

DEPARTMENT OF TRANSPORTATION SERVICES  
**CITY AND COUNTY OF HONOLULU**

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November 10, 2009

RT10/09-339291R

Mr. Sean Hao  
Reporter  
Honolulu Advertiser  
Post Office Box 3110  
Honolulu, Hawaii 96802

Dear Mr. Hao:

This letter is in response to your October 27, 2009, information request made pursuant to Hawaii Revised Statutes Chapter 92F. The City's responses are as follows:

- 1. All evaluation committee meeting minutes relating to the recent award of a rail guideway construction contract to Kiewit Pacific.**

Notes of evaluation committee meetings will not be disclosed pursuant to Hawaii Revised Statutes ("HRS") Section 92F-13(3) (1993) and HRS Section 103D-105 (Supp. 2009) because the legitimate government function of agency decision-making would be frustrated by the disclosure of discussions, deliberations, and decisions of the evaluation committee that are subject to the deliberative process privilege.

- 2. All scoring sheets of evaluation committee members relating to the recent award of a rail guideway construction contract to Kiewit Pacific.**

The Department of Transportation Services does not maintain these records. The Department of Budget and Fiscal Services has custodial responsibility for the contract file. A copy of your information request has been forwarded to the Director of the Department of Budget and Fiscal Services pursuant to Hawaii Administrative Rules Section 2-71-13(d).



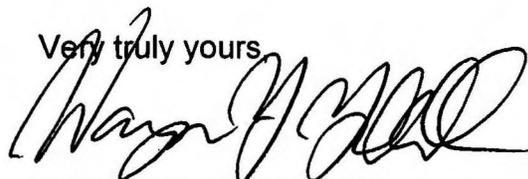
Mr. Sean Hao  
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- 3. A copy of the Leon Snead & Company report of the procurement system of the City and County of Honolulu's Department of Budget and Fiscal Services and Department of Transportation Services.**

A copy of the requested report is attached.

If you have any questions, please feel free to contact me.

Very truly yours



WAYNE Y. YOSHIOKA  
Director

Attachment

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**FINAL REPORT**

**Procurement System Review of the**

**CITY AND COUNTY OF HONOLULU**

**HONOLULU, HAWAII**

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**Dates of Site Visit: February 26 – March 7, 2007**

**Prepared by:**  
**Leon Snead & Company, P.C.**  
**416 Hungerford Drive, Suite 400**  
**Rockville, MD 20850**

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## EXECUTIVE SUMMARY

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C., performed an on-site procurement system review of the City and County of Honolulu, (Department of Budget and Fiscal Services and the Department of Transportation Services) Honolulu, Hawaii (hereafter referred to as the grantee) and its contractor, the Oahu Transit Service, Inc. (OTS), during the period from February 26 through March 7, 2007. The review was made to determine whether the grantee and OTS were deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1E as it relates to procurements for the purpose of developing and administering transit related programs.

The review covered 22 contracts and purchase orders awarded by the grantee valued at more than \$100.7 million. The review assessed the grantee's compliance with 56 "elements," or requirements, as defined in FTA Circular 4220.1E. The review assessment is divided into two categories: 1. Not Deficient (definition - in all instances the grantee complied with the requirement), and 2. Deficient (definition - in one or more of the applicable instances the grantee did not comply with the requirement).

We found both strengths and weaknesses in the grantee's procurement function. Our review of the procurement operations disclosed that the grantee had no deficiencies with respect to 35 elements (procurement requirements) of the FTA Circular 4220.1E and it had deficiencies relative to 17 elements. Compliance with four elements in the FTA Circular did not apply to the contract files reviewed (See Appendix I).

Among the strengths found in the grantee's procurement operations were: well written policies and procedures; a sound solicitation process for Sealed Bids/Invitation for Bids (IFB's); and generally well written and complete specifications which are necessary for good contracting and encouraging competition.

The principal weaknesses relate to the grantee's need to implement procurement policies covered by the requirements in FTA Circular 4220.1E and a need for a documented contract administration system. In addition, the grantee needs to comply with the FTA requirements pertaining to: the documentation supporting independent cost estimates; geographic preferences; written procurement selection procedures; award to responsible contractors; RFP price and other factors; sole source if other award is infeasible; evaluation of options; documentation of cost or price analysis; written record of procurement history; progress payments; and required Federal clauses. Also, some files did not contain the required Pre-Award and Post-Delivery Rule Certifications.

Practices that could be followed by the grantee as described in the FTA Best Practices Procurement Manual are included in this report. This report also includes advisory comments to correct elements with "deficiencies" and to assist the grantee in its procurement practices.

The review also covered 21 contracts and purchase orders awarded by Oahu Transit Service, Inc. (OTS), valued at more than \$4.3 million. The review assessed the grantee's compliance with 56 "elements," or requirements, as defined in FTA Circular 4220.1E. The review assessment is

divided into two categories: 1. Not Deficient (definition - in all instances the grantee complied with the requirement), and 2. Deficient (definition - in one or more of the applicable instances the grantee did not comply with the requirement).

We found both strengths and weaknesses in the transit system's procurement function. Our review of the procurement operations disclosed that OTS had no deficiencies with respect to 32 elements (procurement requirements) of the FTA Circular 4220.1E and it had deficiencies relative to 8 elements. Compliance with 16 elements in the FTA Circular did not apply to the contract files reviewed (See Appendix I).

Among the strengths found in OTS's procurement operations were: well written policies and procedures; a sound process for the procurement of bus and van parts following Sealed Bids/Invitation for Bids (IFB's) procedures; and generally well written and complete specifications which are necessary for good contracting and encouraging competition.

The principal weaknesses relate to OTS's need to: implement procurement policies covered by the requirements in FTA Circular 4220.1E. In addition, the grantee needs to ensure that OTS complies with the FTA requirements pertaining to: the documentation supporting independent cost estimates; geographic preferences; sole source if other award is infeasible; documentation of cost or price analysis; written record of procurement history; and required Federal clauses.

Practices that could be followed by OTS as described in the FTA Best Practices Procurement Manual are included in this report. This report also includes advisory comments to correct elements with "deficiencies" and to assist OTS in its procurement practices.

At the request of the Deputy Regional Administrator, Region IX, we reviewed a complaint filed with the grantee alleging favoritism in the selection of a subcontractor. The issue revolved around technical direction given to the prime contractor, Parsons Brinckerhoff Quade & Douglas, by grantee officials to conduct its public opinion survey in a particular manner. The results of that technical direction was the selection of a subcontractor, Community Planning & Engineering, offering that type of service and being particularly qualified to perform that type of service. Another potential subcontractor, Communications Pacific Inc., at the request of the prime contractor, had submitted a subcontract proposal to do a public opinion survey in a different way. When officials of Communications Pacific Inc. learned of the technical direction and the resulting subcontract to Community Planning & Engineering, they protested and alleged favoritism in the award of the subcontract. Our team leader reviewed the contract files and discussed the issues with the grantee's project manager. As a result of his analysis, we concluded that the grantee's technical direction was purely motivated by the needs of the project and not by a desire to select one contractor over another. The grantee has the authority to give technical direction to its prime contractors within the scope of the contract. We did not detect any violation of FTA standards regarding this issue.

We believe that when the City and County of Honolulu and OTS implement the corrective actions recommended in this report, their procurement systems will be strengthened and will be in compliance with FTA Circular 4220.1E.

## I. PROCUREMENT SYSTEM REVIEW BACKGROUND

### Background

The objectives of the Procurement System Review (PSR) are to encourage and facilitate improved grantee procurement operations, promote the use of best practices, and assess the City and County of Honolulu's compliance with all Federal requirements. Specifically, the PSR ensures improved and greater compliance with the requirements of Federal Transit Administration (FTA) Circular 4220.1E and the Pre-Award and Post-Delivery Rule. The PSR is designed to be a customer-oriented review that encourages working relationships between FTA and its grantee.

This procurement system review of the City and County of Honolulu was performed in accordance with FTA procedures and included a risk assessment phase and contract review phase. The risk assessment phase included discussions with FTA regional office personnel, grantee document review, and systemwide requirements review. The contract review phase included a sample selection and review of contract files. Specific documents reviewed are referenced in this report and are available in the grantee's files.

### Required Elements

The procurement system review looks at both systemwide elements and individual procurement elements. Systemwide procurement elements are FTA requirements that apply to the procurement system as a whole. Individual procurement elements are requirements evaluated on an individual contract-by-contract basis.

### Classification of Findings

The reviewer records deficiencies for each systemwide and individual procurement element. The reviewer determines deficiencies for systemwide elements based on the results of the Systemwide Requirements Review Check List. The reviewer determines deficiencies for each individual procurement element based upon all the contract files reviewed.

Two levels of findings are used:

- Not Deficient. A finding of "not deficient" indicates that the grantee complied with the basic requirements of the element. This is defined as, "The review of the selected procurement files found that in all instances, the grantee complied with the requirement."
- Deficient. A finding of "deficient" indicates that the grantee did not always comply with the requirements of the element. This is defined as, "The review of the selected procurement files found that in one or more of the applicable instances, the grantee did not comply with the requirement."

At an exit conference held on March 7, 2007, we discussed our findings and recommendations with the following:

- Melvin N. Kaku - Director, Department of Transportation Services (DTS)
- Donna Woo - First, Deputy Corporation Counsel, Department of the Corporation Council (COR)
- Reid M. Yamashiro - Deputy Corporation Counsel, COR
- Kenneth Toru Hamayasu, P.E. - Chief, Transportation Planning Division, DTS
- Phyllis C. Kurio - Transportation Planner, DTS
- James Burke - Chief, Public Transit Division, DTS
- Michael R. Hansen - Chief Accountant, Internal Control Division, Department of Budget & Fiscal Services (BFS)
- Wendy K. Imamura - Purchasing Administrator, BFS
- Michael Hiu - Assistant Purchasing Administrator, BFS
- Paul Romaine - Administrative Services Officer, DTS
- Edward Carranza \* - Deputy Regional Administrator, Region IX, FTA
- John Hunt \* - Transportation Program Specialist, Region IX, FTA

\* via Conference Call

## II. DESCRIPTION OF THE GRANTEE

The City & County of Honolulu (the City) provides public transportation services to the entire island of Oahu, an area of 596 miles with a population totaling over 876,000 residents. The City's Department of Transportation Services, Public Transit Division is responsible for oversight of the contractor, the Oahu Transit Services, Inc. (OTS) that manages and operates the City's public transit system, including both fixed routes and the paratransit system. OTS, a private non-profit corporation, provides a fixed route service known as "TheBus" and ADA paratransit service known as "TheHandi-Van." TheBus system is comprised of 93 routes that extend to urban, suburban, and rural areas throughout the island of Oahu. TheHandi-Van provides island-wide public transit service for the elderly and persons with disabilities and is supplemented by a taxi company under contract with OTS.

There are 525 buses in TheBus' total fleet. Additionally, six paratransit buses are used for fixed-route community access service. TheHandi-Service is operated with a fleet of 129 buses.

The DTS FY 2007 operating budget for public transit provides the following:

Salaries & Wages	\$ 84,022,958
Fringe Benefits	28,169,195
Payroll Taxes	6,875,711
Diesel	17,109,541
Public Liability Insurance	11,000,000
Bus Parts	7,435,953
Operating Materials & Supplies	2,580,000
Services (Management, Consultant, Accounting, Legal, Misc. Operating)	11,087,550
Other	<u>1,326,798</u>
Total Operating Expenses	<u>\$169,607,706</u>

### III. RESULTS OF THE REVIEW

The results of the review are summarized for each systemwide and individual procurement element. For each procurement requirement, the report describes the required element, cites a reference to FTA Circular 4220.1E (and other applicable regulations), discusses the issues and identifies deficiencies, presents best practices/advisory comments, and incorporates the grantee's corrective actions and schedule. The results of the review of the City and County of Honolulu will be presented first, followed by the results of the review of the Oahu Transit Services, Inc.

#### A. THE CITY AND COUNTY OF HONOLULU - SYSTEMWIDE PROCUREMENT ELEMENTS

Systemwide procurement elements are requirements that apply to the procurement system as a whole. We interviewed the grantee's senior management and reviewed its policies and procedures to assess the procurement system environment. We also interviewed procurement staff to assess the effectiveness of the procurement system. The findings in this section are a result of these reviews, interviews and additional insights gained during the contract review phase.

##### NOT DEFICIENT

The grantee's system is "not deficient" with respect to the following systemwide elements:

##### *Element 5 – Procedures for Ensuring Most Efficient and Economic Purchase*

"Grantee procedures shall provide for a review of proposed procurements to avoid purchases of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach." [FTA C 4220.1E, ¶ 7.d.]

##### DEFICIENT

The grantee was "deficient" with respect to the following elements:

##### *Element 1 – Written Standards of Conduct*

"Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved."

"Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.” (Emphasis added)

“The grantee’s officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee’s officers, employees, or agents, or by contractors or their agents.” [FTA C 4220.1E, ¶ 7.c.]

#### Discussion

The grantee’s system is “deficient” with respect to this element. The grantee’s written standards of conduct meet the FTA standards with one exception. It does not include the complete definition of who has a financial or other interest in a firm selected for award as described in the FTA Circular (underlined above).

#### Best Practices/Advisory Comments

The grantee should amend its Standards of Conduct to include the missing definition.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended Standards of Conduct procedures that include the missing definition. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA’s concurrence with the draft procedures, whichever is later. The grantee’s response included Standards of Conduct draft procedures (see Exhibit 1) for FTA’s review and comment.

#### **Element 2 – *Contract Administration System***

“Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.” [FTA C 4220.1E, ¶ 7.b.]

#### Discussion

The grantee’s system is “deficient” with respect to this element. The grantee does not have a documented contract administration system. The grantee’s procurement policies and procedures address the procurement process up to the point of a contract award. They do not contain policies and procedures covering the functions of contract administration. The review did not find documentation of contract administration authority or responsibility. Contract administration is the responsibility of the Department of Transportation Services. However,

these responsibilities are neither well defined nor clearly divided among the responsible offices or individuals.

We also found that pre-award contracting functions are shared between the Department of Transportation Services and the city's Purchasing Department. These functions are also not clearly defined nor definitively divided among the responsible offices or individuals.

### Best Practices/Advisory Comments

Within nine months of this report the grantee should include a comprehensive section on contract administration in its procedures manual. This new section on contract administration should list all functions of contract administration and include procedures for their proper performance. The new section of the procedures manual, or specific letters of delegation should designate specific individuals responsible for each contract administration function. Such delegations should not only list the specific contract administration functions delegated but should also enumerate those functions that have not been delegated (e.g., contract modifications) and the controls and reporting requirements that are associated with the delegated functions.

The Best Practices Procurement Manual, Section 9, provides the following: "Administrative Duties – Every type of contract will have different contract administration actions and the documentation required to support that administration will differ as well. Supply contracts have different specific administrative actions than construction contracts do just as fixed price contracts are administered differently than cost-reimbursement contracts. The FAR has a extensive listing of contract administration functions that are considered "normal" and you might want to review them to see what might be applicable to your particular contracts."

"Any contract involving the expenditure of public funds is subject to review/audit during and after performance to ensure that, at the very broadest level, the government got what it paid for. This concept means that at the contract administration level, you want the file (standing alone and without need of interpretation or augmentation of the contract administrator or other staff element) to demonstrate that the contracting officer and the contractor have complied with the terms of the contract (i.e., bonds have been submitted, contractual issues requiring the approval of the contracting officer have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.) and that contractual and administrative issues in dispute have been addressed and settled in accordance with good administrative practice and sound business judgment."

The grantee's policies and procedures should also clearly specify who in the organization has contracting authority. Normally contracting authority is specifically delegated to individuals accompanied by certain restrictions such as dollar thresholds and record keeping requirements for the exercise of that authority. When the city delegates authority to obligate public funds it should also require specific training to ensure that those funds are expended in accordance with State, local and Federal law and regulation.

The review did not conclude that pre-award procurement processes and contracting authority should solely rest in one organization or in several organizations. The significant finding was

that the responsibility for these important functions is not clearly defined and specifically divided between the Purchasing Department and the Department of Transportation Services. Also, when pre-award and post-award functions are assigned outside the Purchasing Department, training and record keeping requirements are not specifically required.

#### Corrective Actions and Schedule

The grantee in its response to the draft report stated that its procedures will be amended within nine months of the final report to include a comprehensive section on contract administration. The grantee's response included preliminary contract administration draft procedures (see Exhibit 2) for FTA's review and comment.

#### Reviewer's Comments

Our review of these draft procedures indicated that FTA may wish to follow-up with the grantee to ensure that the grantee's contract administration procedures include specific requirements regarding contract amendment authority. This authority is normally not delegated to the contract administrator.

#### **Element 3 – *Written Protest Procedures***

“Grantees shall have written protest procedures to handle and resolve disputes relating to their procurement and shall in all instances disclose information regarding the protest to FTA (emphasis added). All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.”

“Reviews of protest by FTA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.”

“Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.” [FTA C 4220.1E, ¶ 7.1.]

#### Discussion

The grantee's protest procedures are “deficient” with respect to this element. The established protest procedures contain a standard contract clause and meet all of FTA's requirements with one exception. There are no directions directly to City employees to notify FTA of the protest in all instances when FTA funds are involved.

#### Best Practices/Advisory Comments

The grantee should, within 30 days of the date of this report, develop written protest procedures that require notification of FTA in all instances of protests involving FTA funds.

#### Corrective Action and Schedule

The grantee in its response to the draft report provided a draft of its amended written protest procedures that require the notification of FTA in all instances involving FTA funds. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included written protest draft procedures (see Exhibit 1) for FTA's review and comment.

#### **Element 4 – Prequalification Criteria**

“Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.” [FTA C 4220.1E, ¶ 8.d.]

#### Discussion

The grantee's system is 'deficient with respect to this element. Although the grantee prequalifies bidders or offerors, its policies and procedures do not contain the FTA requirements.

#### Best Practices/Advisory Comments

The grantee's Policies and Procedures Manual should be amended to include coverage of the prequalification process and include the FTA standards.

#### Corrective Action and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that include the coverage of the prequalification process and included the FTA standards. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included draft procedures of prequalification criteria (see Exhibit 1) for FTA's review and comment.

#### **Element 6 – Procurement Policies and Procedures**

“Grantees and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this circular.” [FTA C 4220.1E, ¶ 7.a]

#### Discussion

The grantee's system is “deficient” with respect to this element. The grantee's procurement procedures were reviewed for the mandatory requirements of FTA C 4220.1E.

Listed below are FTA Circular requirements, shown by paragraph number, which were not found in the procurement policies and procedures of the City and County of Honolulu:

¶ 7.j. “Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.”

¶ 7.m. “Contract Term Limitation. Grantees shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. Grantees are expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.”

¶ 7.n. “Revenue Contracts. Revenue Contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee.”

¶ 8.b. “Prohibition Against Geographic Preferences. Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified Firms, given the nature and size of the project, to compete for the contract.”

¶ 9.e. “Procurement of Architectural and Engineering Services (A&E). Grantees shall use Qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d)..... These qualifications-based competitive proposal procedures can only be used for the procurement of the services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.” (Emphasis added)

¶ 9.h. “Procurement By Noncompetitive Proposals (Sole Source). Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph. (1) Procurement by noncompetitive proposals may be used only when the

award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies: .....

(e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307 (a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.” (Emphasis added)

¶ 9.i. “Options. “Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

(1) Evaluation of Options. The option quantities or periods contained in the contractor’s bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

(2) Exercise of Options.

(a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

(b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.”

¶ 10. “Contract Cost and Price Analysis for Every Procurement Action. Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. (Emphasis added)

¶ 10.e. “Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.”

¶12.a. “Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient’s use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.”

¶12.b. “Progress Payments. Grantees may use progress payments provided the following requirements are followed:

(1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.

(2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee’s interest in the progress payment.”

¶ 14. "Contract Award Announcement. If a grantee announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the grantee shall:

- a. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and
- b. Express the said amount as a percentage of the total costs of the planned acquisition."

¶16. "Statutory and Regulatory Requirements. A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R. Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual."

#### Best Practices/Advisory Comments

Within 30 days of the date of this report the grantee should amend its procurement manual to include the missing FTA Circular requirements.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that include the above FTA Circular requirements. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included draft procedures of the above requirements (see Exhibit 1) for FTA's review and comment.

## **B. OAHU TRANSIT SERVICES, INC. (OTS) - SYSTEMWIDE PROCUREMENT ELEMENTS**

Systemwide procurement elements are requirements that apply to the procurement system as a whole. We interviewed OTS' senior management, as well as the management of its Purchasing Department, and reviewed its policies and procedures to assess the procurement system environment. We also interviewed procurement staff to assess the effectiveness of the procurement system. The findings in this section are a result of these reviews, interviews and additional insights gained during the contract review phase.

### **NOT DEFICIENT**

OTS' system is "not deficient" with respect to the following systemwide elements:

#### ***Element 1 – Written Standards of Conduct***

"Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved."

"Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above." (Emphasis added)

"The grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents." [FTA C 4220.1E, ¶ 7.c.]

#### ***Element 2 – Contract Administration System***

"Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." [FTA C 4220.1E, ¶ 7.b.]

#### **Element 4 – Prequalification Criteria**

“Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.” [FTA C 4220.1E, ¶ 8.d.]

#### **Element 5 – Procedures for Ensuring Most Efficient and Economic Purchase**

“Grantee procedures shall provide for a review of proposed procurements to avoid purchases of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.” [FTA C 4220.1E, ¶ 7.d.]

### **DEFICIENCY**

OTS’ system was “deficient” with respect to the following elements:

#### **Element 3 – Written Protest Procedures**

“Grantees shall have written protest procedures to handle and resolve disputes relating to their procurement and shall in all instances disclose information regarding the protest to FTA (emphasis added). All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.”

“Reviews of protest by FTA will be limited to a grantee’s failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.”

“Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.” [FTA C 4220.1E, ¶ 7.1.]

#### **Discussion**

OTS’ protest procedures are “deficient” with respect to this element. The established protest procedures contain a standard contract clause and meet all of FTA’s requirements with one exception. There are no directions directly to OTS employees to notify FTA of the protest in all instances when FTA funds are involved.

### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should ensure that OTS develops written protest procedures that require notification of FTA in all instances of protests involving FTA funds.

### Corrective Action and Schedule

The grantee in its response to the draft report provided a draft of OTS's amended written protest procedures that require the notification of FTA in all instances involving FTA funds. The grantee added that OTS's procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included draft written protest procedures (see Exhibit 4) for FTA's review and comment.

### **Element 6 – Procurement Policies and Procedures**

“Grantees and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this circular.” [FTA C 4220.1E, ¶ 7.a]

### Discussion

OTS' system is “deficient” with respect to this element. OTS' procurement procedures were reviewed for the mandatory requirements of FTA C 4220.1E.

Listed below are FTA Circular requirements, shown by paragraph number, which were not found in the procurement policies and procedures of OTS:

¶ 7.i. “Written Record of Procurement History. Grantees shall maintain records detailing the history of each procurement. At a minimum, these records shall include:

- (1) the rationale for the method of procurement,
- (2) selection of contract type,
- (3) reasons for contractor selection or rejection, and
- (4) the basis for the contract price.”

¶ 7.j. “Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.”

¶ 7.m. “Contract Term Limitation. Grantees shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. Grantees are expected to be judicious in

establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.”

¶7.n. “Revenue Contracts. Revenue Contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee.”

¶ 8.a. “Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- (5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee: a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;”

¶ 8.b. “Prohibition Against Geographic Preferences. Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified Firms, given the nature and size of the project, to compete for the contract.”

¶ 8.c. “Written Procurement Selection Procedures. Grantees shall have written selection procedures for procurement transactions. All solicitations shall:

- (1) ... When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” (emphasis added) description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.”

¶ 9.h. “Procurement By Noncompetitive Proposals (Sole Source). Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

- (1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies: .....

(e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307 (a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:

- (1) that such manufacturer or supplier is the only source for such item; and
- (2) that the price of such item is no higher than the price paid for such item by like customers.” (Emphasis added)

¶ 9.i. “Options. “Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

(1) Evaluation of Options. The option quantities or periods contained in the contractor’s bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

(2) Exercise of Options.

(a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

(b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.”

¶ 10. “Contract Cost and Price Analysis for Every Procurement Action. Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. (Emphasis added)

¶ 10.e. “Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.”

¶12.a. “Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient’s use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.”

¶12.b. “Progress Payments. Grantees may use progress payments provided the following requirements are followed:

(1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.

(2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee’s interest in the progress payment.”

¶ 14. "Contract Award Announcement. If a grantee announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the grantee shall:

- a. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and
- b. Express the said amount as a percentage of the total costs of the planned acquisition."

¶16. "Statutory and Regulatory Requirements. A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R. Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual."

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should ensure that OTS amends its procurement manual to include the missing FTA Circular requirements.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of OTS's amended procedures that include the above FTA Circular requirements. The grantee added that OTS's procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included draft procedures of the missing requirements (see Exhibit 4) for FTA's review and comment.

## **C. THE CITY AND COUNTY OF HONOLULU - INDIVIDUAL PROCUREMENT ELEMENTS**

The individual procurement elements are applicable to the contract files reviewed. We compiled the findings from all contracts reviewed by each individual procurement element. The results of those findings and conclusions are presented below and organized by whether the element was evaluated as "not deficient" or "deficient." Those elements for which the grantee is "not deficient" are shown first and those defined as "deficient" with respect to that element are shown second. The elements classified as "not applicable" to the sample contract files reviewed are shown in Appendix I, Report Summary Table. Within each category the numbered elements appear as they are listed in FTA's Procurement System Review Guide.

**NOT DEFICIENT** (A full description of the elements for which the grantee is not deficient is in Appendix II.)

The grantee is "not deficient" with respect to the following elements:

- Element 8 - *A&E Geographic Preference***
- Element 9 - *Unreasonable Qualification Requirements***
- Element 10 - *Unnecessary Experience and Excessive Bonding***
- Element 11 - *Organizational Conflict of Interest***
- Element 12 - *Arbitrary Action***
- Element 13 - *Brand Name Restriction***
- Element 15 - *Contract Term Limitation***
- Element 17 - *Solicitation Prequalification Criteria***
- Element 19 - *Sound and Complete Agreement***
- Element 23 - *Price Quotations [Small Purchases]***
- Element 24 - *Complete Specifications***
- Element 25 - *Adequate Competition - Two or More Competitors***
- Element 26 - *Firm Fixed Price [Sealed Bid]***
- Element 27 - *Selection on Price [Sealed Bid]***
- Element 28 - *Discussions Unnecessary [Sealed Bid]***
- Element 29 - *Advertised/Publicized***
- Element 30 - *Adequate Solicitation***
- Element 31 - *Sufficient Bid Time [Sealed Bid]***
- Element 32 - *Bid Opening [Sealed Bid]***
- Element 33 - *Responsiveness [Sealed Bid]***
- Element 34 - *Lowest Price [Sealed Bid]***
- Element 35 - *Rejecting Bids [Sealed Bid]***
- Element 36 - *Evaluation [RFP]***
- Element 43 - *Exercise of Options***
- Element 44 - *Out of Scope Changes***
- Element 45 - *Advance Payments***
- Element 48 - *Cost Plus Percentage of Cost***
- Element 49 - *Liquidated Damages Provisions***
- Element 50 - *Piggybacking***

**Element 51 - *Qualifications Exclude Price [A&E]***  
**Element 52 - *Serial Price Negotiations [A&E]***  
**Element 53 - *Bid Security [Construction over \$100,000]***  
**Element 54 - *Performance Security [Const. over \$100,000]***  
**Element 55 - *Payment Security [Const. over \$100,000]***

## **DEFICIENT**

The grantee is "deficient" with respect to the following elements:

### **Element 7 - *Independent Cost Estimate***

"Grantees must perform a cost or price analysis in connection with every procurement action... as a starting point, grantees must make independent estimates before receiving bids or proposals." [FTA C 4220.1E, ¶ 10.]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed 22 procurement files involving request for proposals, invitation for bids, sole source procurements, and small purchases and found twelve files lacked supporting documentation indicating an adequate independent cost estimate had been performed by the grantee before it received bids or proposals. Our review found the grantee does use a formal procurement requisition form (DF-P-19) to initiate the procurement process. This form is generated by the requiring or user organizations. The independent cost estimate must be received before receipt of proposals and supported with detailed information as to its development and/or source. Seven of the deficient procurement files contained a single dollar amount that appeared as a budgeted figure with no backup details or no identified source of the estimated cost. The other deficient files failed to include any independent cost estimates. It should be noted the reviewers did find some very detailed independent cost estimates, especially in the area of construction.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should establish policies and develop procedures and implement management controls to ensure that one of the first steps to be taken in connection with every procurement action is an independent cost or price estimate. This independent estimate should be completed before receiving bids or proposals and should be maintained in the official contract file. The Best Practices Procurement Manual Section 2.3.2 states "A final purpose of the independent cost estimate is for price analysis. Either a cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. The adequacy of the price or cost analysis is a critical responsibility of the contracting official. In many contract awards the bids alone may be adequate to assure a reasonable price. However, in all negotiated procurements, most contract changes, and sealed bids where price competition was not sufficient, further analysis is required. An independent cost estimate prepared before receipt of offers is invaluable in these circumstances. The estimate alone may, if prepared with sufficient detail and reliability in the

contracting official's judgment, be sufficient to determine whether the price is reasonable. It will at least supplement other pricing data in making the determination of reasonableness. Because cost analysis can be time consuming, expensive, and raise disputes, the availability of an independent pre-bid estimate which enables price analysis and obviates cost analysis is worth material pre-bid effort."

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that require an independent cost estimate before receiving bids or proposals as the first step in the cost or price analysis for all procurement actions. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### **Element 14 – Geographic Preferences**

The "Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws." [FTA C 4220.1E, ¶ 8.b.]

#### Discussion

The grantee is deficient with respect to this element. We reviewed 22 procurement files involving request for proposals, invitation for bids, sole source procurements and small purchases and found two files contained in-state preference provisions that were inserted in the sealed bid solicitations. This preference does not prohibit other than in-state companies from bidding, but does offer a 4.5% preference to those in-state firms bidding. The solicitations contained language for "Out-of-State Bidders" such as "the package bid or purchase price, for the purpose of determining the lowest bid price, shall be increased by the applicable retail rate of general excise tax (4%) and the applicable use tax (1/2%). The lowest responsible bidder, taking into consideration the above increases, shall be awarded the contract." Another preference noted was for percentage increases (3%,5%,or10%) for the costs of certain classes of materials to be used under construction contracts when they were not "in-state" materials. It should be noted that in none of the files reviewed was the delivery schedule considered critical or addressed as an issue.

#### Best Practices/Advisory Comments

Within 30 days of the date of this report, the grantee should establish policies and develop procedures and implement management controls to ensure that procurements funded with federal funds do not include geographic preferences. Geographic preference is another element, which restricts full and open competition. The prohibition against geographic preference as stated in FTA Circular 4220.1E is based upon 49 CFR Part 18.36 (c) (2). The only exception noted in this

prohibition is in the procurement of architectural and engineering (A&E) services, where knowledge of local conditions and building codes is a relevant factor in the quality of the A&E services provided its application leaves an adequate number of qualified firms, given the size and nature of the project, to compete for the contract. If supplies or services are required to be furnished on a short lead-time basis; a much better approach, and one that is not prohibited by the FTA, would be to require the contractor to demonstrate its ability to respond within the time frame needed, and not to stipulate a geographical restriction in the solicitation.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that prohibit geographical preferences in the evaluation of bids and proposals involving Federal funds. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### **Element 16 - *Written Procurement Selection Procedures***

"Grantees shall have written selection procedures for procurement transactions. All solicitations shall: . . . (2) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals." [FTA C 4220.1E, ¶ 8.c.]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed 11 procurement files involving request for proposals and invitation for bids for evidence of written procurement selection procedures and found one file deficient. We found one file that failed to include in the solicitation the evaluation criteria and their relative order of importance.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should implement management controls to ensure that solicitations identify all requirements, including the grantee's required delivery schedule, that potential offerors must fulfill and all other factors to be used in evaluating bids and proposals. Best Practices Procurement Manual, Sections 4.3.2, 4.4.1, 4.5.1, and 4.5.2 offer further guidance in these areas.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that solicitations must contain written selection procedures, method of award provisions, and/or evaluation criteria and their relative order of importance as appropriate. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

### ***Element 18 - Award to Responsible Contractors***

“Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.” [FTA C 4220.1E, ¶ 7.h.]

#### Discussion

The grantee is “deficient” with respect to this element. We reviewed 19 procurement files involving request for proposals, invitation for bids, and sole source procurement and found two files lacked documentation that would indicate a determination had been made that the successful contractor was considered responsible prior to making the award. It should be noted in those files where the grantee had evaluated such responsibility matters as part of the award process we found the grantee not deficient. Also, it was noted in most files the grantee obtained a “Certificate of Good Standing” issued by the State’s Department of Commerce and Consumer Affairs. This certificate recognizes the contractor as being an existing corporation in good standing and duly authorized to transact business with the State. In addition, the contractor is required to submit a Certificate of Compliance from the States’ Department of Labor and Industrial Relations and a tax clearance issued by the Hawaiian State Department of Taxation and Internal Revenue Service. These submissions are considered marginal at best to satisfy the requirement. When special capabilities are required a specific determination of contractor responsibility is needed. The deficient procurement files did not contain the certificates or lacked a written determination.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should develop procedures and implement management controls to ensure that awards are made only to responsible contractors. The contractor must be considered responsible in order to receive an award regardless of the procurement method used to select the contractor. To be considered responsible, a contractor must meet all the following requirements:

- (a) Financial resources adequate to perform the contract, or the ability to obtain them,
- (b) Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and government business commitments,
- (c) A satisfactory performance record,
- (d) A satisfactory record of integrity and business ethics,
- (e) The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them,
- (f) Compliance with applicable licensing and tax laws and regulations,
- (h) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them,
- (i) Compliance with Affirmative Action and Disadvantaged Business Program requirements and,

- (j) Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

While the award of a contract itself can in some instances be considered as implicit affirmation that a contractor has been determined to be responsible, where appropriate the written record should state the specific basis for a responsibility determination. When an offer, on which an award would otherwise be made, is rejected because the prospective contractor is found to be not responsible, the grantee should make, sign, and place in the file a determination of nonresponsibility, which states the basis for this determination. Documents and reports supporting a determination of responsibility or nonresponsibility, including any pre-award survey reports, should be included in the contract file.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that required all recommendations to make awards under solicitations must contain a written determination that the awarded contractor has been determined to be responsible prior to the award. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### ***Element 37- Price and Other Factors [RFP]***

"If this procurement method is used the following requirements apply: ... Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered. [FTA C 4220.1E, ¶ 9.d. (4)]

#### Discussion

The grantee is "deficient" with regard to this element. We reviewed six procurement files involving requests for proposals and found that one file lacked documentation that would indicate that a determination had been made that the successful proposal was the most advantageous with respect to price and other factors having been considered. In this procurement file, the selection was predicated upon the contractor being evaluated on its qualifications alone without price being considered. The areas evaluated were experience and professional qualifications relevant to the project, past performance on similar projects, technical capacity, and technical approach. The grantees' requirement is considered to be for professional services that are not covered under the "Brooks Act" procedures and as such, price must be considered as part of the competitive process for award. There was no documentation reflecting the costs proposed, or any discussion of tradeoffs between the cost and technical and what would be the best value to the grantee.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should establish policies, develop procedures, and implement management controls to ensure that its competitive negotiation

process includes price as a factor during initial contractor selection. Awards must be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered. Only in architectural and engineering services procurements, shall the grantee use competitive proposal procedures based on the Brooks Act, which requires selection based on qualifications and excludes price as an evaluation factor. Price must be evaluated unless the Brooks Act applies. Price is often separately evaluated from the technical proposals so that the price figures do not unduly influence the technical evaluation. However, one of the purposes of competitive proposals is to allow an enlightened trade-off between price and technical merit; in some procurements it may be more appropriate to permit an integrated and internally consistent evaluation of price and technical factors.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that require all requests for proposals include price as an evaluation factor. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### ***Element 38 - Sole Source if Other Award is Infeasible***

"Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- (a) The item is available only from a single source;
- (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (c) FTA authorizes noncompetitive negotiations-e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
- (d) After solicitation of a number of sources, competition is determined inadequate; or
- (e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a) (1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: 1 that such manufacturer or supplier is the only source for such item; and 2 that the price of such item is no higher than the price paid for such item by like customers." [FTA C 4220.1E, ¶ 9.h. (1)]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed nine noncompetitive procurement files involving sole source awards and found five procurement files deficient. The deficient procurement files failed to document that the source selected was the only source that could satisfy their requirement. There was no signed/approved sole source justifications found in three procurement files. It should be noted two deficient procurement files were the result of a single source responding to an invitation for bids. The files did not address any circumstances

surrounding why only one source bid, and did not reflect any attempt to mitigate this situation from happening in future procurements for like items. In one case, documentation in the file acknowledged only two sources were available to furnish a certain size bus but failed to grant an extension for receipt of proposals, thereby eliminating that source. Similarly, the small purchase files did not address any attempts to foster competition, either now or in the future.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should develop procedures and implement management controls consistent with the FTA Circular that avoid using sole source procurement except in circumstances where it is both necessary and in the best interest of the grantee. When a noncompetitive procurement is necessary in circumstances other than those in the FTA Circular paragraphs (a), (b), (d), or (e) shown above, the grantee should ensure that FTA approval is obtained. Before using the sole source method of procurement, first determine that the desired requirements cannot be obtained under small purchase procedures, sealed bids, or competitive proposals. If one of these three methods can be used (or is feasible), sole source is not an option. When the sole source procurement method is used, the files should provide justification for using this method of purchase and for using the particular vendor selected. The file should contain a proper and timely approved sole source justification, which reflects the requirements and periods of performance. Adding additional items or requirements or additional periods of time of performance require additional sole source justification.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that if a sole bid or offer is received under a competitive solicitation, any award to the sole bidder or offeror must be under sole source procurement procedures with proper justification and documentation. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### ***Element 39 - Cost Analysis Required [Sole Source]***

"A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required." [FTA C 4220.1E, ¶ 9.h. (2)]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed nine noncompetitive procurement files involving sole source situations, and found five of the files did not contain documentation that would have supported that an adequate cost analysis had been performed which verified the cost data, any projections of cost data and the evaluation of specific elements of costs and profit. There was no element-by-element analysis or discussion of the cost or profit and no evidence of any negotiations being conducted at that level. In one deficient file award was recommended "to the lowest bidder on the basis of low bid" when only one bid was received. In the other four files, documentation was found to support that the prices were not

unreasonable. Generally, the documentation demonstrated the prices were less than experienced before from the same supplier, or that the prices were less than the rate of inflation or certain price/product indices, or that the prices were less than the published price lists. Lacking a cost analysis, the grantee must demonstrate price reasonableness by showing the prices were established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public, and getting the contractor to offer a most favored customer clause stating the price is no more than that offered to others under like situations.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should develop procedures and implement management controls to ensure that an adequate cost analysis is performed for sole source procurements. A contract file checklist and a review by the manager or supervisor are a good way of ensuring compliance with this element. The analysis should be documented in the contract or purchase order file. The cost analysis should include an evaluation of labor, materials, other direct costs, overhead rates, G&A rates, and a profit factor. When negotiations take place the file should be documented to reflect the results of the negotiations and the rationale behind the agreements reached

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that require a cost analysis must be performed and documented prior to sole source award. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee continued that DTS procedures will include instructions on the preparation of an analysis. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### **Element 40 - *Evaluation of Options***

"Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options . . . The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement." [FTA C 4220.1E, ¶ 9.i. & 9.i. (1)]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed seven procurement files that included options and found two procurement files failed to adequately address this element. Both of these requirements became sole source procurements after adequate competition was not obtained. In the first deficient procurement file the solicitation contained an option for up to 100% of the basic quantities at the same terms and conditions as the bid price except for the price of the chassis and the delivery schedule, which were left to be negotiated. The contractor,

although not taking exception to this requirement, did not address it in his proposal nor did the grantee evaluate it. The contractors' bid or proposal was not incorporated into the contract. In the second deficient procurement file, the contract for a six-month ferry demonstration project contained two unpriced and loosely defined options. Options that are not evaluated and are unpriced are not options at all. The grantee therefore has no unilateral right to exercise such an option and is therefore placed in either a sole source or recompetition situation requiring all the documentation to support those activities.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should establish policies, develop procedures and implement management controls that ensure that options are priced and evaluated as part of the contract award. The grantee should further ensure, when using options, that they have the unilateral right to exercise the options. Often the prices of the option years determine which contractor has the most advantageous bid for the grantee. On the other hand, an apparent low bidder may in fact be the high bidder after the prices of the option years are considered. If a market is such that offerors are unable to propose prices for the option years, the solicitation may identify an applicable index to be used as an escalator and the mechanics for its use. These escalation provisions must be firmly established in the solicitation and the contract. The offeror should be advised in the solicitation how the option year price will be calculated, evaluated and the selection made.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that require options quantities be evaluated to determine contract award. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### **Element 41 - Cost or Price Analysis**

"Grantees must perform a cost or price analysis in connection with every procurement action, including, contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation . . . "[FTA C 4220.1E, ¶ 10.]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed 13 procurement files involving request for proposals, invitations for bids, and small purchases and found five deficient files. Basically the deficiency resulted from a general lack of detailed documentation to support the results of a cost or price analysis or whether a cost or price analysis had ever been performed. In one deficient procurement file, the contract was awarded using "Brooks Act" procedures; we found a basic contract award of \$90,000 that was subsequently modified to \$267,500. This file did not contain documentation that an analysis had been performed regarding any of the proposed labor hours, labor rates, overhead rates, other direct costs, or profit. It appeared the

proposed costs were accepted as proposed with no negotiations. Two other deficient procurement files fell into this category. The basic awards for the last two deficient procurement files were adequately supported, however, there was no documentation found to support cost analysis or negotiations for contract modifications.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should develop procedures and implement management controls to ensure that cost or price analysis is conducted, consistent with Federal cost principles, and documented in the procurement file.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that require a written determination that the price was determined to be fair and reasonable and the basis for that determination must be documented. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee continued that DTS procedures will include instructions on the preparation of an analysis. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### **Element 42 - *Written Record of Procurement History***

"Grantees shall maintain records detailing the history of a procurement. At a minimum, these records shall include: (1) the rationale for the method of procurement, (2) selection of contract type, (3) reasons for contractor selection or rejection, and (4) the basis for the contract price." [FTA C 4220.1E, ¶ 7.i.]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed 22 procurement files involving request for proposals, invitation for bids, sole source procurements, and small purchases for evidence of a written record of procurement history and found seven files did not contain an adequate procurement history or file documentation. With some effort, the reviewers were able to locate enough documentation scattered throughout the file to be able to piece together a reasonable history of the procurement files found not deficient. It is suggested when multiple contract awards result from a single solicitation, a brief summarization be included in the files which do not contain the detailed evaluations. In addition, the recommendations for award (s) resulting from the proposal evaluations should explain the rationale for the basis for the contract price, and any trade offs between the technical and cost/price proposals, and why the grantee considers the final price to be fair and reasonable.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should develop procedures and implement management controls to ensure that procurement files are properly documented with

evidence supporting the determinations made during each stage of the procurement process. A complete contract file checklist is a good management review tool to achieve this purpose. The documentation should include:

- (a) Rationale for the method of procurement;
- (b) Independent Cost Estimates;
- (c) Copies of published notices of proposed contract action;
- (d) The evaluations of bids and selections of firms for negotiations and award;
- (e) The costs negotiated by the parties and the determination that the price is fair and reasonable;
- (f) A cost or price analysis, as appropriate;
- (g) A summary record of negotiations, if appropriate; and
- (h) All correspondence and data in support of relevant contractual actions.

Procurement files should be a complete record of procurement actions and should fully support contractors' bid and price. If written quotes/bids are required, then these should become part of the file. If the procurement action is the result of a contract amendment or exercise of an option, sufficient data should be included to fully support the basis for the price and procurement action.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that require the procurement file must contain a record detailing the procurement history. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### **Element 46 - Progress Payments**

"Grantees may use progress payments provided the following requirements are followed: (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract. (2) When progress payments are used, the grantee must obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. Alternate security for progress payments by irrevocable letter of credit or equivalent means to protect the grantee's interests in the progress payments may be used in lieu of obtaining title." [FTA C 4220.1E, ¶ 12.b.]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed four procurement files covering invitation for bids, request for proposals, and sole source procurements involving progress payments and found two of the contracts deficient. Normally, progress payments are made based on costs incurred and secured by title for that which the progress payments were made. In the case of these construction contracts, the security was in the form of performance bonds that are an acceptable equivalent. However, in these contracts, instead of progress payments being made on costs incurred, payment is made on grantee's monthly estimates of completion. This form of payment is based on a percentage of completion and if not carefully

monitored, could result in a form of advance payments, and would when using FTA funds, require written concurrence from FTA.

#### Best Practices/Advisory Comments

Within 30 days after the date of the report, the grantee should amend their policy and develop procedures and implement management controls for ensuring that contracts containing progress payments are based on costs incurred and include provisions giving the grantee title to property for which progress payments are made or to insure the contracts contain other security provisions.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that require progress payments may only be made on the basis of cost incurred and they must obtain adequate security for which progress payments are made. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### **Element 56 - *Statutory and Regulatory Requirements***

"A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel, and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R. Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual." [FTA C 4220.1E, ¶ 16.]

#### Discussion

The grantee is "deficient" with respect to this element. We reviewed 19 procurement files involving request for proposals, invitation for bids, and sole source procurements to determine whether the solicitations and the resultant agreements contained the appropriate FTA required clauses. We found three procurement files to be deficient in that they failed to include FTA required clauses. It should be noted, in the other not deficient files, we found the grantee included a comprehensive list of the required clauses.

#### Best Practices/Advisory Comments

Within 30 days of this report, the grantee should establish policies and develop procedures and implement management controls to ensure that all procurements funded with FTA funds contain the appropriate statutory and regulatory clauses. The Best Practices Procurement Manual, Section 8.1, provides that "Appendix A.1 of this Manual contains thirty model contract clauses

that are either federally required or suggested model clauses that you may include in contracts. The clauses contained in this Appendix include the following common elements, which will be helpful to grantees in deciding if a specific clause is required in a particular procurement:

Applicability to Contracts - discusses the types of contracts for which the clause is applicable.

Flow Down - discusses to which prime contractors and which level of subcontractors the clauses apply.

Mandatory Clause/Language - includes the model clause, identified by FTA as either a required (specified) clause or a suggested-language clause."

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of its amended procedures that require all Federal statutory and regulatory requirements for contracts funded under Federal grants must be complied with. The grantee added that its procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee continued that DTS procedures will include a checklist presented in Exhibit 3 of the response. The grantee's response included the draft procedures (see Exhibit 1) for FTA's review and comment.

#### **D. OAHU TRANSIT SERVICE, INC. - INDIVIDUAL PROCUREMENT ELEMENTS**

The individual procurement elements are applicable to the contract files reviewed. We compiled the findings from all contracts reviewed by each individual procurement element. The results of those findings and conclusions are presented below and organized by whether the element was evaluated as "not deficient" or "deficient." Those elements for which the grantee is "not deficient" are shown first and those defined as "deficient" with respect to that element are shown second. The elements classified as "not applicable" to the sample contract files reviewed are shown in Appendix I, Report Summary Table. Within each category the numbered elements appear as they are listed in FTA's Procurement System Review Guide.

**NOT DEFICIENT** (A full description of the elements for which the grantee is not deficient is in Appendix II.)

The grantee is "not deficient" with respect to the following elements:

- Element 9 - *Unreasonable Qualification Requirements***
- Element 10 - *Unnecessary Experience and Excessive Bonding***
- Element 12 - *Arbitrary Action***
- Element 13 - *Brand Name Restriction***
- Element 15 - *Contract Term Limitation***
- Element 16 - *Written Procurement Selection Procedures***
- Element 18 - *Award to Responsible Contractors***
- Element 19 - *Sound and Complete Agreement***
- Element 20 - *No Splitting [Micro-purchases]***
- Element 21 - *Fair and Reasonable Price Determination***
- Element 23 - *Price Quotations [Small Purchases]***
- Element 24 - *Complete Specifications***
- Element 25 - *Adequate Competition - Two or More Competitors***
- Element 26 - *Firm Fixed Price [Sealed Bid]***
- Element 27 - *Selection on Price [Sealed Bid]***
- Element 28 - *Discussions Unnecessary [Sealed Bid]***
- Element 29 - *Advertised/Publicized***
- Element 30 - *Adequate Solicitation***
- Element 31 - *Sufficient Bid Time [Sealed Bid]***
- Element 32 - *Bid Opening [Sealed Bid]***
- Element 33 - *Responsiveness***
- Element 34 - *Lowest Price [Sealed Bid]***
- Element 40 - *Evaluation of Options***
- Element 41 - *Cost or Price Analysis***
- Element 43 - *Exercise of Options***
- Element 45 - *Advance Payments***
- Element 47 - *Time and Materials Contracts***
- Element 48 - *Cost Plus Percentage of Cost***

## DEFICIENT

The OTS is "deficient" with respect to the following elements:

### *Element 7 - Independent Cost Estimate*

"Grantees must perform a cost or price analysis in connection with every procurement action... as a starting point, grantees must make independent estimates before receiving bids or proposals." [FTA C 4220.1E, ¶ 10.]

### Discussion

The OTS is "deficient" with respect to this element. We reviewed twelve procurement files involving invitation for bids, a sole source procurement, and small purchases and found nine files lacked supporting documentation indicating an adequate independent cost estimate had been performed by OTS before it received bids or proposals. Our review found the grantee does use a formal procurement requisition form (DF-P-19) to initiate the procurement process. This form is generated by the requiring or user organizations. The independent cost estimate must be received before receipt of proposals and supported with detailed information as to its development and/or source. The three "not deficient" procurement files contained estimates based on prices from prior years. The deficient files failed to include any independent cost estimates.

### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should ensure that OTS establish policies, develop procedures, and implement management controls to ensure that one of the first steps to be taken in connection with every procurement action is an independent cost or price estimate. This independent estimate should be completed before receiving bids or proposals and should be maintained in the official contract file. The Best Practices Procurement Manual Section 2.3.2 states "A final purpose of the independent cost estimate is for price analysis. Either a cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. The adequacy of the price or cost analysis is a critical responsibility of the contracting official. In many contract awards the bids alone may be adequate to assure a reasonable price. However, in all negotiated procurements, most contract changes, and sealed bids where price competition was not sufficient, further analysis is required. An independent cost estimate prepared before receipt of offers is invaluable in these circumstances. The estimate alone may, if prepared with sufficient detail and reliability in the contracting official's judgment, be sufficient to determine whether the price is reasonable. It will at least supplement other pricing data in making the determination of reasonableness. Because cost analysis can be time consuming, expensive, and raise disputes, the availability of an independent pre-bid estimate which enables price analysis and obviates cost analysis is worth material pre-bid effort."

### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of OTS's amended procedures that require as a starting point an independent cost estimate before receiving bids or proposals in the cost or price analysis for all procurement actions. The grantee added that OTS's procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 4) for FTA's review and comment.

### **Element 14 – *Geographic Preferences***

The "Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws." [FTA C 4220.1E, ¶ 8.b.]

### Discussion

The OTS is "deficient" with respect to this element. We reviewed twelve procurement files involving request for proposals, invitation for bids, sole source procurements and small purchases and found two files contained in-state preference provisions that were inserted in the sealed bid solicitations. This preference does not prohibit other than in-state companies from bidding, but does offer a 4.5% preference to those in-state firms bidding. The solicitations contained language for "Out-of-State Bidders" such as "the package bid or purchase price, for the purpose of determining the lowest bid price, shall be increased by the applicable retail rate of general excise tax (4%) and the applicable use tax (1/2%). The lowest responsible bidder, taking into consideration the above increases, shall be awarded the contract." It should be noted that in none of the files reviewed was the delivery schedule considered critical or addressed as an issue.

### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should ensure that OTS establish policies and develop procedures and implement management controls to ensure that procurements funded with federal funds do not include geographic preferences. Geographic preference is another element, which restricts full and open competition. The prohibition against geographic preference as stated in FTA Circular 4220.1E is based upon 49 CFR Part 18.36 (c) (2). The only exception noted in this prohibition is in the procurement of architectural and engineering (A&E) services, where knowledge of local conditions and building codes is a relevant factor in the quality of the A&E services provided its application leaves an adequate number of qualified firms, given the size and nature of the project, to compete for the contract. If supplies or services are required to be furnished on a short lead-time basis; a much better approach, and one that is not prohibited by the FTA, would be to require the contractor to demonstrate its ability to respond within the time frame needed, and not to stipulate a geographical restriction in the solicitation.

### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of OTS's amended procedures that prohibit geographical preferences in the evaluation of bids and proposals involving Federal funds. The grantee added that OTS's procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 4) for FTA's review and comment.

### **Element 38 - Sole Source if Other Award is Infeasible**

"Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- (b) The item is available only from a single source;
- (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (c) FTA authorizes noncompetitive negotiations-e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
- (d) After solicitation of a number of sources, competition is determined inadequate; or
- (e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a) (1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers." [FTA C 4220.1E, ¶ 9.h. (1)]

### Discussion

The OTS is "deficient" with respect to this element. We reviewed five noncompetitive procurement files involving an invitation for bid, and four small purchase awards resulting in sole source awards and found all five procurement files deficient. The deficient procurement files failed to document that the source selected was the only source that could satisfy their requirement. There were no signed sole source justifications found. It should be noted that the contract files in question was the result of a single source responding to an invitation for bids. The files did not address circumstances surrounding why only one source bid, and did not reflect any attempt to mitigate this from happening in future procurements for like items.

### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should ensure that OTS develop procedures and implement management controls consistent with the FTA Circular that avoid using sole source procurement except in circumstances where it is both necessary and in the best interest of the grantee. When a noncompetitive procurement is necessary in circumstances other than those in the FTA Circular paragraphs (a), (b), (d), or (e) shown above, the grantee should ensure that FTA approval is obtained. Before using the sole source method of procurement, first

determine that the desired requirements cannot be obtained under small purchase procedures, sealed bids, or competitive proposals. If one of these three methods can be used (or is feasible), sole source is not an option. When the sole source procurement method is used, the files should provide justification for using this method of purchase and for using the particular vendor selected. The file should contain a proper and timely approved sole source justification, which reflects the requirements and periods of performance. Adding additional items or requirements or additional periods of time of performance require additional sole source justification.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of OTS's amended procedures that comply with FTA requirements. The grantee added that OTS's procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 4) for FTA's review and comment.

#### **Element 39 - Cost Analysis Required [Sole Source]**

"A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required." [FTA C 4220.1E, ¶ 9.h. (2)]

#### Discussion

The OTS is "deficient" with respect to this element. We reviewed five noncompetitive procurement files involving an invitation for bid and small purchases resulting in sole source awards, and found the files did not contain documentation that would have supported that an adequate cost analysis had been performed which verified the cost data, any projections of cost data and the evaluation of specific elements of costs and profit. There was no element-by-element analysis or discussion of the cost or profit and no evidence of any negotiations being conducted at that level. Lacking a cost analysis, the grantee must demonstrate price reasonableness by showing the prices were established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public, and getting the contractor to offer a most favored customer clause stating the price is no more than that offered to others under like situations.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should ensure that OTS develop procedures and implement management controls to ensure that an adequate cost analysis is performed for sole source procurements. A contract file checklist and a review by the manager or supervisor are a good way of ensuring compliance with this element. The analysis should be documented in the contract or purchase order file. The cost analysis should include an evaluation of labor, materials, other direct costs, overhead rates, G&A rates, and a profit factor. When negotiations take place the file should be documented to reflect the results of the negotiations and the rationale behind the agreements reached.

### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of OTS's amended procedures that comply with FTA requirements. The grantee added that OTS's procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 4) for FTA's review and comment.

### **Element 42 - *Written Record of Procurement History***

"Grantees shall maintain records detailing the history of a procurement. At a minimum, these records shall include: (1) the rationale for the method of procurement, (2) selection of contract type, (3) reasons for contractor selection or rejection, and (4) the basis for the contract price." [FTA C 4220.1E, ¶ 7.i.]

### Discussion

The OTS is "deficient" with respect to this element. We reviewed twelve procurement files involving request for proposals, invitation for bids, sole source procurements, and small purchases for evidence of a written record of procurement history and found five files did not contain an adequate procurement history or file documentation. The reviewers were able to locate enough documentation scattered throughout the file to be able to piece together a reasonable history of the procurement files found not deficient. Documentation supporting the recommendations for award (s) resulting from the proposal evaluations should explain the rationale for the basis for the contract price, and any trade offs between the technical and cost/price proposals, and why the grantee considers the final price to be fair and reasonable.

### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should ensure that OTS establish policies and develop procedures and implement management controls to ensure that procurement files are properly documented with evidence supporting the determinations made during each stage of the procurement process. A complete contract file checklist is a good management review tool to achieve this purpose. The documentation should include:

- (a) Rationale for the method of procurement;
- (b) Independent Cost Estimates;
- (c) Copies of published notices of proposed contract action;
- (d) The evaluations of bids and selections of firms for negotiations and award;
- (e) The costs negotiated by the parties and the determination that the price is fair and reasonable;
- (f) A cost or price analysis, as appropriate;
- (g) A summary record of negotiations, if appropriate; and
- (h) All correspondence and data in support of relevant contractual actions.

Procurement files should be a complete record of procurement actions and should fully support contractors' bid and price. If written quotes/bids are required, then these should become part of the file. If the procurement action is the result of a contract amendment or exercise of an option, sufficient data should be included to fully support the basis for the price and procurement action.

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of OTS's amended procedures that comply with FTA requirements. The grantee added that OTS's procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 4) for FTA's review and comment.

#### ***Element 56 - Statutory and Regulatory Requirements***

"A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel, and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R. Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual." [FTA C 4220.1E, ¶ 16.]

#### Discussion

The OTS is "deficient" with respect to this element. We reviewed four procurement files involving request for proposals, invitation for bids, and sole source procurements to determine whether the solicitations and the resultant agreements contained the appropriate FTA required clauses. We found one file to be deficient in that it did not include FTA required clauses. It should be noted, in the other not deficient files, we found the grantee included a comprehensive list of the required clauses.

#### Best Practices/Advisory Comments

Within 30 days after the date of this report, the grantee should ensure that OTS develop procedures and implement management controls to ensure that all procurements funded with FTA funds contain the appropriate statutory and regulatory clauses. The Best Practices Procurement Manual, Section 8.1, provides that "Appendix A.1 of this Manual contains thirty model contract clauses that are either federally required or suggested model clauses that you may include in contracts. The clauses contained in this Appendix include the following common elements, which will be helpful to grantees in deciding if a specific clause is required in a particular procurement:

Applicability to Contracts - discusses the types of contracts for which the clause is applicable.

Flow Down - discusses to which prime contractors and which level of subcontractors the clauses apply.

Mandatory Clause/Language - includes the model clause, identified by FTA as either a required (specified) clause or a suggested-language clause."

#### Corrective Actions and Schedule

The grantee in its response to the draft report provided a draft of OTS's amended procedures that comply with FTA requirements. The grantee added that OTS's procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The grantee's response included the draft procedures (see Exhibit 4) for FTA's review and comment.

## **E. THE CITY AND COUNTY OF HONOLULU - PRE-AWARD AND POST-DELIVERY REVIEW REQUIREMENTS**

“A recipient purchasing revenue service rolling stock with funds obligated by FTA on or after October 24, 1991, must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits as prescribed in this part. In addition, such a recipient must maintain on file the certifications required under subparts B, C, and D of this part.” [49 CFR § 663.7]

### ***Pre-Award***

“A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is completed before the recipient enters into a formal contract for the purchase of such rolling stock.” [49 CFR § 663.21]

“A pre-award audit under this part includes - (a) A Buy America certification as described in § 663.25 of this part; (b) A purchaser’s requirements certification as described in § 663.27 of this part; and (c) Where appropriate, a manufacturer’s Federal Motor Vehicle Safety certification information as described in § 663.41 or § 663.43 of this part.” [49 CFR § 663.23]

The grantee shall ensure before signing a contract with a supplier that the Buy America Certification has been reviewed and verified for both the 60% domestic content; and the proposed U.S. final assembly location, operations, and total costs. The grantee, before signing a contract with a supplier, shall have performed the “Purchaser’s Requirements Certification” and checked bid specification compliance with the solicitation specifications and completed the manufacturer capability study. The grantee before signing a contract with a supplier for buses shall have requested and received the manufacturer’s letter satisfying the “Federal Motor Vehicle Safety Standards (FMVSS) Certification”. In the event any of the foregoing has not been accomplished, the grantee has requested and received a waiver from FTA.

### **Discussion**

The grantee is “deficient” with respect to this element. We reviewed four procurement files relative to the Pre-Award required reviews and certifications and found two files deficient. In one deficient file we did not find the Buy America Certification, but did find the Purchaser’s Requirements Certification and the Federal Motor Vehicle Safety Standards (FMVSS) Certification. In the second deficient file we found the Buy America Certification but did not find the Purchaser’s Requirement Certification and the Federal Motor Vehicle Safety Standards (FMVSS) Certification.

### **Best Practices/Advisory Comments**

Refer to the Best Practices/Advisory Comments following the Post-Delivery Review Element.

### ***Post-Delivery***

“A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under this part is completed before title to the rolling stock is transferred to the recipient.” [49 CFR § 663.31]

“A post-delivery audit under this part includes - (a) A post-delivery Buy America certification as described in § 663.35 of this part; (b) A post-delivery purchasers certification as described in § 663.37 of this part; and (c) When appropriate, a manufacturer’s Federal Motor Vehicle Safety Standard self-certification information as described in § 663.41 and § 663.43 of this part.” [49 CFR § 663.33]

The grantee shall insure before using the vehicles in transit service that the “Buy American Certification” has been reviewed and verified for both the 60% domestic content; and the actual U.S. final assembly location, operations, and total costs. In addition, the Purchaser’s Requirements Certification for procurements of rail vehicles or more than ten buses or modified vans is completed for the Resident Inspector’s report and the Visual Inspections and Road Tests or Performance Tests in the case of rail vehicles. Finally, the grantee has verified that the Federal Motor Vehicle Safety Standards (FMVSS) sticker is affixed to each bus. In the event that any of the foregoing this has not been accomplished the grantee has requested and received a waiver from the FTA.

### **Discussion**

The grantee is “deficient” with respect to this element. We reviewed four procurement files relative to the required Post-Delivery reviews and certifications again with varying results. One file did not have any deliveries to this point, therefore the reviews and certifications were not applicable. In one deficient file no required reviews or certifications were found. In the last two deficient files the Buy America Certifications were found but not the Purchaser’s Requirements Certifications

### **Best Practices/Advisory Comments**

Within 30 days after the date of this report, the grantee should develop procedures and implement management controls to insure compliance with the Pre-Award and Post-Delivery requirements. The FTA Administrator’s *Dear Colleague Letter C-97-03*, dated March 18, 1997, outlines the steps that a grantee must take in performing pre-award and post-delivery reviews of rolling stock procurements to ensure their compliance with Buy America Act requirements. This *Dear Colleague Letter* may be found in Appendix A.2 of the Best Practices Procurement Manual. It must be stressed that grantees are to document their reviews and include this documentation in their contract files as evidence that they have performed the required reviews. FTA has published manuals that provide detailed guidance to grantees concerning which Buy America certifications and documents are needed to support the procurement process from issuance of the solicitation to title transfer, as well as the procedures that the grantee may follow when conducting the pre-award and post-delivery reviews. There are also examples of Buy America calculations and responses to frequently asked questions. The manuals are: *Conducting*

*Pre-Award and Post-Delivery Reviews for Bus Procurements*; Document No: FTA DC-90-7713-93-1, Rev. B, dated May 1, 1995 and *Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements*; Document No: FTA DC-90-7713-94-1, Rev. B, dated May 1, 1995.

Corrective Actions and Schedule

The grantee in its response to the draft report stated that DTS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later.

Reviewers Comments

FTA may wish to ensure that the grantee develop procedures and implement management controls to insure compliance with the Pre-Award and Post-Delivery requirements.

**REPORT SUMMARY TABLE  
THE CITY AND COUNTY OF HONOLULU**

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
1)	Written Standards of Conduct	FTA C4220.1E, ¶ 7.c.		✓			Amend Procedures
2)	Contract Administration System	FTA C4220.1E, ¶ 7.b.		✓			Develop Procedures
3)	Written Protest Procedures	FTA C4220.1E, ¶ 7.1.		✓			Amend Procedures
4)	Prequalification System	FTA C4220.1E, ¶ 8.d.		✓			Amend Procedures
5)	Procedures for Ensuring Most Efficient and Economic Purchase	FTA C4220.1E, ¶ 7.d.	✓				
6)	Procurement Policies & Procedures	FTA C4220.1E, ¶ 7.a.		✓			Amend Procedures
7)	Independent Cost Estimate	FTA C4220.1E, ¶ 10.	10	12		22	Establish Procedures
8)	A&E Geographic Preference	FTA C4220.1E, ¶ 8.a.	2			2	
9)	Unreasonable Qualification Requirements	FTA C4220.1E, ¶ 8.a.	14			14	
10)	Unnecessary Experience and Bonding	FTA C4220.1E, ¶ 8.a.	19			19	
11)	Organizational Conflict of Interest	FTA C4220.1E, ¶ 8.a.	1		18	1	
12)	Arbitrary Action	FTA C4220.1E, ¶ 8.a.	22			22	
13)	Brand Name Restrictions	FTA C4220.1E, ¶ 8.a.	9		13	9	
14)	Geographic Preferences	FTA C4220.1E, ¶ 8.b.	20	2		22	Establish Procedures
15)	Contract Term Limitation	FTA C4220.1E, ¶ 7.m.	7		15	7	
16)	Written Procurement Selection Procedures	FTA C4220.1E, ¶ 8.c.	10	1		11	Establish Mgt. Controls
17)	Solicitation Prequalification Criteria	FTA C4220.1E, ¶ 8.d.	2		9	2	
18)	Award to Responsible Contractors	FTA C4220.1E, ¶ 7.h.	17	2		19	Develop Procedures
19)	Sound and Complete Agreement	FTA C4220.1E, ¶ 15.	19			19	
20)	No Splitting [Micro-purchase]	FTA C4220.1E, ¶ 9.a.					

ND – Not Deficient  
D – Deficient  
NA – Not Applicable

**REPORT SUMMARY TABLE  
THE CITY AND COUNTY OF HONOLULU**

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
21)	Fair and Reasonable Price Determination [Micro-purchase]	FTA C4220.1E, ¶ 9.a.					
22)	Micro-Purchase Davis Bacon	FTA C4220.1E, ¶ 9.a.					
23)	Price Quotations	FTA C4220.1E, ¶ 9.b.	2		1	2	
24)	Clear, Accurate, and Complete Specif	FTA C4220.1E, ¶ 8.c.	22			22	
25)	Adequate Competition - Two or More Competitors	FTA C4220.1E, ¶ 9.c.	11			11	
26)	Firm Fixed Price [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	5			5	
27)	Selection on Price [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	5			5	
28)	Discussions Unnecessary [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	5			5	
29)	Advertised/Publicized	FTA C4220.1E, ¶ 9.c.	11			11	
30)	Adequate Solicitation	FTA C4220.1E, ¶ 9.c.	11			11	
31)	Sufficient Bid Time [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	5			5	
32)	Bid Opening [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	5			5	
33)	Responsiveness [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	5			5	
34)	Lowest Price [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	1		4	1	
35)	Rejecting Bids [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	1		4	1	
36)	Evaluation [RFP]	FTA C4220.1E, ¶ 9.d.	6			6	
37)	Price and Other Factors [RFP]	FTA C4220.1E, ¶ 9.d.	5	1		6	Establish Mgt. Controls
38)	Sole Source if Other Award is Infeasible	FTA C4220.1E, ¶ 9.f.	4	5		9	Develop Procedures
39)	Cost Analysis Required [Sole Source]	FTA C4220.1E, ¶ 9.h.	4	5		9	Develop Procedures
40)	Evaluation of Options	FTA C4220.1E, ¶ 9.i.	5	2	12	7	Establish Mgt. Controls

ND – Not Deficient  
D – Deficient  
NA – Not Applicable

*Leon Snead & Company, P.C.*

**REPORT SUMMARY TABLE  
THE CITY AND COUNTY OF HONOLULU**

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
41)	Cost or Price Analysis	FTA C4220.1E, ¶ 10.	8	5		13	Establish Mgt. Controls
42)	Written Record of Procurement	FTA C4220.1E, ¶ 7.i.	15	7		22	Establish Mgt. Controls
43)	Exercise of Options	FTA C4220.1E, ¶ 9.i.	3		16	3	
44)	Out of Scope Changes	FTA C4220.1E, ¶ 9.f.	4		15	4	
45)	Advance Payments	FTA C4220.1E, ¶ 12.a.	19			19	
46)	Progress Payments	FTA C4220.1E, ¶ 12.b.	2	2	15	4	Develop Procedures
47)	Time & Materials Contracts	FTA C4220.1E, ¶ 7.j.			19		
48)	Cost Plus Percentage of Cost	FTA C4220.1E, ¶ 10.e.	18			18	
49)	Liquidated Damages Provisions	FTA C4220.1E, ¶ 13.	5		14	5	
50)	Piggybacking	FTA C4220.1E, ¶ 7.p.	1		18	1	
51)	Qualifications Exclude Price [A&E]	FTA C4220.1E, ¶ 9.e.	2			2	
52)	Serial Price Negotiations [A&E]	FTA C4220.1E, ¶ 9.e.	2			2	
53)	Bid Security [Construction Over \$100,000]	FTA C4220.1E, ¶ 11.a.	2			2	
54)	Performance Security [Construction Over \$100,000]	FTA C4220.1E, ¶ 11.b.	2			2	
55)	Payment Security [Construction Over \$100,000]	FTA C4220.1E, ¶ 11.c.	2			2	
56)	Clauses	FTA C4220.1E, ¶ 16.	16	3		19	Establish Mgt. Controls

ND – Not Deficient  
D – Deficient  
NA – Not Applicable

*Leon Snead & Company, P.C.*

**REPORT SUMMARY TABLE  
OAHU TRANSIT SERVICE, INC.**

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
1)	Written Standards of Conduct	FTA C4220.1E, ¶ 7.c.	✓				
2)	Contract Administration System	FTA C4220.1E, ¶ 7.b.	✓				
3)	Written Protest Procedures	FTA C4220.1E, ¶ 7.l.		✓			Develop Procedures
4)	Prequalification System	FTA C4220.1E, ¶ 8.d.	✓				
5)	Procedures for Ensuring Most Efficient and Economic Purchase	FTA C4220.1E, ¶ 7.d.	✓				
6)	Procurement Policies & Procedures	FTA C4220.1E, ¶ 7.a.		✓			Amend Procedures
7)	Independent Cost Estimate	FTA C4220.1E, ¶ 10.	3	9		12	Develop Procedures
8)	A&E Geographic Preference	FTA C4220.1E, ¶ 8.a.					
9)	Unreasonable Qualification Requirements	FTA C4220.1E, ¶ 8.a.	11			11	
10)	Unnecessary Experience and Bonding	FTA C4220.1E, ¶ 8.a.	4			4	
11)	Organizational Conflict of Interest	FTA C4220.1E, ¶ 8.a.			4		
12)	Arbitrary Action	FTA C4220.1E, ¶ 8.a.	12			12	
13)	Brand Name Restrictions	FTA C4220.1E, ¶ 8.a.	3		9	3	
14)	Geographic Preferences	FTA C4220.1E, ¶ 8.b.	10	2		12	Develop Procedures
15)	Contract Term Limitation	FTA C4220.1E, ¶ 7.m.	11		1	11	
16)	Written Procurement Selection Procedures	FTA C4220.1E, ¶ 8.c.	3			3	
17)	Solicitation Prequalification Criteria	FTA C4220.1E, ¶ 8.d.			3		
18)	Award to Responsible Contractors	FTA C4220.1E, ¶ 7.h.	4			4	
19)	Sound and Complete Agreement	FTA C4220.1E, ¶ 15.	4			4	

ND – Not Deficient  
D – Deficient  
NA – Not Applicable

*Leon Snead & Company, P.C.*

**REPORT SUMMARY TABLE  
OAHU TRANSIT SERVICE, INC.**

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
20)	No Splitting [Micro-purchase]	FTA C4220.1E, ¶ 9.a.	9			9	
21)	Fair and Reasonable Price Determination [Micro-purchase]	FTA C4220.1E, ¶ 9.a.	9			9	
22)	Micro-Purchase Davis Bacon	FTA C4220.1E, ¶ 9.a.			9		
23)	Price Quotations	FTA C4220.1E, ¶ 9.b.	4		4	4	
24)	Clear, Accurate, and Complete Specific Adequate Competition - Two or More Competitors	FTA C4220.1E, ¶ 8.c.	12			12	
25)		FTA C4220.1E, ¶ 9.c.	3			3	
26)	Firm Fixed Price [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	3			3	
27)	Selection on Price [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	3			3	
28)	Discussions Unnecessary [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	3			3	
29)	Advertised/Publicized	FTA C4220.1E, ¶ 9.c.	3			3	
30)	Adequate Solicitation	FTA C4220.1E, ¶ 9.c.	3			3	
31)	Sufficient Bid Time [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	3			3	
32)	Bid Opening [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	3			3	
33)	Responsiveness [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	3			3	
34)	Lowest Price [Sealed Bid]	FTA C4220.1E, ¶ 9.c.	2		1	2	
35)	Rejecting Bids [Sealed Bid]	FTA C4220.1E, ¶ 9.c.			3		
36)	Evaluation [RFP]	FTA C4220.1E, ¶ 9.d.					
37)	Price and Other Factors [RFP]	FTA C4220.1E, ¶ 9.d.					
38)	Sole Source if Other Award is Infeasible	FTA C4220.1E, ¶ 9.f.		5			Develop Procedures
39)	Cost Analysis Required [Sole Source]	FTA C4220.1E, ¶ 9.h.		5			Develop Procedures

ND – Not Deficient  
D – Deficient  
NA – Not Applicable

*Leon Sneed & Company, P.C.*

**REPORT SUMMARY TABLE  
OAHU TRANSIT SERVICE, INC.**

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
40)	Evaluation of Options	FTA C4220.1E, ¶ 9.i.	1		3	1	
41)	Cost or Price Analysis	FTA C4220.1E, ¶ 10.	7		4	7	
42)	Written Record of Procurement	FTA C4220.1E, ¶ 7.i.	7	5		12	Establish Mgt. Controls
43)	Exercise of Options	FTA C4220.1E, ¶ 9.i.	1		3	1	
44)	Out of Scope Changes	FTA C4220.1E, ¶ 9.f.			4		
45)	Advance Payments	FTA C4220.1E, ¶ 12.a.	4			4	
46)	Progress Payments	FTA C4220.1E, ¶ 12.b.			4		
47)	Time & Materials Contracts	FTA C4220.1E, ¶ 7.j.	1		3	1	
48)	Cost Plus Percentage of Cost	FTA C4220.1E, ¶ 10.e.	4			4	
49)	Liquidated Damages Provisions	FTA C4220.1E, ¶ 13.			4		
50)	Piggybacking	FTA C4220.1E, ¶ 7.p.			4		
51)	Qualifications Exclude Price [A&E]	FTA C4220.1E, ¶ 9.e.					
52)	Serial Price Negotiations [A&E]	FTA C4220.1E, ¶ 9.e.					
53)	Bid Security [Construction Over \$100,000]	FTA C4220.1E, ¶ 11.a.					
54)	Performance Security [Construction Over \$100,000]	FTA C4220.1E, ¶ 11.b.					
55)	Payment Security [Construction Over \$100,000]	FTA C4220.1E, ¶ 11.c.					
56)	Clauses	FTA C4220.1E, ¶ 16.	3	1		4	Establish Mgt. Controls

ND – Not Deficient  
D – Deficient  
NA – Not Applicable

DESCRIPTION OF NOT DEFICIENT ELEMENTS

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**Element 8 – A&E Geographic Preference**

“...geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.” [FTA C 4220.1E, ¶ 8.b.]

**Element 9 - Unreasonable Qualifications Requirements**

"Grantees shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract." [FTA C 4220.1E, ¶ 8.b.]

**Element 10 – Unnecessary Experience and Excessive Bonding**

"...Some situations considered to be restrictive of competition include, but not limited to: (2) Unnecessary experience and excessive bonding requirements." [FTA C 4220.1E, ¶ 8.a. (2)]

**Element 11 - Organizational Conflicts of Interest**

“...An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage; ...” [FTA C 4220.1E, ¶ 8.a. (5)]

**Element 12 – Arbitrary Action**

“All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to; ... (7) Any arbitrary action in the procurement process.” [FTA C 4220.1E, ¶ 8.a. (7)]

**Element 13 - Brand Name Restrictions**

“Specifying only a “brand name” product instead of allowing “an equal” product to be offered without listing its salient characteristics.

Grantees may define the salient characteristics in language similar to the following:

DESCRIPTION OF NOT DEFICIENT ELEMENTS

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(a) 'Original Equipment Manufacturer (OEM) part # 123 or approved equal that complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties'; or

(b) 'Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other component the part must be compatible with] and will not compromise any OEM warranties'; . . ." [FTA C 4220.1E, ¶ 8.a.(6)]

**Element 15 - Contract Term Limitation**

"Grantees shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options." [FTA C 4220.1E, ¶ 7.m.]

**Element 16 - Written Procurement Selection Procedures**

"Grantees shall have written selection procedures for procurement transactions. All solicitations shall: . . . (2) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals." [FTA C 4220.1E, ¶ 8.c.]

**Element 17 - Solicitation Prequalification Criteria**

"Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date." [FTA C 4220.1E, ¶ 8.d]

**Element 18 - Award to Responsible Contractors**

"Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources." [FTA C 4220.1E, ¶ 7.h.]

**Element 19 - Sound and Complete Agreement**

"All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase thresholds.)

## DESCRIPTION OF NOT DEFICIENT ELEMENTS

- b. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (Applicable to all contracts in excess of \$10,000)" [FTA C 4220.1E, ¶ 15.]

**Element 20 - No Splitting [Micro-purchase]**

"...There should be . . . no splitting of procurements to avoid competition." [FTA C 4220.1E, ¶ 9.a]

**Element 21 - Fair and Reasonable Price Determination**

"Procurement by Micro-Purchases . . . Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived." [FTA C 4220.1E, ¶ 9.a.]

**Element 23 – Price Quotations [Small Purchase]**

"Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. §403 (11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources." [FTA C 4220.1E, ¶ 9.b.]

**Element 24 - Clear, Accurate, and Complete Specifications**

"All solicitations shall: (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use." [FTA C 4220.1E, ¶ 8.c. (1)]

"In order for sealed bidding to be feasible, the following conditions should be present:(a) A complete, adequate, and realistic specification or purchase description is available" [FTA C 4220.1E, ¶ 9.c. (1) (a)]

"If this procurement method is used, . . . The invitation for bids, which will include any specifications and pertinent attachments, shall define the terms or services sought in order for the bidder to properly respond" [FTA C 4220.1E, ¶ 9.c. (2)(b)]

## DESCRIPTION OF NOT DEFICIENT ELEMENTS

**Element 25 - Adequate Competition - Two or More Competitors**

“In order for sealed bidding to be feasible, the following conditions should be present: ... (b) Two or more responsible bidders are willing and able to compete effectively for the business; ...” [FTA C 4220.1E, ¶ 9.c. (1) (b)]

“The competitive proposal method of procurement is normally conducted with more than one source submitting an offer i.e., proposal.” [FTA C 4220.1E, ¶ 9.d.]

**Element 26 - Firm Fixed Price [Sealed Bid]**

“The procurement lends itself to a firm fixed price contract . . . ” [FTA C 4220.1E, ¶ 9.c. (1)(c)]

**Element 27 – Selection on Price [Sealed Bid]**

“...the selection of the successful bidder can be made principally on the basis of price.” [FTA C 4220.1E, ¶ 9.c. (1)(c)]

**Element 28 - Discussions Unnecessary [Sealed Bid]**

“No discussions with bidders is needed.” [FTA C 4220.1E, ¶ 9.c. (1)(d)]

**Element 29 – Advertised/Publicized**

If the sealed bid procurement method is used, . . . “The invitation for bids will be publicly advertised. . .” [FTA C 4220.1E, ¶ 9.c. (2) (a)]

If the request for proposals method is used, . . . “Request for proposals will be publicized . . . ” [FTA C 4220.1E, ¶ 9.d. (1)]

**Element 30 - Adequate Solicitation**

(a) Sealed Bids - “If this procurement method is used, . . . bids shall be solicited from an adequate number of known suppliers...” [FTA C 4220.1E, ¶ 9.c. (2)(a)]

(b) Competitive Proposals - If this procurement method is used the following requirements apply: . . . Proposals will be solicited from an adequate number of qualified sources.” [FTA C 4220.1E, ¶ 9.d. (2)]

**Element 31 - Sufficient Bid Time [Sealed Bid]**

“If this procurement method is used, . . . sufficient time to prepare bids prior to the date set for opening the bids;” [FTA C 4220.1E, ¶ 9.c. (2)(a)]

## DESCRIPTION OF NOT DEFICIENT ELEMENTS

**Element 32 - Bid Opening [Sealed Bid]**

"Procurement By Sealed Bids/Invitation For Bid (IFB) . . . (c) All bids will be publicly opened (emphasis added) at the time and place described in the invitation for bids;" [FTA C 4220.1E, ¶ 9.c. (2) (c)]

**Element 33 - Responsiveness [Sealed Bid]**

"If this procurement method is used, . . . A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder." [FTA C 4220.1E, ¶ 9.c. (2)(d)]

**Element 34 - Lowest Price [Sealed Bid]**

"If this procurement method is used, . . . A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder." [FTA C 4220.1E, ¶ 9.c. (2)(d)]

**Element 35 - Rejecting Bids [Sealed Bid]**

"Any or all bids may be rejected if there is a sound business reason." [FTA C 4220.1E, ¶ 9.c. (2)(e)]

**Element 36 - Evaluation [RFP]**

"Procurement By Competitive Proposal/Request for Proposals (RFP) . . . If this procurement method is used, the following requirements apply:

- (1) ...All evaluation factors will be identified along with their relative importance . . .
- (3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees." [FTA C 4220.1E, ¶ 9.d. (1) & (3)]

**Element 40 - Evaluation of Options**

"Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options . . . The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement." [FTA C 4220.1E, ¶ 9.i. & 9.i. (1)]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

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**Element 41 – Cost or Price Analysis**

"Grantees must perform a cost or price analysis in connection with every procurement action, including, contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation . . ." [FTA C 4220.1E, ¶ 10.]

**Element 43 – Exercise of Options**

"Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

**(2) Exercise of Options.**

(a) A grantee must ensure that the exercise of an option is in accordance with the term and conditions of the option stated in the initial contract awarded.

(b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised." [FTA C 4220.1E, ¶9.i.(2)]

**Element 44 - Out of Scope Changes**

" . . . A contract change that is not within the scope of the original contract is considered a sole source procurement . . ." [FTA C 4220.1E, ¶ 9.h.]

**Element 45 – Advance Payments**

"Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement." [FTA C 4220.1E, ¶ 12.a.]

**Element 47 – Time and Materials Contracts**

Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk. [FTA C 4220.1E, ¶ 7.j.]

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**DESCRIPTION OF NOT DEFICIENT ELEMENTS**


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**Element 48 - Cost Plus Percentage of Cost**

"The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used." [FTA C 4220.1E, ¶ 10.e.]

**Element 49 - Liquidated Damages Provisions**

"A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise." [FTA C 4220.1E, ¶ 13.]

**Element 50 - Piggybacking**

"Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum." [FTA C 4220.1E, ¶7.p.]

"...Grantees who obtain these contractual rights (commonly known as 'piggybacking') may exercise them after first determining the contract price remains fair and reasonable." [FTA C 4220.1E, ¶7.e. (3)]

**Element 51 - Qualifications Exclude Price [A&E]**

"Procurement of Architectural and Engineering Services (A&E). Grantees shall use qualification-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. Qualifications-based competitive proposal procedures require that: (1) An offeror's qualifications be evaluated; (2) Price be excluded as an evaluation factor"; [FTA C 4220.1E, ¶ 9.e. (1) & (2)]

**Element 52 - Serial Price Negotiations [A&E]**

"Qualifications-based competitive proposal procedures require that . . . (3) Negotiations be conducted with only the most qualified offeror; and (4) Failing agreement on price, negotiations

## DESCRIPTION OF NOT DEFICIENT ELEMENTS

with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee." [FTA C 4220.1E, ¶ 9.e. (3) & (4)]

**Element 53 - Bid Security [Construction over \$100,000]**

" . . . FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified" [FTA C 4220.1E, ¶ 11.a.]

**Element 54 - Performance Security [Construction Over \$100,000]**

" . . . FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

. . . b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; . . ." [FTA C 4220.1E, ¶ 11.b.]

**Element 55 - Payment Security [Construction Over \$100,000]**

" . . . FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

- (1) Fifty percent of the contract price if the contract price is not more than \$1 million;
- (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) Two and a half million dollars if the contract price is more than \$5 million." [FTA C 4220.1E, ¶ 11.c.]

**CITY AND COUNTY OF HONOLULU  
RESPONSE DATED MAY 18, 2007**

DEPARTMENT OF TRANSPORTATION SERVICES  
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 3RD FLOOR  
HONOLULU, HAWAII 96813  
Phone: (808) 768-8305 • Fax: (808) 523-4730 • Internet: www.honolulu.gov

MUFI HANNEMANN  
MAYOR



MELVIN N. KAKU  
DIRECTOR

RICHARD F. TORRES  
DEPUTY DIRECTOR

TPD07-00187

May 18, 2007

Mr. Leslie T. Rogers, Regional Administrator  
Federal Transit Administration, Region IX  
U.S. Department of Transportation  
201 Mission Street, Suite 1650  
San Francisco, California 94105-1839

Attention: Mr. John Hunt  
Procurement Review Coordinator

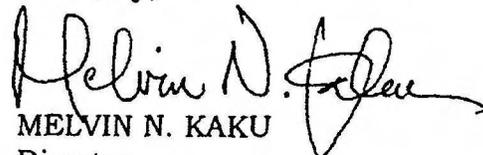
Dear Mr. Rogers:

Subject: FY 2007 Procurement System Review Draft Report

Thank you for the opportunity to review the draft of Honolulu's Procurement System Review report. We submit for your review and consideration our comments to the subject draft report (Attachments 1, 2, and 3), as well as drafts of several corrective actions (Exhibits 1, 2, 3, and 4).

The review was very helpful and we look forward to receiving your review comments on the procedures that have been drafted to date. Please continue to coordinate the procurement review corrective actions with Ms. Phyllis Kurio. Ms. Kurio can be reached at (808) 768-8347 or email: [pkurio@honolulu.gov](mailto:pkurio@honolulu.gov).

Sincerely,

  
MELVIN N. KAKU  
Director

Attachments

cc: ✓ Mr. Bud Maraist  
Leon Snead & Company, LLC

AR00055480

**ATTACHMENT 1**  
Comments to Draft Report

**ATTACHMENT 2**  
Corrective Actions  
City & County of Honolulu

**ATTACHMENT 3**  
Corrective Actions  
Oahu Transit Services, Inc.

FY 2007 Procurement System Review  
City and County of Honolulu  
Comments to Draft Report

*Page 4, list of exit conference attendees*

Please make the following revisions:

1. Melvin N. Kaku – Director, Department of Transportation Services (DTS)
2. Donna Woo – First[,] Deputy Corporation Counsel, Department of the Corporation Counsel (COR)
3. Reid M. Yamashiro – Deputy Corporation Counsel, COR
4. Kenneth Toru Hamayasu, P.E. – Chief, Transportation Planning Division, DTS
5. Phyllis C. Kurio – Transportation Planner, DTS
6. James Burke – Chief, Public Transit Division, DTS
7. Michael R. Hansen – Chief Accountant, Internal Control Division, Department of Budget & Fiscal Services (BFS)
8. Wendy K. Imamura – Purchasing Administrator, BFS [Department of Budget & Fiscal Services]
9. Michael Hiu – Assistant Purchasing Administrator, BFS [Department of Budget & Fiscal Services]
10. Paul Romaine – Administrative Services Officer, DTS

*Page 20, line 2*

Please make the following revision because the grantee is not a transit authority:  
Independent cost estimate ... by the grantee before it [the transit authority]

*Page 31*

Please make the following revision because OTS is not the grantee:

**DEFICIENT**

The OTS [grantee] is “deficient” with respect to the following elements:

*Page 38, line 1*

Please make the following revision:

The grantee shall ensure ... that a Buy America[n]

FY 2007 Procurement System Review  
City and County of Honolulu  
Corrective Actions

Element # & Description		Corrective Actions
1	Written Standards of Conduct	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 1
2	Contract Administration System	BFS procedures will be amended within 9 months of the final report to include a comprehensive section on contract administration; preliminary draft procedures are submitted as Exhibit 2.
3	Written Protest Procedures	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 2
4	Prequalification System	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 10
6	Procurement Policies & Procedures <ul style="list-style-type: none"> <li>• Time &amp; Materials Type Contracts</li> <li>• Contract Term Limitation</li> <li>• Revenue Contracts</li> <li>• A&amp;E Services</li> <li>• Sole Source Procurement (OEM)</li> <li>• Cost Plus Percentage of Cost</li> <li>• Advance Payments</li> </ul>	<p>BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1</p> <p>Section 4</p> <p>Section 5</p> <p>Section 6</p> <p>Section 14</p> <p>Section 16</p> <p>Section 19</p> <p>Section 20</p>
7	Independent Cost Estimate	<p>BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 18</p> <p>DTS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The procedures will include instructions on how to prepare an independent cost estimate.</p>

BFS = City Department of Budget and Fiscal Services  
DTS = City Department of Transportation Services

Element # & Description		Corrective Actions
6, 14	A&E Geographic Preference	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 8.
6, 14	Geographic Preferences	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 8.
16	Written Procurement Selection Procedures	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 9.
18	Award to Responsible Contractors	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 3.
37	Price & Other Factors [RFP]	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 11.
38	Sole Source if Other Award is Infeasible	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 12.
39	Cost Analysis Required [Sole Source]	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 13. DTS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The procedures will include instructions on how to prepare an analysis.
6, 40	Evaluation of Options	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 17. DTS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later.

BFS = City Department of Budget and Fiscal Services  
DTS = City Department of Transportation Services

Element # & Description		Corrective Actions
6, 41	Cost or Price Analysis	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 13. DTS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The procedures will include instructions on how to prepare an analysis.
42	Written Record of Procurement	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 7.
6, 46	Progress Payments	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 21.
6, 56	Clauses	BFS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft procedures are incorporated in Exhibit 1, Section 23. DTS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The procedures will include the checklist presented in Exhibit 3.
	Buy America pre-award & post-delivery requirements	DTS procedures will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later.

BFS = City Department of Budget and Fiscal Services

DTS = City Department of Transportation Services

FY 2007 Procurement System Review  
Oahu Transit Services, Inc.  
Corrective Actions

Element # & Description		Corrective Actions
5	Written Protest Procedures	OTS Procurement Manual Section 2.3 will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft policy is included in Exhibit 4.
6	Procurement Policies & Procedures	OTS Procurement Policy Manual Section 2.3.4 will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft policy is included in Exhibit 4.
7	Independent Cost Estimate	OTS Procurement Policy Manual Section 2.3.4(j) will be added and Section 2.4 will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft policy is included in Exhibit 4.
14	Geographic Preferences	OTS Procurement Policy Manual Section 2.3.4(h) will be added and Section 2.3.2(1e) will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft policy is included in Exhibit 4.
38	Sole Source if Other Award is Infeasible	OTS Procurement Policy Manual Section 2.3.4(h) will be added and Section 2.3.5 will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft policy is included in Exhibit 4.
39	Cost Analysis Required [Sole Source]	OTS Procurement Policy Manual Section 2.3.4(h)(1)(f) will be added and Section 2.3.5 will be amended within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft policy is included in Exhibit 4.
42	Written Record of Procurement	OTS Procurement Policy Manual Section 2.3.4(a) will be added within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft policy is included in Exhibit 4.
56	Clauses	OTS Procurement Policy Manual Section 2.3.4(o) will be added within 30 days of the final report, or 30 days of FTA's concurrence with the draft procedures, whichever is later. The draft policy is included in Exhibit 4.

**EXHIBIT 1**

City & County of Honolulu  
Draft Procedures for FTA Funded Procurement

**EXHIBIT 2**

City & County of Honolulu  
Preliminary Draft Procedures  
Contract Administration

**EXHIBIT 3**

City & County of Honolulu  
Proposed Third-Party Contract  
Clauses Checklist

**EXHIBIT 4**

Oahu Transit Services, Inc.  
Draft Revisions to  
Procurement Manual

requirements and procedures and is not intended to be an exclusive list of procedures required for compliance with FTA requirements.

1. Standards of Conduct (FTA C 4220.1E, 7.c.)

No employee, officer, agent, immediate family member, or Board member of the City shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (a) The employee, officer, agent, or Board member,
- (b) Any member of his/her immediate family,
- (c) His or her partner, or
- (d) An organization that employs, or is about to employ, any of the above.

2. Protests of Awards (FTA C 4220.1E, 7.1).

In all instances involving FTA funds the City shall disclose information regarding the protest to the FTA.

3. Award to Responsible Contractors (FTA C 4220.1E, 7.h).

All recommendations to make awards under solicitations must contain a written determination that the awarded contractor has been determined to be responsible prior to the award. Responsible contractors possess the ability to perform successfully under the terms and conditions of the proposed procurement.

4. Time and Materials Type Contracts (FTA C 4220.1E, 7.j.).

All time and materials type contracts must have a ceiling price that the contractor shall not exceed except at its own risk.

5. Term Limitation for Contracts (FTA C 4220.1E, 7.m.).

Contract term limitation for rolling stock and replacement parts shall not exceed five (5) years inclusive of options without prior written FTA approval when FTA funds are involved. For all other types of contracts, the contract file must contain evidence that the contract term is based upon sound business judgment.

6. Revenue Contracts (FTA C 4220.1E, 7.n.).

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business

opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the City

7. Written Record of Procurement History (FTA C 4002.1E, 7.i.)

The procurement file must contain a record detailing the procurement history. At a minimum, these records shall include: (1) the rationale for the method of procurement, (2) selection of contract type, (3) reasons for contractor selection or rejection, and (4) the basis for the contract price.

8. In-State or Local Geographical Preferences (FTA C 4220.1E, 8.b.).

Except when procuring architectural and engineering services, the use of in-State or local geographical preferences in the evaluation of bids or proposals is prohibited unless Federal statutes expressly mandate or encourage geographical preference.

9. Written Procurement Selection Procedures (FTA C 4220.1E, 8.c).

All solicitations must contain written selection procedures, method of award provisions, and/or evaluation criteria and their relative order of importance, as appropriate to the solicitation.

10. Prequalification of Persons, Firms, or Products (FTA C 4220.1E, 8.d.).

Potential bidders may not be precluded from qualifying during the solicitation process. Any exceptions, such as a requirement for extensive testing that makes qualification during the solicitation process, must be approved by the City Director of Budget and Fiscal Services.

11. Price and Other Factors [RFP] (FTA C 4220.1E, 9.d.(4)).

All request for proposals must include price as an evaluation factor.

12. Sole Source if Other Award is Infeasible (FTA C 4220.1E 9.h.(1))

If a sole bid or offer is received under a competitive solicitation, any award to the sole bidder or offeror must be made under sole source procurement procedures with proper justification and documentation.

13. Cost Analysis Required [Sole Source] (FTA C 4220.1E, 9.h.(2))

Cost analysis must be performed and documented prior to sole source award. Written evidence of negotiation efforts is required for sole source award. A written determination that the price was determined to be fair and reasonable and the basis for that determination must be documented.

14. Qualification Based Selection (FTA C 4220.1E, 9.e.).

Only architectural and engineering services as defined by the Brooks Act may be procured using the qualifications based selection method. All others must use a competitive process, which includes price as an evaluation/selection factor.

15. Procurement of Design-Build (FTA C 4220.1E, 9.g.).

The City must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in FTA C 4220.1E, 9.e. when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in FTA C 4220.1E, 9.e. Qualifications-based competitive proposal procedures shall not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in FTA C 4220.1E, 9.e.

16. Sole Source Procurement Requirement (FTA C 4220.1E, 9.h.).

For sole source procurement of items associated with capital maintenance items as defined in 49U.S.C.5307(a)(1) that is procured directly from the OEM, the City must certify to FTA that this is the only source and the price is no higher than for like customers. The term "associated capital maintenance items" means equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used.

17. Requirements for Use of Options (FTA C 4220.1E, 9.i.).

- (a) Option quantities must be evaluated to determine contract award, and
- (b) When exercising options, ensure it is in accordance with the contract and that the price is better than prices available in the market or is more advantageous at the time the option is exercised.

18. Independent Cost or Price Estimates (FTA C 4220.1E, 10.).

Must make independent cost or price estimates before receiving bids or proposals. This is the first step in the cost or price analysis required for all procurement actions. The contract file must document the method used to determine the independent cost estimate.

19. Cost Plus Percentage of Cost Contracts (FTA C 4220.1E, 10.e.).

Cost plus percentage of cost type contract is prohibited.

20. Advance Payments (FTA C 4220.1E, 12.a.).

Advance payments utilizing FTA funds are prohibited unless prior written concurrence is obtained from FTA.

21. Payment on Cost Incurred (FTA C 4220.1E, 12.b.).

Progress payments may only be made on the basis of costs incurred and the City must obtain adequate security for which progress payments are made. Adequate security may include taking title, letter of credit or equivalent means to protect the City's interest.

22. Public Announcement of Awards (FTA C 4220.1E, 14.).

If the City announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the City shall:

- (a) Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and
- (b) Express the said amount as a percentage of the total costs of the planned acquisition.

23. Federal Statutory and Regulatory Requirements (FTA C 4220.1E, 16.).

All Federal statutory and regulatory requirements for contracts funded under Federal grants must be complied with. The FTA Best Practices Manual, Appendix 1A, Federally Required and Other Model Clauses, latest revision, must be incorporated into all FTA funded procurement contracts.

([http://www.fta.dot.gov/funding/thirdpartyprocurement/grants\\_financing\\_6037.html](http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html))

DRAFT

Category  
**PROCUREMENT**

Effective Date  
 Index Code  
 01.11

Reference

Revised Charter of the City and County of Honolulu Chapter 3, Section 9  
 Hawaii Revised Statutes, Section 103D  
 Hawaii Administrative Rules Title 3, Subtitle 11  
 Federal Acquisition Regulations, Part 42

Subject

**CONTRACT ADMINISTRATION**

**POLICY**

I. Delegation of Authority

- A. The Director of Budget and Fiscal Services, as the Chief Procurement Officer for the City and County of Honolulu, delegates to the Heads of each Department, the authority to administer contracts funded by the budget of that Department in accordance with this policy.
- B. The Head of a Department is defined as the Officer-in-Charge on City contracts. The Heads of each Department may further delegate contract administration, in whole or part, to appropriate departmental personnel. The individual delegated as the contract administrator shall also be known as the Designee of the Officer in Charge.

II. Duties of the Officer-in-Charge

- A. Maintain a contract administration file to include, but not be limited to:
  1. Copy of the contract and any subsequent amendments, including insurance, certificates, bonds, etc.
  2. Information sheet with pertinent contract and contact information. (Exhibit A)
  3. Contract Administration Verification Report (CAVR). (Exhibit B)
  4. Notice to proceed (NTP) if applicable
  5. All deliverables including reports, wage compliance validation as applicable, etc.
  6. All correspondence relating to the contract.
  7. Minutes of all meetings with contractor.
  8. Contract Closeout/transition information.
  9. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
  10. Modifications/changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
  11. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., city council, board of directors, executive director) of the settlement amount;
  12. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and

13. Documentation relating to contract close-out.

- B. Ensure that contractors perform in accordance with the terms, conditions, and specifications of contracts and purchase orders
1. List all required deliverables on the CAVR with due dates for each deliverable.
  2. Post actual date received for each deliverable.
  3. Sign acceptance of deliverable. If deliverable is unacceptable notify Contractor in accordance with noncompliance policy below.
  4. Approve and post payments due contractor based on satisfactory performance on CAVR.
  5. Upon satisfactory completion of the contract process the final payment.
    - a. Certify all requirements have been met on CAVR .
    - b. Complete the Final Summary on the CAVR.
    - c. Forward the CAVR to the Department Head for final approval for closeout of contract.
    - d. Submit approved CAVR with approved final invoice to Accounts Payable for payment.
- C. Noncompliance
1. Noncompliance issues shall be handled in accordance with the terms and conditions of the contract which usually require a letter from the Director or Officer-in-charge to the contractor requiring a deficiency be cured within a specified time period.
  2. The Officer-in-charge shall consult the Purchasing Division for assistance in resolving noncompliance issues prior to issuance of a notice to cure. The Officer-in-charge should take into consideration learning curves, Contractor's due diligence, and other factors prior to issuing a notice to cure.
  3. The Officer-in-charge shall document all communications with Contractor regarding performance issues.
- D. Post Award Meetings
1. The Officer-in-charge shall, wherever appropriate, conduct a post award meeting with the Contractor to review the requirements of the contract, any service level agreements, approval process for the acceptance of deliverables, invoicing, and any other issues.
  2. The Officer-in-charge shall document the contract file with minutes of the meeting with a copy to the contractor.
1. Examples of contract administration activities under the responsibility of the Officer in Charge.
1. Receive, evaluate and act on value engineering and other change proposals
  2. Negotiate cost and schedule impact related to change orders and other contract modifications
  3. Process disputes under the Disputes Clause
  4. Review and approve payments under the Progress Payments Clause
  5. Monitor progress and ensure timely notification of anticipated overrun
  6. Monitor financial status and advise the contracting officer if contract performance is jeopardized
  7. Issue tasks under a task order contract
  8. Perform property administration

9. Ensure contractor compliance with quality assurance requirements
10. Evaluate, for adequacy, the contractor's engineering efforts and management systems that relate to design, development, production and testing
11. Evaluate and make recommendations on contractor requests for waivers and deviations
12. Monitor contractor's small and disadvantaged business subcontracting
13. Ensure timely submission of required reports
14. Administer special clauses such as drug and alcohol testing
15. Receive, inspect and accept or reject partial deliveries and final deliveries of all contract deliverables
16. Assist the procurement office in contract close out.

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Contract Information Sheet

**Contractor Name**  
**Contract Number**  
**Description of Services**  
**Effective Date**  
**Expiration Date**

**Contract Administrator**  
**Phone**

**Contractor Contact**  
**Title**  
**Phone**  
**email**

**Alternate Contractor Contact**  
**Title**  
**Phone**  
**email**

## Contract Administration Verification Report

Contract No.:  
Contractor:  
Contract Amount:

Effective Date:  
Completion Date:

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### CONTRACT EVALUATION

Contract Objectives: State the objectives of the contract and attach approved project request form, BEDC002, if applicable. (Include estimated return on investment).

Evaluate the contractor in terms of meeting or exceeding the contract objectives stated above.

Provide recommendations for follow-up or future activities.

**APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES**  
*(excluding micro-purchases, except for construction contracts over \$2,000)*

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/Management	Railroad Stock Purchase	Construction	Materials & Supplies
No federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Termination Provisions	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Suspension and Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, manufactured products)
Provisions for resolution of disputes, breaches, or other litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$2,500 (except transportation services)	>\$2,500	>\$2,000 (including ferry vessels)	

**APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES**  
*(excluding micro-purchases, except for construction contracts over \$2,000)*

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Bonding				>\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyrights requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	Architectural & Engineering	All	All	All	
Notification of Federal Participation	>\$500,000	>\$500,000	>\$500,000	>\$500,000	>\$500,000

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<b>FINANCE &amp; ADMINISTRATION PROCUREMENT MANUAL</b>	
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<b>Title: Purchasing Methods</b>	<b>Effective Date: 12/1/06</b>

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1. The Purchasing Section makes procurement and awards for goods, services, and construction through competitive sealed bidding, competitive sealed proposals, professional services procurement, small purchases, sole source procurement, and emergency procurement in accordance with this Procurement Manual.
2. Whenever possible or practicable, even when competitive quotations or bids are not required, Purchasing Section personnel should attempt to solicit competitive quotations or bids. Purchases shall not be parceled by dividing the purchase of same, like, or related items into several purchases of small quantities to evade competitive bidding requirements.
3. Acceptable Purchasing Methods:
  - (a) Small Purchases – under \$50,000
  - (b) Competitive Sealed Bids – Large Purchases of \$50,000 or greater
  - (c) Emergency Procurement
  - (d) Sole Source Procurement
  - (e) Competitive Sealed Proposals
  - (f) Professional Services
  - (g) Cooperative Purchasing
  - (h) Procurement Exempt From Competition

**4. ETA Funded Procurements:**

- (a) **Written Record of Procurement History** – The history of each procurement shall contain, at a minimum, the following items:
  - (1) the rationale for the method of procurement
  - (2) selection of contract type
  - (3) reasons for contractor selection or rejection, and
  - (4) the basis for the contract price

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(b) Use of Time and Materials Type Contracts. Time and material type contracts shall be used only:

- (1) After a determination that no other type of contract is suitable, and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed, except at its own risk.

(c) Contract Term Limitation. Contracts for rolling stock or replacement parts with period of performance shall not exceed five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) should be based on sound business judgment. Contract terms shall be established and extended no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.

(d) Revenue Contracts. Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent and type of competition required is within the discretionary judgment of the grantee.

(e) Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to provide impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.

(f) Prohibition Against Geographic Preferences. Procurements shall be conducted in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

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- (g) **Written Procurement Selection Procedures.** There shall be written selection procedures for procurement transactions. All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which the most economical is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the parameters or other salient characteristics of a procurement. The specific features of the name brand or other must be met by offers. Such shall be clearly stated.
- (h) **Procurement By Noncompetitive Proposals (Sole Source).** Sole source procurements shall be accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

When a noncompetitive procurement is necessary in circumstances other than those listed in ((a)), ((b)), ((c)), or ((e)) below, FTA approval must be obtained.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- ((a)) The item is available only from a single source.
- ((b)) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- ((c)) FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval 34.5
- ((d)) After solicitation of a number of sources, competition is determined inadequate or
- ((e)) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:

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(1) that such manufacturer or supplier is the only source for such item, and

(2) that the price of such item is no higher than the price paid for such item by like customers.

(f) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the validation of the specific elements of costs and profit is required.

(j) **Options.** Options may be included in contracts. An option is a unilateral right in a contract by which, to a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

(1) **Evaluation of Options.** The option quantities or periods contained in the contract's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

(2) **Exercise of Options**

(a) The exercise of an option must be made in accordance with the terms and conditions of the option stated in the initial contract awarded.

(b) An option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

(l) **Contract Cost and Price Analysis for Every Procurement Action.** A cost or price analysis shall be performed in connection with every procurement action, including contract modifications. The method and degree of analysis will be dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates will be made before receiving bids or proposals.

(k) **Cost Plus Percentage of Cost Prohibited.** The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(i) **Advance Payments.** FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local

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funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

(m) Progress Payments. The following requirements are mandatory for the use of progress payments:

(1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.

(2) Adequate security shall be obtained from the contractor, in the form of credit or equivalent means to protect the grantee's interest in the progress payment.

(n) Contract Award Announcement. Announcement of contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, shall:

(1) Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and

(2) Express the said amount as a percentage of the total costs of the planned acquisition.

(o) Statutory and Regulatory Requirements. All FTA procurement contracts shall include the appropriate statutory and regulatory requirements, such as Davis-Bacon Act, Disadvantaged Business Enterprise (DBE), 8(a), and Buy America. The requirements shall be validated for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel and manufactured goods will be subject to the Buy America requirements in 49 CFR Part 601. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual.

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<b>Title: Competitive Sealed Bids – Large Purchases of \$50,000 or Greater</b>	<b>Effective Date: 12/1/06</b>

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terms, requirements and conditions, including specifications, may not be modified except in writing by the Purchasing Section.”

- (1) *Amendments and Clarifications to Invitations for Bids*  
 Amendments to invitations for bids shall be identified as addenda and shall reference the portions of the invitation for bids it amends and detail the amendments. Other pre-bid communications shall be identified as bid clarification notices. Addenda shall be used to make any material changes in the invitation for bids as in quantity, purchase descriptions, delivery schedules, and opening dates. Either addenda or written bid clarification notices shall be used to correct minor defects or ambiguities and to give general information to all prospective bidders known to have received an invitation for bids. Addenda and bid clarification notices may be issued anytime up to the scheduled opening of the bids.
  
- (2) *Bid Receipt*  
 Bids documents, upon arrival at the Purchasing Section, must be time stamped but not opened. They must be stored in a secure place until the time and date set for bid opening. Other methods of bid receipt are acceptable only if approved by the Purchasing Manager. The bid receipt, accuracy of the time and date stamp, security of storage and personnel access to the bid documents are important components in the public perception of the integrity of the purchasing process. Steps should be taken to ensure that this portion of the process is above any scrutiny. Bids or modifications to bids received after the date and time due are considered late. Bids that are late due to the offeror are returned unopened to the offeror. Records of returned bids must be kept in the procurement file.

(b) Bid Opening

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- (1) Single step invitation for bids shall be opened no sooner than ten (10) calendar days from the public notice of the solicitation. For construction including design-build projects, a minimum of fifteen (15) calendar days shall be provided between the date of the pre-bid conference and the date set for receipt of offers.
  
- (2) Bid opening should take place in public in the presence of one or more witnesses at the time, date and place specified in the solicitation. Bids should be read aloud and recorded along with the names and addresses of one or more witnesses present at the time of the opening. The Purchasing Section personnel involved in the bid opening must immediately inspect the bid to ensure that it is signed by the vendor, to verify and secure any performance security that is attached and to remove any documents provided by the bidder and marked confidential. Any other material may be made available for public inspection. Unsigned bids with no other evidence of contractual commitment on the part of the offeror must be rejected. Unsigned bids cannot be signed after the bid is opened, even if the vendor is present at the bid opening. A record of the rejection and return must be kept in the procurement file. Each procurement file is a public record and upon award, is available for review by auditors and the general public upon request and only during normal business hours.

**(c) Mistakes in Bids**

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the Purchasing Manager of intent to withdraw the bid for modification or to withdraw completely.

Changes in a bid after opening are acceptable if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. Corrections to the bid that may be necessary due to a mathematical mistake are also acceptable. In case of error in extension of price, unit price shall govern.

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(d) Bid Evaluation and Award

The award is made to the lowest responsible and responsive bidder and is based on criteria established in the solicitation. Award notification must be made promptly. Only objective measurements may be used in determining the lowest bidder.

Examples of objective evaluation measures include:

- (i) Transportation costs; and
- (ii) Life cycle costs.

In the event that all bids exceed the funds available, the Purchasing Manager, in consultation with the Chief Procurement Officer, is authorized to conduct negotiations with the low bidder in order to reach an acceptable price.

All bid awards must be approved by the Chief Procurement Officer before a contract can be executed.

(e) Low Tie Bids

It is possible to receive bids that are identical in price and meet all of the requirements established in the solicitation. Except for ~~contract funded procurements (See Section 2.3 Item (f))~~, at the discretion of the Purchasing Manager, an award may be made in any permissible manner including:

- (i) Award to a Hawaii based business;
- (ii) Award to the bidder who received the previous award;
- (iii) If previous award method is not permissible in resolving tie bids, award may be made by drawing lots. A record of a low tie bid must be maintained with the procurement file.

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<b>Title: Sole Source Procurement</b>	<b>Effective Date: 1/1/00</b>

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**Policy**

1. Sole source purchases are made if the goods, services, or construction needed has a unique feature, characteristic, or capability essential for OTS departments to accomplish its work and when there is only one source available from which a particular good, service, or construction may be obtained. Sole source purchases are exempt from the normal competitive bid or proposal procedure of acquiring goods, services, or construction needed.
2. The requesting department must complete a Sole Source form and forward it to the Chief Procurement Officer for review and approval.
3. The Chief Procurement Officer has approved the following sole source procurements:
  - (a) Rental of booth space for exhibits at conventions and trade shows when or organized by a single sponsor;
  - (b) the repair, replacement, installation or relocation of public utility company equipment or facilities;
  - (c) Annual license renewal and maintenance for computer software;
  - (d) Procurement of computer software conversions, modifications, and maintenance for existing programs from the manufacturer of the software;
  - (e) Transcripts of court proceedings.

4. For FTA funded procurements see Sole Source requirements under Policy Number 2.3, Item 4(f).

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<b>Title: Cost or Pricing Data Requirement</b>	<b>Effective Date: 1/1/00</b>

**Policy**

1. If competition is restricted or lacking and/or the prices offered appear high, the Purchasing Manager must determine if the prices are fair and reasonable. It is important to know the market and the supplier's situation in regard to the market.
2. Cost or pricing data is required in support of an offer if any of the following are true statements:
  - (a) The competitive sealed proposal, sole source procurement or the professional service procurement is in excess of \$100,000.
  - (b) An aggregate adjustment (up or down in excess of \$100,000) is made to any contract including those let by competitive sealed bids.
  - (c) It is for an emergency procurement in excess of \$100,000. (Data may be submitted after the award.)
  - (d) The Chief Procurement Officer requests such data and has reasonable justification for the need.
3. Cost or pricing data is not required if the contract price is based on:
  - (a) Multiple offers with "price" as a competing factor.
  - (b) Prices published in a catalog.
  - (c) Prices substantiated through prices previously paid or by sources independent of the supplier.
  - (d) Prices set by law or regulation.
4. Only the Chief Procurement Officer may waive requirements for cost or pricing data.
5. Such a waiver must be documented and kept with the contract file.

6. For ETA-funded procurements refer to Policy Number 2.3 Item 4(i).

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<b>Title: Vendor Protest</b>	<b>Effective Date: 1/1/00</b>

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**Policy**

It is OTS's policy to try to resolve all procurement disagreements without resorting to formal legal proceedings. Any actual or prospective bidder, offeror, or contractor ("protestor") who is aggrieved in connection with the solicitation or the award of a contract may file a protest.

Protests related to FTA funded procurements shall be communicated in writing to the Chief of the Public Transit Division, Department of Transportation Services, of the City and County of Honolulu, for notification to the FTA.

**Procedures**

1. Filing of protest prior to receipt of offers.
  - (a) Protestor initially should seek an informal resolution of the protestor's complaint with the procurement officer named in the solicitation.
  - (b) Protestor may file a protest prior to receipt of offers on any phase of a solicitation including, but not limited to, specifications or disclosure of information marked confidential in the bid or offer.
  - (c) To expedite handling of protests, the envelope should be labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to the Chief Procurement Officer or as otherwise specified in the solicitation.
  - (d) The written protest shall include at a minimum the following:
    - (1) The name and address of the protestor;
    - (2) Appropriate identification of the procurement;
    - (3) A statement of reasons for the protest; and
    - (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.