



POLICIES & PROCEDURES FOR PROCUREMENT

As of December 2019

Approvals:

Purchasing Manager:

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Contents

I.	INTRODUCTION	3
A.	PURPOSE.....	3
B.	APPLICATION	3
C.	FTA CLAUSES.....	4
D.	RECORD KEEPING.....	4
E.	LAND PURCHASES	4
II.	PROCUREMENT PROCESS.....	5
A.	MICRO PURCHASES	5
B.	SMALL PURCHASES.....	5
C.	FORMAL PROCUREMENT	7
1.	Request for Proposals.....	7
2.	Request for Qualifications.....	10
3.	Invitation for Bids	10
III.	SPECIAL CIRCUMSTANCES.....	13
A.	PURPOSE.....	13
B.	BUY AMERICA	13
C.	CONSTRUCTION	13
D.	ROLLING STOCK.....	14
E.	ARCHITECTURAL AND ENGINEERING	15
F.	RESEARCH, DEVELOPMENT, DEMONSTRATION, DEPLOYMENT AND SPECIAL STUDIES	16
G.	SOLE SOURCE	16
H.	EMERGENCY	17
I.	SINGLE BID	17
J.	PIGGYBACKING.....	17
K.	REQUESTS FOR INFORMATION	18
L.	LEASING	18
M.	CHANGE ORDERS	18
IV.	LEGAL REQUIREMENTS	19
A.	CONFLICT OF INTEREST.....	19
B.	SELF CERTIFICATION.....	19
C.	NO REGIONAL PREFERENCES.....	19
D.	EQUAL EMPLOYMENT OPPORTUNITIES	20
E.	DBE.....	20
F.	DETERMINATION OF RESPONSIBILITY	20
G.	PASS-THRU CLAUSES TO SUBS.....	21
V.	PROTEST PROCEDURES.....	21
VI.	Appendix A - Definitions	22

I. INTRODUCTION

A. PURPOSE

This policy sets forth the elements of all purchasing procedures to be followed by the City of St George - SunTran (“SunTran”). This policy specifically applies to Federal programs including but not limited to Federal Transportation Administration (FTA), Federal Highway Administration (FHWA), and other Federal programs as required.

This policy is designed to simplify, clarify, and update the procurement process of SunTran. The rules endeavor to ensure fair and equal treatment of all parties. The policy is meant to encourage effective competition and to ensure that expenditures are carried out in a prudent manner. It is also designed to assure a procurement system of quality and integrity.

B. APPLICATION

These procurement standards follow the FTA 2 CFR 200.318 (General Procurement Standards) through 200.326 (Contract Provisions). In addition to St. George City Code (“Code”) Title 1 Chapter 10B, this policy shall be applicable for any purchases made by SunTran, and include the following terms:

- a. When a procurement involves the expenditure of Federal assistance or Federal contract funds, SunTran shall follow any mandatory requirements of applicable Federal law and applicable federal regulations;
- b. Nothing in these rules shall prevent SunTran from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement providing that competitive procedures as described in these rules shall be followed whenever possible;
- c. This policy shall not be applicable to the leasing, rental, acquisition or disposition of real property.
- d. “Cost plus a percentage of cost” and “percentage of construction cost” methods of contracting SHALL NOT BE USED.
- e. Where appropriate, the following possibilities will be analyzed to determine the most economical and practical procurement: lease vs. purchase alternatives; products and services which use the metric system of measurement; products and services that conserve natural resources, protect the environment and are energy efficient.
- f. SunTran shall consider using Federal excess and surplus property in lieu of purchasing new equipment and property if such use is feasible and reduces project costs.
- g. The Transit Manager will work with the Purchasing Manager in the development and execution of procurement; however, the Transit Manager is responsible for ensuring compliance with this policy.

C. Federal Transit Authority (FTA) CLAUSES

When Federal funds are used, SunTran shall include all applicable FTA required clauses in each contract. The clauses shall be reviewed by the Transit Manager to determine which clauses are applicable and will be included in the solicitation documents for vendor/contractor review. The Transit Manager will ensure that all clauses are signed and all certifications verified before entering into any contract. Any applicable state and/or local requirements will also be included in each solicitation and contract document as necessary. SunTran will also ensure that, as required by the Common Grant Rules, as defined in the FTA Circular 4220.1F, all necessary provisions will be included when entering into a third party or industry developed contract, and that such contracts are favorable to SunTran.

Some Federal third-party contract clauses require additional action on the part of SunTran. As stated above, the verification of any additional requirements will be overseen by the Transit Manager and documentation of any action taken will be included in the contract history file. For additional information on the Federal Clauses and their requirements, please refer to Chapter IV of FTA Circular 4220.1F.

D. RECORD KEEPING

As required by the Common Grant Rules, a procurement history shall be kept for each procurement action. This history file shall at least meet the minimum requirements of the FTA which require: 1) the rationale for the method of procurement, 2) reasons for selection of contract type, 3) reasons for contractor selection or rejection, including a written responsibility determination for the successful contractor, and 4) a basis for the contract price as well as the evaluation and justification for the actual contract cost or price. The written records and documentation will vary greatly depending on the size and complexity of each procurement action. SunTran will maintain these files in a readily accessible location for a minimum of three (3) years after the recipient and subrecipients, if any, have made final payment and all other pending matters are closed. SunTran also recognizes the right, as provided by 49 U.S.C. Section 5325(g), for FTA and DOT officials, the Comptroller General, or any of their representatives, to access, examine and inspect all records, documents and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

E. LAND PURCHASES

This policy shall not be applicable to the leasing, rental, acquisition or disposition of real property.

II. PROCUREMENT PROCESS

A. MICRO PURCHASES

It is the policy of SunTran that it considers micro-purchases to be those purchases of \$3,000 or less.

(1) When appropriate and permitted by State and local law, SunTran may acquire property and services valued at \$3,000 or less without complying with bidding procedures. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements (including FTA Clause), however, will apply to construction contracts exceeding \$2,000.

(2) The following procedures apply to micro-purchases: For more information on micro-purchases, please refer to FTA Circular 4220.1f, Chapter VI, Section 3-a.

a. Competition: These purchases will be made on the open market by informal methods without public notice. Employees who are authorized to make micro-purchases must evaluate the need of the item to be procured, based on their annual budgets, and then evaluate possible vendors to determine whether or not the vendor would be considered responsible. At least three (3) verbal bids or price quotes shall be obtained prior to making the purchase. A record of the three (3) verbal bids shall be noted on the purchase requisition prior to submitting the requisition to the purchasing office for review and approval. After the approval is given, the employee will make their purchase. b. Documentation: Using their receipt, whether it is a store receipt, mailed invoice, or other statement, they will document and code the purchase date, grant number and account number on the document. Also verify that the price is fair and reasonable and document it by writing a statement on how their determination was made. If more information is needed on any procurement, the employee will document it and submit it with the coded invoice. It is not required to document the rationale for method of procurement used, the selection of contract type, or reasons for contractor selection or rejection when making a micro-purchase.

c. Prohibited Divisions: Procurement requirements will not be artificially divided so as to constitute a micro-purchase. For more information on micro-purchases, please refer to FTA Circular 4220.1f, Chapter VI, Section 3-a.

B. SMALL PURCHASES

(1) If it is determined to be in the best interest of SunTran, competitive procurement procedures may be used for purchases under the \$100,000 threshold.

Procurement requirements will not be divided or reduced so as to avoid the additional procurement requirements applicable to larger acquisitions.

For more information on small purchases and their requirements, please refer to FTA Circular 4220.1f Chapter VI Section 3-b or the Best Practices Procurement Manual.

(2) It is the policy of SunTran that the procurement of supplies, equipment, materials, and services from \$3,000.01 to \$5,000.00 will be done using small purchase procedures. Authorized employees will determine what supplies, equipment, materials, or services are needed and, based on their budget, decide when and how they will procure it. They will meet with the Transit Manager and the Purchasing Manager to ensure that they have all the required forms and documents needed before they begin the solicitation process. At a minimum the forms required will include an Independent Cost Estimate, Rationale for Method of Procurement, required clauses, and verifying that the contractor is ready, willing and able. They will then gather documented verbal quotes which provide:

- a. the name of the company or firm;
- b. the person providing the quote;
- c. payment terms (if any) and
- d. price(s) of good(s) or service(s) to be provided.

Written quotes may be used in lieu of verbal quotes if it is in the best interest of SunTran. A minimum of three (3) businesses, if available, handling the particular commodity or service shall be requested to provide verbal or written quotes in order to ensure fair and open competition. A “no bid” shall not meet the requirement of a responsible verbal or written bid. Award shall be made to the business offering the price and terms that will provide SunTran and the Federal Government with the best value and lowest price. The City may, at its discretion, form a bidder’s list with the names of businesses that may be interested in competing for various types of SunTran purchases and contracts. SunTran shall maximize the opportunity for DBEs to participate in verbal bids. All small purchases under this section must still be determined to be fair and reasonable and include the minimum FTA required procurement documentation, including the responsibility of the vendor and any applicable third-party contract clauses. When determining that the price is fair and reasonable, a cost or price analysis must be prepared and included with the procurement file.

(3) It is the policy of SunTran that the procurement of supplies, equipment, materials, and services from \$5,000.01 to \$24,999.99 will be done using small purchase procedures. Authorized employees will determine what supplies, equipment, materials, or services are needed and, based on their budget, decide when and how they will procure it. They will meet with the Transit Manager and the Purchasing Manager to ensure that they have all the required forms and documents needed before they begin the solicitation process. At a minimum the forms required will include an Independent Cost Estimate, Rationale for Method of Procurement, required clauses, and verifying that the contractor is ready, willing and able. Verbally solicit written quotes shall be obtained which provide:

- a. the name of the company or firm;
- b. the person providing the quote;

- c. payment terms (if any) and
- d. price(s) of good(s) or service(s) to be provided.

Effort will be made to contact all known suppliers of the supply, equipment or contractual service sought. A “no bid” shall not meet the requirement of a responsible verbal or written bid. Award shall be made to the business offering the price and terms that will provide SunTran and the Federal Government with the best value and lowest price. The City may, at its discretion, form a bidder’s list with the names of businesses that may be interested in competing for various types of SunTran purchases and contracts. SunTran shall maximize the opportunity for DBEs to participate in verbal bids. All small purchases under this section must still be determined to be fair and reasonable and include the minimum FTA required procurement documentation, including the responsibility of the vendor and any applicable third-party contract clauses. When determining that the price is fair and reasonable, a cost or price analysis must be prepared and included with the procurement file.

C. FORMAL PROCUREMENT

Formal procurement procedures must be used for any procurement action totaling \$25,000 or more. Different formal procurement methods may be used depending on the type of commodity or service to be procured. SunTran will determine which method will ensure the best value for SunTran and Federal Government before proceeding with any procurement process. Prior to releasing a formal procurement to the public, an Independent Cost Estimate (ICE) must be performed. When determining that the bid/proposal price is fair and reasonable, a cost or price analysis must be prepared and included with the procurement file. This cost or price analysis is completed after Bids/Proposals are received and prior to award.

1. Request for Proposals

Request for Proposals (RFP) is a method of contracting for goods or services whereby proposals are solicited from qualified suppliers, following submission of which changes in proposals and prices are allowed, and an offer deemed by SunTran to be the most advantageous in terms of criteria as designated in the RFP is accepted. Factors to be considered in determining whether RFP is a practicable method of procurement include:

- i. The contract needs to be other than fixed-price type;
- ii. If it may be necessary to conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;
- iii. If it may be necessary to base award on a comparative evaluation as stated in the RFP of differing price, quality, and contractual factors in order to determine the most advantageous offering to SunTran; and
- iv. If the primary consideration(s) in determining award may be factors other than price(s).

The RFP will include, at a minimum, the following:

- i. A statement that discussions may be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, but that proposals may be accepted without discussion;
- ii. A statement of when and how price(s) should be submitted
- iii. Instructions and information to bidders concerning the bid submission requirements, including the time and date of closing, the address of the office to which bids are to be delivered, the manner in which proposals should be submitted, and SunTran representatives available for contact regarding the RFP;
- iv. The date, time, and location, if applicable, of any Pre-Proposal Conferences.
- v. The project description and/or specifications, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements; and
- vi. The contract terms and conditions, including warranty and bonding or security requirements as applicable, including applicable federal clauses.

SunTran authorized employees will determine what item or service is needed and meet with the Transit Manager and the Purchasing Manager to obtain all necessary forms and documents. They will form a list of specifications or requirements, or Scope of Work, to describe the commodity or service to be procured. The specifications must be clear and accurate but not contain any features that unduly restrict competition. SunTran recognizes that the FTA may not finance procurements with specifications that are exclusionary or discriminatory. Furthermore, if SunTran is unable to write clear and accurate descriptions of the technical requirements of the property or services sought, a proposal deviation process will be used. Benchmarking of specific components and characteristics establishes in the RFP for SunTran a minimum level of performance that is acceptable to SunTran for the components or characteristics used. Based on the performance documentation being either the same or higher the component or characteristic will be considered during the review of the RFP deviation procedure. Each of the deviations will be evaluated by SunTran's criteria and may affect the bidding vendor in receiving a greater or lower score on the deviation. If only one source can supply the requirement, the procurement shall be made under Sole Source Procurement provisions. For more information on forming specifications for proposals, please refer to the FTA Best Practices Procurement Manual, Chapter 3.

RFPs will be advertised publicly and made available on the City of St. George's website and at the main SunTran office. Proposals will be solicited from an adequate number of qualified sources to ensure fair and open competition. The City may form a bidder's list with the names of businesses who may be interested in receiving solicitations from SunTran. Reasonable effort will be made to include DBEs in all RFP solicitations.

Pre-Proposal Conferences will be held a minimum of 14-calendar days prior to the submission of initial proposals. Attendance to pre-proposal conferences is mandatory, unless otherwise stated in the RFP. Vendors who do not attend the conference and submit a proposal will be deemed unresponsive. Attendees will sign an attendance roll and provide SunTran with their email address or other contact information. A question and answer period after the conference will also be designated in the RFP detailing the number of days allowed for all attendees of the conference to submit questions to the Purchasing Manager or other designated SunTran representatives. At the end of the question period, answers to all questions will be emailed to all attendees of the conference at the emails addresses provided or will be made available in other manners based on the contract information provided.

SunTran reserves the right to make Amendments to RFPs and requires that the bidders acknowledge receipt of all addendums issued. The amendments will reference what portions of the RFP it amends and shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their proposals. If the time set for proposal submittal will not permit such preparation, the due date will be increased in the amendment if possible. If acknowledgement of receipt is required, any proposals received without such acknowledgement may be deemed unresponsive. SunTran also permits any proposals to be withdrawn or modified by an offeror prior to the established due date and time. Minor informalities that are matters of form rather than substance can be waived or corrected without prejudice to other offerors; that is, the affect on price, quantity, quality, delivery, or contractual conditions is negligible. The offeror will be asked to confirm the proposal before an award is made. Such informalities may be waived by the evaluation committee or allowed to be corrected depending on what is determined to be the best interest of SunTran.

Evaluation factors will be clearly defined in the RFP and may include numerical rating systems. The evaluation committee will determine which proposals should be accepted based only on valid criteria listed in the RFP. The committee will include key personnel who are familiar with the product or service to be acquired, including those who formed the contract specifications and are familiar with the technical requirements of the contract. Members of the committee may be required to sign confidentiality agreements regarding any aspect of the contract or the disclosure of information pertaining to it.

If deemed necessary, interviews will be held with individual offerors by committee to clarify both SunTran's requirements and the proposals submitted. Offerors shall be afforded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals prior to award for the purpose of obtaining best and final offers. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror as an amendment. The committee will turn in written recommendations.

Award will be made to the lowest responsible offeror whose proposal is determined to be the most advantageous to SunTran based on the evaluation factors in the RFP. When determining that the price is fair and reasonable, a cost or price analysis must be prepared and included with the procurement file. The Transit Manager or his designated representative will authorize the contract award and the Purchasing Manager will then notify the winning offeror, as well as all unsuccessful offerors.

2. Request for Qualifications

The Request for Qualification method of procurement will be used for architectural and engineering or other Brooks Act protected services. These services are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. Such services may include program management by a contractor, project design, construction management, or engineering services. Unless determined in writing by the FTA, SunTran will not use RFQ or qualification based procurement methods to acquire other types of services if they are not listed above. Please refer to FTA Circular 4220.1F VI for more information on when RFQ are prohibited.

RFQ will be solicited using the same process as an RFP. However instead of using evaluation criteria listed in the Request as factors for award, the offeror's qualifications are evaluated to determine who will be awarded the contract. Price will not be used as an evaluation factor.

For more information, please see section C.4 of this policy.

3. Invitation for Bids (IFB)

In some instances, formal sealed bids (or Invitation for Bids) will be the preferred method of procurement. The Common Grant Rules state a preference of sealed bids when acquiring property, construction and other services. Procurements using sealed bids are appropriate if:

- i. A complete, adequate, precise and realistic specification or purchase description is available;
- ii. Two or more responsive bidders are willing and able to compete effectively for the business;
- iii. The procurement generally lends itself to a firm fixed price contract;
- iv. The successful bidder can be selected on the basis of price and those priced-related factors listed in the solicitation and in Code §1-10B-6. ;
- v. Discussions with bidders after bids have been submitted are generally expected to be unnecessary.

The IFB will include, at a minimum:

- i. The project description and/or specifications, delivery or performance schedule, and inspection and acceptance requirements;
- ii. Instructions and information to bidders concerning the bid submission requirements, including the time and date of closing/opening of bids, the address of the office to which bids are to be delivered, the manner in which bids should be submitted, and SunTran representatives available for contact;
- iii. The contract terms and conditions, including applicable Federal third-party clauses, warranty and bonding or security requirements as applicable.

The specifications, including any pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid. Any documents incorporated by reference in the IFB will have the location where they may be found specified. SunTran will publicly advertise the IFB. A copy of the IFB will be available on the City's website as well as from SunTran's main office. Reasonable effort will be made to include qualified DBEs in any IFB solicitations.

A mandatory Pre-Bid Conference may be conducted for the purpose of explaining the procurement requirements. Information regarding the conference will be included in the solicitation. The conference will be held long enough after the IFB is issued to allow bidders to become familiar with it, but with adequate time before bid opening to allow consideration of the conference results in preparing the bid. All attendees will sign an attendance role and provide SunTran with emails or other contact information. After the conference, time will be allowed for conference attendees to submit questions to SunTran. Responses to all questions will be sent to all vendors in attendance. Nothing stated at such conference will change the IFB unless a formal written amendment is issued. Any amendments issued may require that the bidder acknowledge, in writing, the receipt of all amendments issued. The amendment will reference which part of the IFB it amends and will be distributed within a reasonable time to allow bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation, such time will be increased in the amendment to the extent possible. If acknowledgement of amendment receipt is required, any bids received without such acknowledgement may be deemed unresponsive.

SunTran also permits any bids to be withdrawn or modified by a bidder prior to the established due date and time. If any securities have been submitted, they will be returned to the bidder upon withdrawal of the bid. The solicitation shall also prohibit multiple or alternate bids from a vendor unless such bids are specifically provided for in the IFB. Such prohibited bids will be rejected.

Upon receipt, all bids will be date and time stamped but not opened, except in the case of unidentified bids, which will be opened for identification purposes and then resealed in the presence of witnesses.

All competitive sealed bids shall be opened publicly at the time and date specified

in the IFB. Bids received after the bid opening time shall not be opened but shall be rejected as unresponsive and returned to the bidder unopened. Post marks do not count. SunTran may permit the following exceptions:

- i. In the event of public labor unrest (strike, work slowdown, etc.) which may affect mail delivery, SunTran may develop and issue emergency procedures;
- ii. Any other situation which is beyond the control of SunTran or the vendor shall be ruled on as to the acceptability of the bid by the Purchasing Manager.
- iii. Situations such as flat tires, accidents, or parking problems shall not be cause for acceptance of late bids.

Changes will be made only when deemed appropriate based on the volume or complexity of the bids. Bids shall be opened by the Purchasing Manager and read aloud in the presence of one or more witnesses. All bid openings shall be open to the public and/or interested parties. The name of the bidder, price, discounts, and delivery and product shall be a part of this record. Except for those items identified as proprietary information or trade secrets, all data regarding any particular bid becomes public information immediately after the award relating to that bid has been made.

All products or services shall be evaluated against the specifications and/or brand names used as reference in the IFB. In addition to price, the following factors may be considered in evaluating whether or not the bid is responsive: delivery date after receipt of order, cash discounts, warranties, future availability, results of product testing, financial terms, space limitations, aesthetics, adaptability to environment, cost of operation, safety and health features relating to regulator codes or requirements, the quality of supplies offered, the ability, capacity and skill of the bidder to perform the contract or provide the supplies or service required, whether the bidder can perform the contract or provide the supplies promptly, or within the time specified, without delay or interference, the sufficiency of the bidder's financial resources and the effect thereof on his ability to perform the contract or provide the supplies or services, the character, integrity, reputation, judgment, experience and efficiency of the bidder, the quality of the bidder's performance on previous orders or contracts for the city or others, litigation by or against the bidder, either pending or threatened, where claim is made that the bidder provided or furnished materially defective workmanship or materials to the city, or failed to substantially comply with bid specifications or contract terms and conditions, any previous or existing noncompliance by the bidder with laws and ordinances of the city relating directly or indirectly to the subject of the contract, the ability of the bidder to provide future maintenance and service, where such maintenance and service is essential, possession or ability to obtain all necessary city and state licenses either at the time of bid or before doing business with the city, as specified by the contracting agent, and a statement by bidder of all subcontractors he will use who may do or supply ten percent (10%) or more of the total contract being

awarded, or a willingness to supply such listing of subcontractors at the time of bid award.

If the IFB requires the submission of bid samples, descriptive literature, technical data, or other material necessary to determine product availability, they will be used only to determine whether a bidder's proposal/offering will meet SunTran's needs as set forth in the IFB. Any bidder's proposal/offering which does not meet acceptability requirements will be rejected as non-responsive.

Following the determination of bid responsiveness and product availability, if required, the bids will be evaluated to determine which offers the lowest cost to SunTran in accordance with the specifications set forth in the IFB. The contract shall be awarded with reasonable promptness to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the IFB. After City Council approval, the Transit Manager or his designated representative will authorize the contract award and the Purchasing Manager will then notify the winning bidder, as well as all unsuccessful bidders.

III. SPECIAL CIRCUMSTANCES

A. PURPOSE

While all procurement actions involving Federal funding have minimum requirements from the FTA, including determining the responsibility of the vendor and that the price is fair and reasonable, many procurements will require additional certification. This section discusses those circumstances but is not intended to be all-inclusive. For additional information on any procurement action, refer to FTA Circular 4220.1F.

B. BUY AMERICA

Buy America requirements apply to all contracts for rolling stock, steel, iron, or manufactured products with a value greater than \$100,000. For these contracts, the bidder must submit certification of compliance or non-compliance with the Buy America requirements with each bid or offer. The appropriate certifications will be provided in the bid documents provided by SunTran. If the bidder does not submit a signed certification with the bid, submits the wrong certification of compliance, or certifies both compliance and non-compliance, that bid is non-responsive and cannot be considered. For additional information of Buy America refer to 49 CFR 661 or the Best Practices Procurement Manual Chapter 4.

C. CONSTRUCTION

SunTran will ensure that any construction contract entered into that totals \$2,000 or more will comply with all local and state laws and regulations.

If Federal funding is used on the project, SunTran and third party contractors must also comply with Federal requirements and regulations. The Federal requirements and regulations may include but are not limited to:

- a. Davis Bacon Act (prevailing wages)
- b. Copeland Anti-Kickback Act
- c. Contract Work Hours and Safety Standards Act
- d. Clean Air
- e. Clean Water
- f. Buy America
- g. Bonding
 - i. Bid Guarantee
 - ii. Performance Bonds
 - iii. Payment Bonds
 - iv. Acceptable Sureties
 - v. Reduced Bonding
 - vi. Excessive Bonding
- h. Seismic Safety
- i. Recycled Projects
- j. ADA Access
- k. Value Engineering
- l. Equal Employment Opportunities
- m. Labor Neutrality

When necessary, SunTran may also procure the services of a construction management firm to oversee construction activities (see Architectural and Engineering for more information). Price will be used as one of the factors in selecting construction contractors.

For additional information on any construction procurements, please refer to FTA Circular 4220.1F, the Best Practices Procurement Manual, Chapters 6 and 8, and the U.S. Department of Labor Prevailing Wage Resource Book.

D. ROLLING STOCK

To ensure the best value for SunTran and the Federal Government when purchasing rolling stock, solicitations shall be obtained following RFP procedures. Purchases of rolling stock will satisfy all special requirements and include the required documents, clauses and audits. This includes, but is not limited to:

- a. Compliance with ADA Accessibility Specifications (49 CFR 37-38, 36 CFR 1192)
- b. Transit Vehicle Manufacturer DBE compliance certification (49 CFR 26.49)
- c. Vehicle Minimum Service Life requirements (See FTA Circular 4220.1F IV-18)
- d. Federal Air Pollution and Fuel Economy Regulations (FTA Circular 422.1F IV-

- 19)
- e. Pre-Award Audit (49 CFR Part 663 and 49 U.S.C Section 5323(m))
 - i. Buy America
 - ii. Purchaser's Requirements
 - f. Post-Delivery Audit (49 CFR Part 663 and 49 U.S.C Section 5323(m))
 - i. Buy America
 - ii. Purchaser's Requirements
 - iii. Federal Motor Vehicle Safety Standard certification
 - g. Bus Testing results (49 CFR Part 665)
 - h. Five-Year contract limitation (FTA Circular 4220.1F IV-19)
 - i. A copy of any post-delivery inspections performed by SunTran or assignee

SunTran recognizes that when exercising the option to purchase additional buses on a contract, the Pre-Award and Post-Delivery audits, as well as bus testing results, must be re-certified for the new vehicles. SunTran, or an independent third party, will conduct both the Pre-Award and Post-Delivery audits to ensure that the certification by the manufacturer is accurate.

For more information on Rolling Stock purchases, refer to FTA Circular 4220.1F, the Best Practices Procurement Manual, or 49 CFR sections as listed above.

E. ARCHITECTURAL AND ENGINEERING

For projects relating to or leading to construction, SunTran will use Brooks Act qualifications-based procurement procedures when contracting for A&E services and services as described in 49 U.S.C Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

Competitive procurement procedures, or a Request For Qualifications, shall be used for qualifications-based procurements. Under this method, price may not be considered as an evaluation factor. Negotiations are conducted with ONLY the most qualified offeror. If negotiations with the most qualified offeror fail, negotiations will begin with the next most qualified offeror.

SunTran will take into consideration the relation to construction when determining if Request for Qualifications will be used, which includes:

- a. Purpose of Services
- b. Requirements in the Context of a Construction Project
 - i. End Products Used in Construction
 - ii. Services Related to Design of Construction Projects
 - iii. Actual Construction
- c. Type of Contractor Not Determinative

For any additional information on Brooks Act qualification based procurements, please refer to FTA Circular 4220.1F, the Best Procurement Practices Manual Chapter 6.5, and

40 U.S.C Chapter 11.

F. RESEARCH, DEVELOPMENT, DEMONSTRATION, DEPLOYMENT AND SPECIAL STUDIES

When procuring research-type services, some circumstances can involve Federal requirements such as:

- a. Patent Rights
- b. Rights in Data
- c. Export Control
- d. Protection of Human Subjects
- e. Protection of Animals

For additional information on these requirements and their applicability, please refer to FTA Circular 4220.1F

G. SOLE SOURCE

Sole source purchase requirements are necessary when supplies or services required are available from only one responsible source and no other suppliers or services will satisfy the need. In addition, when SunTran requires an existing contractor to make a change to its contract that is beyond the scope of that contract, it is considered a sole source award and must be justified. Some circumstances that require sole source procurement include, but are not limited to:

- a. Unique Capability or Ability
 - i. Unique or Innovative Concept
 - ii. Patents or Restricted Data Rights
 - iii. Substantial Duplication Costs
 - iv. Unacceptable Delay
- b. Single Bid or Proposal
- c. Unusual and Compelling Urgency
- d. Authorized by FTA

It is important to emphasize that sole source refers to the supplier, not a product or service. Thus, the ability to meet a delivery date or to provide on-call repairs can create a sole source that is a single supplier condition. Justification for a sole source purchase depends upon a needed item being available from only a single supplier under the prevailing conditions. If the item may be obtained from more than one source, price competition shall be solicited. Federal program regulations for sole source procurement shall be followed in accordance with the regulations for the specific program. Any sole-source procurement will be documented and validated. When determining that the price is fair and reasonable, a cost or price analysis must be prepared and included with the procurement file. Please refer to FTA Circular 4220.1F Chapter VI for more information.

H. EMERGENCY

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or other such reasons as may be proclaimed by the City Manager, Mayor, Governor or authorized representative. The existence of such condition creates an immediate and serious need for supplies, equipment, materials, and services that cannot be met through normal procurement methods and the lack of which would threaten the function of City of St George government or its programs.

Emergency procurement shall be limited only to a quantity of those supplies, equipment, materials, or services necessary to meet the emergency. After an emergency condition is proclaimed, the Project Manager and the Purchasing Manager will oversee all purchases required to end the emergency. Emergency Procurements will follow all documentation and justification procedures as Sole Source Procurements.

I. SINGLE BID

If only one responsive bid or proposal is received in response to the solicitation, an award may be made to the single contractor if the Purchasing Manager or Transit Manager or his designated representative find that the price(s) submitted is fair and reasonable, that other prospective bidders/offerors had reasonable time to respond, or there is not adequate time for re-solicitation. When determining that the price is fair and reasonable, a cost or price analysis must be prepared and included with the procurement file. Otherwise, the bid/proposal may be rejected and:

- a. new bids/proposals may be solicited;
- b. the proposed procurement may be canceled; or
- c. if the Purchasing Manager determines that the price of the one bid or proposal is not fair and reasonable and that re-solicitation would likely be futile, the procurement may be made under the provision of Emergency Procurement.

In the case of an RFP having only one submittal, in addition to finding the price to be fair and reasonable, the Purchasing Manager must document any other reasons that would justify accepting the single proposal versus soliciting a new proposal.

Under any circumstances, the decision to solicit new bids/proposals, cancel a bid or make an Emergency Procurement will be adequately documented in the corresponding procurement file.

J. PIGGYBACKING

Utilizing any existing open-end contract for commodities and services of the federal government, agencies of other states, other public bodies or Utah state agencies, to which SunTran was not an original party, are discouraged. When a piggybacking option is

available and will save SunTran and the City money SunTran may piggyback because it is in the best interest of SunTran. If such a contract is entered into, SunTran must verify all necessary clauses and certifications are included in the contract; this includes Federal clauses, assign ability clause, and a copy of the actual contract which will be in the contract file. The Transit Manager will be responsible for verifying that all applicable documents are obtained to verify compliance with federal regulations.

K. REQUESTS FOR INFORMATION

At times, the Purchasing Manager or Transit Manager may find it necessary to solicit Requests for Information from multiple vendors to obtain a better analysis of the market before soliciting Requests for Proposals. In the case of an RFI, it will clearly state that all information submitted is NOT a proposal and that it will be used as a base for the cost or price analysis of the procurement. The Transit Manager will document why it was deemed necessary to solicit RFIs.

L. LEASING

A lease is a contract under which title to the equipment will not pass to the lessee. A lease with an option to purchase, however, allows title to pass if the purchase option is exercised. It has, or has the effect, of a conditional sale agreement. Leases and purchase options should never be used to circumvent the requirements for competition. The soundest and safest approach is that any leases of equipment be subject to the requirements for competition that apply to outright purchases.

All lease agreements shall be reviewed and signed by the Transit Manager or his designee. SunTran may elect to seek additional proposals from third party leasing companies. Lease agreements signed by unauthorized parties may be voided and may result in personal liability.

M. CHANGE ORDERS

SunTran recognizes that from time to time the need may arise to make modifications, or change orders to a contract. All prospective change orders must have cost justifications supporting each charge. The Transit Manager or his designee will negotiate the need and cost of the change orders with the vendor. When determining that the price is fair and reasonable, a cost or price analysis must be prepared prior to approval and included with the procurement file. All change orders will be approved by the Purchasing Manager and the Transit Manager before it is issued. To be approved, the change order must be within the scope of the original project, allocable, and reasonable for the completion of the project. In the event that the change will be a cardinal change to the contract, the work must be publically solicited as a separate contract and cannot be undertaken as a change to the current contract.

IV. LEGAL REQUIREMENTS

A. CONFLICT OF INTEREST

It is of the utmost importance to SunTran that all employees or agents of SunTran maintain a strictly professional relationship with all recipients of Federal or City of St George -SunTran funds. Therefore, no employee, or agent of SunTran shall participate in the selection, award or administration of a contract supported by Federal 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, or agent;
- 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.

No officers, employees, or agents of SunTran will solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements unless the financial interest is not substantial (less than \$50) . However, the receipt of gifts of unsolicited items that are of nominal intrinsic value is acceptable. (See City of St George Policy 4.49 Employee Ethics)

B. SELF CERTIFICATION

It is the policy of SunTran, as required by FTA Circular 4220.1 F, to annually self-certify that its procurement procedures comply with the Federal requirements for any FTA assisted third party contract SunTran undertakes and administers.

C. NO REGIONAL PREFERENCES

Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations is prohibited. 49 U.S.C. Section 5325(i) prohibits FTA recipients from limiting, in particular, bus purchases to in-State dealers. Some exceptions expressly mandated or encouraged by Federal law include:

- a. A&E Services
- b. Licensing
- c. Major Disaster or Emergency Relief

It is the policy of SunTran to not base the award of any contract on regional preferences of any kind, other than the exceptions listed above. In the case of such exceptions, the reasoning will be documented. For more information, refer to FTA Circular 4220.1F.

D. EQUAL EMPLOYMENT OPPORTUNITIES

It is the policy of SunTran that SunTran and applicable third-party contractors (excludes micro-purchases) will comply with Federal Regulations regarding Equal Employment Opportunities. These include:

- a. Federal EEO Requirements
 - i. Nondiscrimination in Federal Public Transportation Programs
 - ii. Prohibition Against Employment Discrimination
- b. Nondiscrimination on the Basis of Sex
- c. Nondiscrimination on the Basis of Age
- d. Federal Protections for Individuals with Disabilities

Please refer to FTA Circular 4220.1F for more information on Federal EEO requirements.

E. DBE

No provision is made in these rules for preference or set asides for minority or women owned businesses. However, it is the policy of SunTran to make a special effort to solicit and encourage Disadvantaged Business Enterprise (DBE) participation for SunTran purchases or contracts. The Transit Manager shall be responsible for monitoring SunTran's progress toward achieving SunTran's DBE goal.

When economically feasible the total requirements of a procurement action will be divided into smaller tasks or quantities to permit maximum participation by DBEs. Where the requirement permits, delivery schedules will be established that encourage participation by DBEs. Specifications may include the provision for progress payments to encourage responses from DBEs. Change orders for all FTA-funded contracts will be evaluated to enforce DBE participation when appropriate.

Prime contractors will be required to take affirmative steps to ensure that DBE requirements are fulfilled by their employees and subcontractors.

SunTran will work in cooperation with the State to ensure that SunTran has a list of all certified DBEs which exist in the State of Utah and will rely on the State of Utah's process for certifying DBEs.

F. DETERMINATION OF RESPONSIBILITY

All procurements, regardless of purchase amount, must have documentation verifying the responsibility of the vendor and their ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. This can include, but is not limited to: verifying record of integrity and business ethics; ensuring the vendor has not been barred nor suspended from Federal programs under DOT regulations compliance

with affirmative action and DBE requirements; public policy compliance; proper licensing and taxing; financial resources; production capability; timeliness to comply with the required schedules, based on all existing commitments; and checking their current and past performance record.

If the contractor fails to supply the requested information, SunTran shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible. Documentation of any findings regarding the responsibility, and the determination of responsibility, will be included in all procurement history files.

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment facilities, expertise, and personally submitting upon request:

- a. evidence that such contractor or vendor possesses such necessary items;
- b. acceptable plans to subcontract for such necessary items; and
- c. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

SunTran claims the right to request any financial documents relevant to the procurement or contract entered into with any contractor or vendor. Furthermore, SunTran affirms that all previous contracts are public knowledge and therefore available for review. SunTran will also have the authority to declare as irresponsible bidders who default on quotations or awarded contracts, and to disqualify such vendors from receiving any business from SunTran for a stated period of time.

G. PASS-THRU CLAUSES TO SUBS

It is the policy of SunTran that all contractors who enter into an agreement or contract with SunTran are required to ensure that any subcontractors hired to fulfill the contract requirements will perform to the same standard as the contractor has agreed to. It is also the Contractors responsibility to ensure that any subcontractors are compliant with all policies, clauses, and requirements of the contract entered into.

V. PROTEST PROCEDURES

Any concerns regarding the awarding of a contract or acceptance of a bid will first be addressed by the concerned party to the Transit Manager or designee. If a resolution cannot be established, an appeal can be made to the Public Works Director. This appeal must be in writing, and contain the following information: 1) the name and address of the individual or organization filing the appeal, 2) the nature and basis for the appeal, 3) reference the specific section of the policy in dispute and the context for the reason for the appeal 4) any other information pertinent to adequately communicate concerns. The appeal must be filed within 15 days of the award of the contract or the acceptance of the bid. FTA will be notified and kept up to date on the status of all protests.

The Public Works Director will review the concerns and make a decision within 15 business days. This decision will be in writing and forwarded to individual or organizations listed in the appeal. If the appellant is not satisfied with the Public Works Director's decision, the individual or organization may appeal to the City Manager within 15 business days of receiving the Public Works Director's decision. This appeal must be in writing and follow the same format as outlined for the appeal to the Public Works Director. The City Manager will respond within 60 days of receiving the appeal. The City Manager's decision is final. If the appellant is not satisfied with the City Manager's decision, the individual or organization may appeal to the Federal Transit Administration within five (5) working days of receiving the notice of the final decision in accordance with FTA C 4220.1F.

VI. Appendix A - Definitions

- a. "AWARD" – the acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a bidder.
- b. "BEST INTEREST OF SUNTRAN" – a term frequently used in granting a purchasing official the authority to use discretion to take action felt to be the most advantageous and in the "best interest of SunTran." The term is normally used when it has not been possible to anticipate all of the circumstances that may arise so that more specific directions could be delineated either by pre-qualification or in the bid documents.
- c. "BID" – an offer to provide goods or services in response to a request by SunTran.
- d. "BID BOND" – an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to accept the contract as awarded.
- e. "BIDDER'S LIST" – a list maintained by the Purchasing Manager setting out the names and addresses of suppliers of various goods and services from who bids, proposals, and quotations can be solicited.
- f. "BRAND NAME SPECIFICATIONS" – specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.
- g. "BRAND NAME OR EQUAL SPECIFICATION" – a specification that cites names, model numbers, or other identifications as representing quality or performance called for, when inviting bids or proposals on comparable items or products of any manufacturer.
- h. "SUNTRAN" – The City of St George - SunTran.
- i. "CENTRALIZED PURCHASING" – a system of purchasing in which the authority, responsibility, and control of purchasing activities is concentrated in one administrative unit.
- j. "CHANGE ORDER"- an order authorized by SunTran authorizing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.
- k. "COST ANALYSIS"- A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost; e.g., under professional consulting and architectural and engineering services contracts. A cost analysis will be necessary whenever adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price

- reasonableness can be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- l. “COMPETITIVE BIDDING” – the submission of prices by individuals or firms for a contract, privilege, or right to supply merchandise or services.
 - m. “CONTRACT” – any type of SunTran agreement, regardless of what it may be called, for the procurement or disposal of supplies, equipment, materials, or services.
 - n. “DISADVANTAGED BUSINESS ENTERPRISE (DBE)” – a small business concern:
 - i. Which is at least 51% owned by one or more socially disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock is owned by one or more socially or economically disadvantaged individuals; and
 - ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it;
 - iii. Whose business is owned by economically disadvantaged women.
 - iv. Socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other individuals found to be disadvantaged by the Small Business Administration. Such individual or entity must provide adequate documentation showing they are actually certified as a registered DBE with the State of Utah or other appropriate approving entity (e.g. another state).
 - o. “EMERGENCY PURCHASE” – a purchase made without following the normal purchasing procedures in order to obtain goods or services to meet an urgent and unexpected requirement.
 - p. “EVALUATION OF BID” – the process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.
 - q. “FORMAL BID” – a bid which must be submitted in a sealed envelope and in conformance with a prescribed format, to be awarded at a specified time.
 - r. “INDEPENDANT COST ESTIMATE” – (ICE) an independent assessment of what you would expect to pay (price) for goods or services based on a reliable source such as historical payment, industry standard, or market survey. Informal cost estimates from suppliers or manufacturers may be used to develop an ICE. An ICE must be performed for all procurements including change orders.
 - s. “INVITATION FOR BIDS” – all documents, whether attached or incorporated by reference, utilized for soliciting bids.
 - t. “INFORMAL BIDS” – an unsealed competitive offer conveyed by letter, telephone, fax, electronic mail, telegram, or other means and under conditions different from those required for formal bidding.
 - u. “LEGAL NOTICE” – notice of a proposed purchase as required by law. Depending on the legal requirement, notice may be satisfied by posting an announcement of the purchase in a public place, notification of the appropriate bidders from the biddees list, formal advertisement in a newspaper of general circulation, or a combination of these methods.
 - v. “LOWEST RESPONSIBLE AND RESPONSIBLE BIDDER” – originally, the bidder submitting the lowest initial price and capable of performing the proposed contract. Under current purchasing concepts, often construed as generally the same as the “lowest

- responsive and responsible bidder” or the “most advantageous bid,” price and other factors considered.
- w. “MISTAKE IN BID” – a miscalculation in composing a bid resulting in an incorrect price or other term which will affect the bidder’s eligibility to be awarded a contract.
 - x. “NO BID” – a response to a request for bids by SunTran stating that the respondent does not wish to submit a bid. In addition to serving as the courtesy of a reply, it can operate to prevent removal from the bidder's list for failure to show active interest.
 - y. “NON-RESPONSIVE BID” – a bid that does not conform to the essential requirements of the Invitation for Bids; non-conforming bid; unresponsive bid.
 - z. “PERFORMANCE BOND” – a Contract of guaranty executed subsequent to award by a successful bidder to protect buyer or owner from loss due to contractor inability to complete the contract as agreed.
 - aa. “PERFORMANCE SPECIFICATION” – a specification describing the performance characteristics sought in a product or service; a purchase description accenting performance over design; a functional rather than a generic or physical specification.
 - bb. “PRICE ANALYSIS” – annotating a price to be fair and reasonable and the justification as to why. This may include catalog or market prices offered in substantial quantities to the general public, regulated prices, or a comparison with recent prices for similar goods or services.
 - cc. “PROFESSIONAL SERVICES” – those services which are essentially intellectual in character and which include analysis, evaluation, prediction, planning, or recommendation. Professional services involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional services include, but are not limited to services performed by accountants, auditors, analysts, consultants, lawyers, physicians, planners, artists, engineers, architects.
 - dd. “PROTEST” – a written statement concerning an unresolved disagreement or controversy arising out of the solicitation or award of a contract.
 - ee. “PRE-QUALIFICATION OF BIDDERS” – the screening of potential suppliers or contractor in which the buyer considers such factors as financial capability, reputation, management, etc., in order to develop a list of prospective bidders qualified to be sent invitations to bid.
 - ff. “PURCHASE REQUISITION” – that document whereby a contract is entered into for a specific need and may include the description of a request item, delivery schedule, transportation data, criteria evaluation, suggested source of supply, and information supplied for the making of a written determination.
 - gg. “PROPRIETARY INFORMATION” – information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep from general public view in order to maintain competitive advantage in the market.
 - hh. “PROPOSAL” – an offer made by one party to another as a basis for negotiations for entering into a contract.
 - ii. “PURCHASE ORDER” – a purchaser’s document which formalized a purchase transaction with a vendor. A purchase order contains statements as to quantity, description, and price. Acceptance of a purchase order by the vendor constitutes a contract.

- jj. “QUALIFIED PRODUCTS LIST” – an approved list of supplies, services or construction items described by model or catalog numbers, which prior to competitive solicitation, SunTran has determined will meet the applicable specification requirements.
- kk. “REQUEST FOR PROPOSALS (RFP)” – all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals; the RFP procedure permits negotiation of proposals and process as distinguished from competitive bidding and an Invitation for Bids.
- ll. “RESPONSIBLE BIDDER” – that bidder who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability that will assure good faith performance.
- mm. “SEALED BID” – a bid which has been submitted in a sealed envelope, to prevent its contents from being revealed or known before the deadline for the submission of all bids.
- nn. “SOLICITATION TIME” – the period of time between the date of the advertisement for bids and the date set for opening of bids.
- oo. “SPECIFICATIONS” – any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- pp. “TRADE SECRET” – any aspect of a business or its operation not made available to competitors.
- qq. “VALUE ANALYSIS” – an organized effort to analyze the function(s) of products, systems specifications and standards, practices and procedures, intended to satisfy the required function(s) in the most economical manner.
- rr. “WAIVER OF BIDS” – a process authorized by applicable Federal, State, or local law or regulations and approved by SunTran to procure items without competitive bidding procedures because of unique circumstances related to a particular need or procurement, including emergency provisions.