to foster effective broad-based competition within the free enterprise system;*
 - (viii) *to protect the financial interest of all ATA Bus patrons and funding sources;*
 - (ix) *to provide safeguards for the maintenance of a procurement system of quality and integrity.*
- (c) Singular-Plural and General Rules. In this Code, unless the context requires otherwise:
- (i) words in the singular number include the plural, and those in the plural include *the singular; and*
 - (ii) *words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.*

Section 1.02 Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of Kansas, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake or bankruptcy shall supplement the provisions of this Code.

Section 1.03 Requirement of Good Faith.

This Code requires all parties involved in the negotiation, performance, or administration of ATA Bus contracts to act in good faith.

Section 1.04 **Application of this Code.**

- (a) **General Application.** This Code applies only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a contract solicited or entered into prior to the effective date.
- (b) **Application to ATA Bus Procurement.** This Code shall apply to every expense of ATA Bus funds from all sources (local, federal or state) except as otherwise specified by ATA Bus acting through the ATA Bus Board of Directors (Board), except that this Code shall not apply to either grants, or contracts between ATA Bus and its political subdivision or other governments. Nothing in this Code or in regulations promulgated hereunder shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. This Code shall apply to all ATA Bus departments, except that the Board may permit optional use of selected portions of the regulations as the Board sees fit.
- (c) **Severability.** If any provision of this Code or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

Section 1.05 **Effective Date.**

This Code shall become effective upon adoption by the ATA Bus Board of Directors.

Section 1.06 **Definitions**

The words defined in this Section shall have the meanings set forth below whenever they appear in this Code, unless: (1) the context in which they are used clearly requires a different meaning; or (2) different definition is prescribed for a particular Article or provision.

- (a) **Advertisement for Bids** means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (b) **Bid** means an offer to furnish specified goods used for services at a specified price under specified condition.
- (c) **Business** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
- (d) **Change Order** means a written order signed by the Board of Directors, directing the contractor to make changes authorized by the Board of Directors.
- (e) **Commodity** means materials and supplies
- (f) **Construction** means the process of building, altering, repairing, improving or demolishing any structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
- (g) **Contract** means all types of ATA Bus agreements, regardless of what they may be called, for the procurement of equipment, supplies, services or construction.
- (h) **Contract Modification** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties of the contract.
- (i) **Contractor** means any person, partnership or corporation having a contract with ATA Bus.
- (j) **Cost-Reimbursement Contract** means a contract under which a contractor is reimbursed for costs which are allowable in accordance with the contract terms and the provisions of this Code, and a fee, if any.
- (k) **Data** means recorded information, regardless of form or characteristic.
- (l) **Designee** means a duly authorized representative of a person holding a superior position.
- (m) **Employee** means an individual drawing a salary from ATA Bus, whether elected or appointed.
- (n) **Established Catalog Price** means the price included in a catalog, price list, schedule or other form that:
 - (i) is regularly maintained by a manufacturer, supplier or contractor;
 - (ii) *is either published or otherwise available for inspection by customers; and*
 - (iii) *states prices at which sales are currently or were last made to buyers constituting the general buying public for the supplies or services involved.*
- (o) **Governmental Body** means any department, commission, council, board, bureau, committee, agency, corporation or other establishment or official of any city, township, county, state or nation.
- (p) **Grant** means the furnishing by the State of Kansas or the Federal Government of assistance, whether financial or otherwise, to support any ATA Bus program.
- (q) **May** denotes the permissive.
- (r) **Parts** means individual pieces of equipment already owned by ATA Bus, purchased to repair the ATA Bus owned equipment.
- (s) **Person** means any business, individual, committee, club, other organization or group of individuals.

- (t) **Procurement** means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, equipment or construction. It also includes all functions that pertain to the obtaining of any supply, service, equipment or construction, including description of requirements, selection or solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (u) **Procurement Officer** means any ATA Bus employee or official duly authorized to enter into and administer contracts, and make written determinations with respect thereto.
- (v) **Project Quantity** means a quantity of material large enough to complete an entire construction project. Material quantities needed to do maintenance work are not considered to be project quantities.
- (w) **Proposal** means putting forward an offer to provide equipment, a service, good or construction. ATA Bus selects a proposal for acceptance based on a number of predetermined criteria.
- (x) **Purchase Description** means the words used in a solicitation to describe the supplies, services or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.
- (y) **Regulation** means a governmental body's statement, having general or particular applicability and future affect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedures or practice requirements.
- (z) **Request for Proposal** means a written document wherein ATA Bus requests interested vendors to submit proposals for providing a service, good or construction as described in the Request for Proposal.
- (aa) **Responsible Bidder or Offeror** means a person who has the capability in all respects to perform fully the contract requirement, and the integrity and reliability which will assure good faith performance.
- (bb) **Responsive Bidder** means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.
- (cc) **Sealed Bids** means a bid sealed in an envelope and opened at an appointed time and place.
- (dd) **Services** means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are incidental to the required performance.
- (ee) **Shall** denotes the imperative.
- (ff) **Supplies** means all property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding land or a permanent interest in land.

Section 1.07 **Public Access to Procurement Information.**

To the extent allowed by Kansas law, procurement information shall be a public record and shall be available to the public.

Article II. SOURCE SELECTION AND CONTRACT FORMATION

Section 2.01 **Methods of Source Selection.**

Unless otherwise authorized by law, all ATA Bus contracts shall be awarded by competitive bidding, pursuant to Section 2-02 (Competitive Sealed Bidding), except as provided in:

- Section 2.03 (Competitive Proposals);**
- Section 2.04 (Small Purchases);**
- Section 2.05 (Sole Source Procurement);**
- Section 2.06 (Emergency Procurements);**
- Section 2.07 (Commodities Purchases);**
- Section 2.08 (Used Equipment Purchases);**
- Section 2.09 (Parts Purchases);**
- Section 2.10 (Competitive Selection Procedures for Non-Professional); or**
- Article IV, Procurement of Professional Services**
- Article V, Federal and State Grants**

Section 2.02 **Competitive Sealed Bidding.**

- (a) **Conditions for Use.** Contracts shall be awarded by competitive sealed bidding for all procurement except as otherwise provided in Section 2.201 (Methods of Source Selection).
- (b) **Advertisement for Bids.** An Advertisement for Bids shall be issued to all possible suppliers, local and remote, and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Efforts shall be made to solicit bids from minority and/or women-owned businesses, where available.
- (c) **Public Notice.** Adequate public notice of the Advertisement for Bids shall be given a reasonable time prior to the date set forth herein for the opening of bids, in accordance with Board of Director's requirements and/or State or Federal Law. Such notice may include publication in the official ATA Bus newspaper, a reasonable time prior to bid opening, mailed notice and notice to known vendors by FAX.
- (d) **Bid Opening.** Bids shall be opened in the presence of one or more witnesses at the time and place designated in the Advertisement for Bids. Bids over \$25,000 shall be opened by the Board of Directors. Bids under \$25,000 shall be opened by the Director and at least one other individual (Operations manager, Accountant and/or Board Member), summarized and presented to the Board with recommendations for approval. The amount of each bid, and such other relevant information as may be specified, together with the names of each bidder shall be recorded; the record and each bid shall be open to public inspection if the Board of Director's deems appropriate.
- (e) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the criteria set forth in the Advertisement for Bids, which may include criteria to determine acceptability such a inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The Advertisement for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Advertisement for Bids.
- (f) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted as decided by the Board of Directors. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of ATA Bus or fair competition shall be permitted. Except as otherwise provided, all decisions to permit the correction of bids, the withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Department Head and approval by the Board of Directors.

- (g) **Award.** The contract shall be awarded with reasonable promptness by written notice to the lowest **responsive and responsible bidder** whose bid meets the requirements and criteria set forth in the Advertisement for Bids. In the event all bids for a construction project exceed available funds as presented by the ATA Bus Treasurer, and the lowest responsive and responsible bid does not exceed such funds by more than five percent, the Board of Directors may in situations where time or economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the **lowest** responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- (h) **Multi-step Sealed Bidding.** When it is considered impractical to initially prepare a purchase description to support an award based on price, an Advertisement for Bids may be issued requesting the submission of unpriced offers to be followed by an Advertisement for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

Section 2.03 **Competitive Proposals.**

- (a) **Conditions for Use.** When the Board of Director's has determined the use of competitive proposals is advantageous to ATA Bus, a contract may be entered into by competitive sealed proposals. The Board of Director's may provide that it is either not practicable nor advantageous to ATA Bus to procure specified types of supplies, services, equipment or construction by competitive sealed bidding or competitive FAX bidding.
- (b) **Request for Proposals.** Proposals shall be solicited through a Request for Proposals.
- (c) **Public Notice.** Adequate public notice of the Request for Proposals shall be given in the manner as provided herein, with a minimum of 3 day posting, as required by KDOT.
- (d) **Receipt of Proposals.** Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A Register of Proposals shall be prepared by the ATA Bus Procurement officer and shall be open for public inspection after contract award, if the Board of Director's has deemed appropriate.
- (e) **Evaluation Factors.** The Request for Proposals shall state the relative importance of price and other evaluation factors.
- (f) **Discussion with the ATA Bus Procurement Officer and Revisions to Proposals.** As provided in the Request for Proposals, and under regulations promulgated by the Board of Directors, the Board may conduct discussions with responsible offerors. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (g) **Award.** Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to ATA Bus, taking into consideration price and the evaluation factors set forth. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

Section 2.04 **Small Purchases.**

- (a) Any non-office technology related procurement valued at less than \$5,000 may be made in accordance with small purchase procedures, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section. Small purchase procedures require the ATA Bus Executive Director and/or Operations Manager to approve any purchase ranging in size from no cost, to \$5,000. Purchases greater than \$5,000 will require pre-approval by the Board of Directors. Competitive bidding is not required for small purchases, but the purchaser will attempt to purchase the least expensive item available.
- (b) All office technology related purchases, to include, but not be limited to all hardware, software, and peripheral devices shall be ordered and purchased by the Executive Director with purchases greater than \$2,500 requiring prior approval by Board of Directors. The Executive Director shall work with the Riley County Information Systems Department in the coordination of office technology-related purchases to ensure that uniform, standardized, and necessary equipment is purchased, to obtain competitive pricing, and schedule installation of the new equipment.

Section 2.05 **Sole Source Procurement.**

A contract may be awarded for equipment, a supply, service, or construction item without competition when the Department head reports in writing there is only one source for the required supply, service or construction item.

Section 2.06 **Emergency Procurements.**

Notwithstanding any other provision of this Code the Department Head may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under any emergency condition provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the departmental purchase file.

Section 2.07 **Commodities Purchases.**

Commodities in less than project quantities such as office supplies, vehicle expenses (fuel, oil, part, etc) may be purchased at the daily posted price. Project quantities shall be competitively bid.

Section 2.08 **Used Equipment Purchases.**

When it is determined that it is in the best interest of ATA Bus, used equipment may be purchased directly from the owner of the used equipment. Price shall be determined by negotiation. Prices paid for used equipment shall not reflect a premium based on values for used equipment as published by the appropriate used equipment price guide.

Section 2.09 **Parts Purchase.**

Parts for equipment repairs may be purchased from the equipment manufacturers at the quoted prices and considered a sole source procurement. Parts shall be competitively bid when over \$5,000 if multiple parts suppliers are available.

Section 2.10 **Competitive Selection Procedures for Non-Professional Services.**

- (a) **Conditions of Use.** Non-professional services, i.e., services provided that do not require public measures of competency of the products shall be procured in accordance with this Section. Professional Services exempt from this section are: accounting, architecture, construction management, engineering, law, medicine, land use planning and surveying.
- (b) **Statement of Qualifications.** The relevant services may submit statements of interest in providing such types of services. The Executive Director and/or Operations Manager may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.
- (c) **Public Announcement and Form of Request for Proposals.** Adequate notice of the need for such services shall be given by the ATA Bus through a Request for Proposals. The Request for Proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.
- (d) **Discussions.** The Executive Director and/or Operations Manager may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (e) **Award.** Award shall be made to the offeror determined in writing by the Executive Director and/or Operations Manager to be best qualified based on the evaluation factors set forth in the Request for Proposals, 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 proposals were submitted by one or more 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 as best qualified if the amount of compensation is determined to be fair and reasonable.

Section 2.11 **Cancellation of Advertisements for Bids and Requests for Proposals.**

An Advertisement for Bids, a Request for Proposals or other solicitation may be cancelled, 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 in the best interests of ATA Bus.

Section 2.12 ACCOUNTING INFORMATION

- (a) Approval of Accounting System. Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been approved by the ATA Bus Board of Director's and it has been determined by the Executive Director and/or Operations Manager that:
- (i) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
 - (ii) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

Section 2.13 Cost or Pricing Data.

- (a) Contractor Certification. A contractor shall submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the costs or pricing data submitted were accurate, complete, and current as of a mutually determined specified date prior to the date of:
- (i) the pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source procurement authority where the total contract price is expected to exceed a maximum amount established by the purchasing department head; or
 - (ii) the pricing of any change order or contract modification which is expected to exceed an amount established by the purchasing department head.
- (b) Price Adjustment. Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to Riley County including profit or fee, shall be adjusted to exclude any significant sums by which ATA Bus finds that such price was increased because the contractor furnished costs or pricing data were inaccurate, incomplete or not current as of the date agreed upon between the parties.
- (c) **Cost or Pricing Data Not Required.** The requirements of this Section need not be applied to contracts:
- (i) where the contract price is based on adequate price competition;
 - (ii) where the contract price is based on established catalog prices or market prices;
 - (iii) where contract prices are set by law or regulation; or
 - (iv) where it is determined in writing in accordance with regulations promulgated by the Board of Directors that the requirements of this Section may be waived; and the reasons for such waiver are stated in writing.

Section 2.14 **Right to Audit Records.**

- (a) **Audit of Cost or Pricing Data.** ATA Bus may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any person who receives a change order, or contract modification for which cost or pricing data are required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.
- (b) **Contract Audit.** ATA Bus shall be entitled to audit books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

Section 2.15 **MISCELLANEOUS PROVISIONS**

- (a) **Performance Bonds.** Personal property or equipment performance bonds will be required of vendors selling personal property or equipment. The bond shall be for the amount of the purchase and shall be good for 1 year after the Board of Directors agrees to purchase the personal property or equipment.
- (b) **Types of Contracts.** Subject to the limitations of this Section, any type of contract which will promote the best interests of ATA Bus may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited unless a maximum, not to exceed amount is predetermined. A cost-reimbursement contract with a "maximum, not to exceed" may be used only when a determination is made in writing that such contract is likely to be less costly to ATA Bus than any other type; or that it is impracticable to obtain the supplies, services, equipment or construction required except under such a contract.
- (c) **Multi-Term Contracts.**
 - (i) **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 ATA Bus 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 therefore.
 - (ii) **Determination Prior to Use.** Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - 1) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - 2) that such a contract will serve the best interests of ATA Bus by encouraging effective competition.

- (iii) **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 cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized 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.*
- (d) **Right to Inspect Plant.** ATA Bus may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or contemplated to be awarded by ATA Bus.
- (e) **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 Riley County Attorney and to the Kansas Attorney General.

Section 2.16 **RECORDS**

- (a) **Retention of Procurement Records.** All procurement records shall be retained for five (5) years. All retained documents shall be made available as public records upon request.
- (b) **Record of Procurement Actions Taken.**
 - (i) **Contents of Record.** The Department Head shall maintain a record listing all *contracts made for a minimum of five years. The record shall contain:*
 - 1) each contractor's name;
 - 2) the amount and type of each contract; and
 - 3) a listing of the supplies, services or construction procured under each contract.

Article III. SPECIFICATIONS

Section 3.01 Definitions of Terms Used in this Article.

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

Section 3.02 Duties of the Board of Directors.

The ATA Bus Board of Directors may promulgate regulations governing the preparation, maintenance and content of specifications for supplies, equipment and construction required by ATA Bus.

Section 3.03 **Duties of the Executive Director and/or Operations Manager.** The Executive Director and/or Operations Manager shall prepare, issue, revise, maintain and monitor the use of specifications for supplies, services, equipment and construction required by ATA Bus.

Section 3.04 Maximum Practicable Competition.

All specifications shall seek to promote an economy purchase for the purposes intended, and shall encourage competition in the market in the process of satisfying ATA Bus's needs, and shall not be unduly restrictive.

Article IV. PROCUREMENT OF PROFESSIONAL SERVICES

Section 4.01 Definitions of Terms Used in this Article.

Accounting, Architecture, Engineering, Legal, Medical, Planning and/or Land Surveying Services are those professional services within the scope of the practice of accounting, architecture, engineering, law, planning, land surveying or medicine as defined by the laws and regulations of the State of Kansas.

Section 4.02 Professional Services.

- (a) **Applicability.** Professional services shall be procured as provided in this Section except when the cost of such services is less than \$5,000 or when a state of emergency exists.
- (b) **Policy.** It is the policy of ATA Bus to publicly announce all requirements for services and to negotiate contracts for professional services on the basis of demonstrated competence and qualification of the type of services required, and at fair and reasonable prices.
- (c) **Professional Services Selection Committee.** In the procurement of professional services, the Board of Director's shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. The Executive Director and the Board of Director's shall comprise the professional services Selection Committee for each professional services contract over \$5,000 (unless otherwise determined by the Board of Directors). The selection of professional service contractors for projects under \$5,000 shall be made by the Executive Director with final approval by the Board of Director's. The Selection Committee shall evaluate statements of qualifications submitted by firms interested in the proposed contract. The Selection Committee shall select in order of preference, based upon the published criteria, no less than two firms deemed to be the most highly qualified to provide the services required. Efforts shall be made to solicit minority and women-owned businesses, where available.

- (d) **Negotiation.** The Executive Director shall negotiate a contract with the highest qualified firm for professional services at compensation which the Board of Directors determines in writing to be fair and reasonable to ATA Bus. In making this decision, the Executive Director and the Board shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Board be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Executive Director determines to be fair and reasonable to ATA Bus, negotiations with that firm shall be formally terminated. The Executive Director shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Executive Director shall formally terminate negotiations. The Executive Director shall then undertake negotiations with the third most qualified firm. Should the Executive Director be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Executive Director shall select additional firms in order of their competence and qualifications, and the Executive Director shall continue negotiations in accordance with this Section until an agreement is reached.

Article V. FEDERAL AND STATE GRANTS

Section 5.01 **Application to ATA Bus Procurement:**

All provisions of the ATA Bus procurement policy shall be adhered to with regards to every expenditure of public funds from federal or state moneys awarded to and expended by ATA Bus. However, if the current policy does not include all provisions as required by a federal or state grant agreement, the minimum requirements of the federal or state grant agreement/contract will be adhered to, in place of the general provisions. In the event a grant agreement does not indicate additional requirements for expending federal funds, procurement must follow the general guidelines and requirements as defined in the latest *OMB Circular A-133 Audits of States and Local Governments, Not-for-Profit Organizations* and the *OMB A-133 Compliance Supplement* to ensure all federal requirements are adhered to.

Section 5.02 **Protest of Contract Award:** Anyone wishing to file a protest concerning the bid award must do so in writing. The written protest must include a detailed statement of the issues. The Flint Hills Area Transportation Agency (FHATA) - located at 5815 Marlatt Av, Manhattan, KS 66503 must receive the written protest within five (5) days of the notice of the bid award. The FHATA will issue a written decision on a timely protest within 10 business days of the receipt of the written protest. If FHATA upholds the protest, the contract award will be withheld until a solution is determined and the price bid by all firms will be held until that time. The written decision by FHATA will be considered the final decision. Reviews of any protest filed with the Federal Transit Administration will be limited to review of whether FHATA, as the grantee, failed to have or follow its protest procedures, failed to review a complaint, protest, or violated a Federal law or regulation. An appeal to the FTA must be received by the FTA Regional Office (901 Locust Street, Suite 404, Kansas City, Missouri 64106) or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Any protest filed with FTA shall also be sent to the KDOT Office of Public Transportation. Any allegation that a violation of Federal law or regulation may have occurred shall be handled by the complaint process stated within that law or regulation. Violations of State law or regulations will be handled under the jurisdiction of Kansas.

Article VI. MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

Section 6.01 Contract Clauses and Their Administration.

- (a) **Contract Clauses.** The Board of Directors may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:
- (i) the unilateral right of ATA Bus to order in writing:
 - 1) changes in the work within the scope of the contract; and
 - 2) temporary stopping of work or delaying performance; and
 - (ii) *variations occurring between estimated quantities of work in a contract and actual quantities.*
- (b) **Price Adjustments.**
- (i) Adjustments in price pursuant to this Section shall be computed in one or *more of the following ways*:
 - 1) by agreement on a fixed price adjustment before commencement of performance;
 - 2) by unit prices specified in the contract or subsequently agreed upon;
 - 3) by the costs attributable to the events or situations under such clauses with adjustments of profit for fee, all as specified in the contract or subsequently agreed upon;
 - 4) in such other manner as the contracting parties may mutually agree; or
 - 5) in the absence of agreement by the parties, by a unilateral determination by ATA Bus of the costs attributable to the events or situations under such clauses with adjustments of profit or fee, all as computed by ATA Bus.
- (c) **Additional Contract Clauses.** The Board of Directors may promulgate regulations including, but not limited to, regulations permitting or requiring the inclusion in ATA Bus contracts of clauses providing for appropriate remedies and covering the following subjects:
- (i) liquidated damages as appropriate;
 - (ii) *specified excuses for delay or non-performance;*
 - (iii) *termination of the contract for default; and*
 - (iv) *termination of the contract in whole or in part for the convenience of ATA Bus.*
- (d) **Modification of Clauses.** The Executive Director may vary the clauses promulgated by the Board of Directors under Subsection (1) and Subsection (3) of this Section for inclusion in any particular ATA Bus contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation provided the Board of Directors approves such variation and provided that notice of any such material variation be stated in the Advertisement for Bids or Request for Proposals.

FLINT HILLS AREA TRANSPORTATION AGENCY,
INC.

POLICIES AND PROCEDURES

ADOPTION

Adopted this ____ day of _____, 2011 by the Board of Directors of Flint Hills
Area Transportation Agency, Inc., Manhattan, Kansas

Board of Directors
Of Flint Hills Area Transportation Agency, Inc.

Chairman

Member

Member

AMENDED

Amended this ____ day of _____, 2011 by the Board of Directors of Flint Hills
Area Transportation Agency, Inc., Manhattan, Kansas

Board of Directors
Of Flint Hills Area Transportation Agency, Inc.

Chairman

Member

Member

FLINT HILLS AREA TRANSPORTATION AGENCY,
INC.

POLICIES AND PROCEDURES

ADOPTION

Adopted this 16th day of August, 2011 by the Board of Directors of Flint Hills
Area Transportation Agency, Inc., Manhattan, Kansas

Board of Directors
Of Flint Hills Area Transportation Agency, Inc.

Loren Oppy
Chairman

DM McNeil
Member

Bonnie L. Sutton
Member

AMENDED

Amended this 12th day of Sept., ^{2012 FLS} ~~2011~~ by the Board of Directors of Flint Hills
Area Transportation Agency, Inc., Manhattan, Kansas

Board of Directors
Of Flint Hills Area Transportation Agency, Inc.

Loren Oppy
Chairman

DM McNeil
Member

Bonnie L. Sutton
Member