



ADMINISTRATIVE AND FINANCE COMMITTEE
THURSDAY, SEPTEMBER 10, 2020 – 8:00 A.M.

GUIDANCE FOR PUBLIC ACCESS TO THE ADMINISTRATIVE & FINANCE COMMITTEE

MEETING ACCESSIBLE VIA ZOOM AT: <https://omnitrans.zoom.us/j/85277227972>

TELECONFERENCE

Dial: **1 669 900 6833**
Meeting ID: 852 7722 7972

*This meeting is being conducted in accordance with Governor Newsom's
Executive Orders N-25-20, N-29-20 and N-35-20*

There will be no physical location for this meeting. Members of the public wishing to participate via teleconference, can do so by dialing the following number: 1 669-900-6833, Meeting ID: 852 7722 7972. Interested persons who wish to make a public comment, may submit comments in writing to BoardSecretary@omnitrans.org. Comments must be submitted by Wednesday, September 9, 2020 at 5:00 p.m. Comments received will be read into the record.

Any member of the public requiring a reasonable accommodation to participate in this meeting in light of this announcement shall contact the Board's Secretary prior to September 9, 2020 at 5:00 p.m. The Board Secretary's telephone number is 909-379-7110 (voice) or 909-384-9351 (TTY).

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Committee Meeting: Thursday, October 15, 2020, 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

This is the time and place for the general public to address the Board for items that are not on the agenda. Interested persons who wish to make a public comment, may submit comments in writing to BoardSecretary@omnitrans.org. Comments must be submitted by Wednesday, September 9, 2020 at 5:00 p.m. Comments received will be read into the record for up to 3 minutes per individual.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

Disclosure – Note agenda items contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation in the appropriate item.



ADMINISTRATIVE AND FINANCE COMMITTEE
THURSDAY, SEPTEMBER 10, 2020 – 8:00 A.M.

E. DISCUSSION ITEMS

- | | |
|---|-----|
| 1. Approve Administrative & Finance Committee Minutes – August 13, 2020 | 3 |
| 2. Receive and Forward to the Board of Directors the Final Consolidation Study Report –
<i>Jeremiah Bryant</i> | 7 |
| 3. Receive and Forward to the Board of Directors Customer Comment Standard Operating
Procedures Update – <i>Nicole Ramos</i> | 11 |
| 4. Recommend the Board of Directors Adopt New Policy and Approve Proposed
Procurement Policy Changes – <i>Art Torres</i> | 34 |
| 5. Recommend the Board of Directors Approve Transition to Hybrid/In-Person Meetings –
<i>Erin Rogers</i> | 184 |
| 6. CEO/General Manager's Report – <i>Erin Rogers</i> | |

F. REMARKS AND ANNOUNCEMENTS

G. ADJOURNMENT

ITEM # E1

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES, AUGUST 13, 2020**

A. CALL TO ORDER

In accordance with Governor Newsom's Executive Orders N-25-20, N-29-20, and N-35-20, the August 13, 2020, Administrative & Finance Committee was held via teleconference. Committee Chair Sam Spagnolo called the meeting to order at 8:00 a.m.

1. Pledge of Allegiance
2. Roll Call

COMMITTEE MEMBERS PRESENT

Council Member Sam Spagnolo, City of Rancho Cucamonga – Committee Chair
Mayor David Avila, City of Yucaipa
Council Member Ron Dailey, City of Loma Linda
Mayor John Dutrey, City of Montclair
Supervisor Curt Hagman, County of San Bernardino
Council Member John Roberts, City of Fontana
Council Member Alan Wapner, City of Ontario

BOARD MEMBERS NOT PRESENT

None

OMNITRANS ADMINISTRATIVE STAFF PRESENT

Erin Rogers, CEO/General Manager
Shawn Brophy, Director of Operations
Jeremiah Bryant, Director of Strategic Development
Alex Chen, Director of Information Technology
Aaron Moore, Deputy Director of Operations - STS
Suzanne Pfeiffer, Director of Human Resources
Nicole Ramos, Director of Marketing & Communications
Connie Raya, Director of Maintenance
Jerome Rogers, Director of Safety & Regulatory Compliance
Art Torres, Director of Procurement
Donald Walker, Director of Finance
Araceli Barajas, Sr. Executive Asst. to CEO/Clerk of the Board
Mike Bonacio, Technical Services Manager
Vickie Chesney, Maintenance Manager
Victor Cuate, Service Planning Manager
Barbara Erwin, Safety & Regulatory Compliance Manager
Marcos Espinoza, Network Engineer
Dylan Firth, Security Specialist
Christine Glass, Employee Relations Manager

Jose Hernandez, Community Outreach Coordinator
Angelica Jara, Contracts Review Analyst
Maurice Mansion, Treasury Manager
Joseph Mercurio, Accounting Manager
David Orosco, Safety & Regulatory Compliance Specialist
Max Shen, Web Designer
Christine Van Matre, Contracts Administrator
Teresa Villa, Procurement Manager

LEGAL COUNSEL

Steve DeBaun, Legal Counsel

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Thursday, September 10, 2020.

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues.

E. DISCUSSION ITEMS

1. Approve Administrative and Finance Committee Minutes – June 11, 2020

M/S (Hagman/Avila) that approved Administrative & Finance Committee Minutes of June 11, 2020. Roll call vote was taken and the motion passed unanimously by Members present.

Member Dailey joined the meeting at 8:11 a.m.

2. Receive and Forward to the Board of Directors, Agency Management Report Fiscal Year 2020 Fourth Quarter Report

Treasury Manager, Maurice Mansion provided a brief background on this item as detailed in the staff report.

The Committee received and forwarded this item to the Board.

3. Receive and Forward to the Board of Directors, Management Plan Strategic Initiatives and Key Performance Indicators Fiscal Year 2020 Fourth Quarter Report

Director of Strategic Development, Jeremiah Bryant, provided a brief background on this item as detailed in the staff report.

The Committee received and forwarded this item to the Board.

4. Receive and Forward to the Board of Directors, Consolidation Study Reports and Recommend the Board of Directors Support SBCTA Staff Recommendation

Director of Strategic Development, Jeremiah Bryant, provided a brief background on this item and stated that the recommendation on today's agenda is to "Support the SBCTA staff recommendation to the SBCTA Board "to not consolidate San Bernardino County Transportation Authority and Omnitrans based on findings identified in the functional analysis and the financial impact of the analysis." He introduced WSP Project Manager, Cliffe Henke to provide additional information regarding the report findings.

Member Hagman referred to cost of the study and stated that had there been preliminary research conducted, a substantial amount of money could have been saved. Members Dailey, Spagnolo, and Dutrey agreed with Member Hagman's comments.

Director of Special Projects & Strategic Initiatives, Beatriz Valdez from SBCTA provided additional information regarding the final two tasks included in the study.

M/S (Dutrey/Dailey) that recommended the Board of Directors support SBCTA staff recommendation to the SBCTA Board "to not consolidate San Bernardino County Transportation Authority and Omnitrans based on findings identified in the functional analysis and the financial impact analysis reports." Roll call vote was taken and the motion was passed unanimously by Members present.

5. Recommend the Board of Directors Authorize the CEO/General Manager to Deobligate and Reobligate Local Transportation Funds and State Transit Assistance Funds

Treasury Manager, Maurice Mansion provided a brief background on this item as detailed in the staff report.

M/S (Dutrey/Roberts) that recommended the Board of Directors:

1. Authorize the CEO/General to deobligate \$2,273,552 of Local Transportation Funds (LTF) and \$3,393,732 of State and Transit Assistance (STA) funds and reobligate these funds to the designated projects shown in the attached funding source; and,
2. Authorize the CEO/General Manager to transfer \$1,077,829 of Local Transportation Funds (LTF) and \$285,446 of State Transit Assistance (STA) funds identified in prior motion and originally allocated to Omnitrans to the San Bernardino County Transportation Authority (SBCTA) for use on the West Valley Connector project.

Roll call vote was taken and motion was passed unanimously by Members present.

6. CEO/General Manager's Report

CEO/General Manager, Erin Rogers reported on the following items:

- On Tuesday, August 11th, Ms. Rogers and Director of Strategic Development Jeremiah Bryant attended the Chino Hills City Council Meeting via Zoom. Mr. Bryant provided the Mayor and Council an update on the OmniRide Program, which is the MicroTransit pilot program scheduled to begin service in Chino Hills in September.
- Ms. Rogers is scheduled participate in a Virtual Transportation Roundtable hosted by Congresswoman Norma Torres later today. The panel will consist of other transit agency CEOs and Caltrans District 7 staff to discuss regional transportation issues.
- Lastly, Ms. Rogers reminded the Members to sign up for a meeting with the Strategic Planning Consultant if they haven't already done so. The meetings are to seek input from the Board regarding Omnitrans' 2021-2025 Strategic Plan. She stated that the information will be discussed at a Board Workshop, which will be scheduled for later in the year.

Member Wapner stated that when he spoke with the Strategic Planning Consultant, he mentioned the importance of conducting scientific poll as part of this project. He asked if staff had considered including a poll in this project. Ms. Rogers responded that staff is exploring various options.

F. ADJOURNMENT

The Administrative and Finance Committee meeting adjourned at 8:54 a.m.

The next Administrative and Finance Committee Meeting is scheduled Thursday, September 10, 2020 at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Liz Gutierrez
Executive Staff Assistant

ITEM # E2

DATE: September 10, 2020

TO: Committee Chair Sam Spagnolo and
Members of the Administrative & Finance Committee

THROUGH: Erin Rogers, CEO/General Manager

FROM: Jeremiah Bryant, Director of Strategic Development

SUBJECT: CONSOLIDATION STUDY UPDATE

FORM MOTION

Receive and forward to the Board of Directors the final Consolidation Study report.

BACKGROUND

As detailed at the November 2019 Omnitrans Board of Director's Meeting, the San Bernardino County Transportation Authority (SBCTA) awarded a contract to WSP USA, Inc. to complete the SBCTA and Omnitrans Consolidation Study and Innovative Transit Review of the Metro-Valley (Study).

WSP has presented the findings of four detailed reports to both Omnitrans and SBCTA Boards including:

1. Agency Functional Assessment and Pros/Cons of Consolidation
2. Performance Review Report
3. Evaluation of Functional Areas in a Complete Consolidation
4. Detailed Analysis of Financial Impacts and Benefits of Any Proposed Consolidation

The first two reports were presented to the Boards in April 2020 and the final two reports were presented in September 2020.

The Detailed Analysis of Financial Impacts demonstrated there were significant one-time costs in the range of \$100 million to \$174 million, limited annual savings, significant risks, and little functional overlap between the agencies. As a result of these findings, SBCTA staff recommended against consolidation. At the September 2, 2020 Omnitrans Board of Director's meeting, Omnitrans' Board supported the SBCTA staff recommendation. At the September 2, 2020 SBCTA Board of Director's meeting, the SBCTA Board of Directors also supported staff recommendation not to consolidate the agencies.

Even though both Boards took action not to consolidate the agencies, there was a desire to complete Task 2 “Consolidation Findings Report, Implementation Report and Final Consolidation Report.” Completing Task 2 of this study, which includes a preliminary implementation plan, allows the full scope to be completed should the question of consolidation arise again in the future.

This report is also being presented at the SBCTA Transit Committee on September 10, 2020 following this Administrative and Finance Committee meeting.

Key elements of Task 2 include:

- Summary of all other previous study components and discusses some considerations and tradeoffs of a complete consolidation
- A hypothetical schedule laying out how a consolidation might take place
- A proposed organizational structure in a potential complete consolidation
- A review of consolidation considerations responding to COVID-19 pandemic
- A review of streamlining opportunities without consolidation
- Implementation plan and guidance

The attached reports are the final reports of the consolidation study element of the “SBCTA and Omnitrans Consolidation Study and Innovative Transit Review of the Metro-Valley.” Task 3 - The Innovative Transit Review element of this study is ongoing. Both Omnitrans and SBCTA Boards will receive a final Task 3 report later this year.

CONCLUSION

Receiving and forwarding this report and attachments keeps the Board informed on the progress of the Consolidation Study.

ER:JB

Attachment A: Task 2-Final Consolidation Report

Attachment B: Task 2-Final Consolidation Report Appendix

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

CONSOLIDATION STUDY AND INNOVATIVE TRANSIT REVIEW TASK 2 – FINAL CONSOLIDATION REPORT

AUGUST 27, 2020

FINAL



**FULL REPORT PROVIDED AS A
SEPARATE LINK AND
A HARD COPY WILL BE
PROVIDED UPON REQUEST**



APPENDIX

**FULL REPORT PROVIDED AS A
SEPARTE LINK AND A HARD COPY
WILL BE PROVIDED UPON REQUEST**

ITEM # E3

DATE: September 10, 2020

TO: Committee Chair Sam Spagnolo and
Members of the Administrative and Finance Committee

THROUGH: Erin Rogers, CEO/General Manager

FROM: Nicole Ramos, Director of Marketing and Communications

**SUBJECT: CUSTOMER COMMENT STANDARD OPERATING PROCEDURES
UPDATE**

FORM MOTION

Receive and forward to the Board of Directors this staff report on Omnitrans' Standard Operating Procedure for Handling and Processing Customer Comments.

BACKGROUND

In Fiscal Year 2019-2020, Omnitrans received nearly 120,000 calls. Approximately two thousand of these were formalized inquiries, compliments, or complaints regarding agency services and related issues via its Call Center, Transit Center and Administration Facility information desks, letters, and digital communications channels. The agency has long managed these customer interactions via its Standard Operating Procedure for Handling and Processing Customer Comments, with five goals in mind:

- 1) Ascertain trends and take a proactive approach to concerns;
- 2) Ensure prompt response to customer concerns;
- 3) Expedite customer comment resolution;
- 4) Provide centralized handling, processing, and record-keeping; and
- 5) Adhere to appropriate federal guidelines.

The procedure was most recently updated in March 2020. The detailed process is attached; however, the procedure can be summarized in eight steps:

- 1) All customer contacts are recorded, stored, and filed in a database by Omnitrans Customer Service representatives.
- 2) Safety-related concerns are immediately forwarded to the Operations and Safety departments.

- 3) In the event of an Americans with Disabilities Act or Access-related concern, Customer Service representatives assist customers in preparing a written summary of the event, which is investigated by Omnitrans' contractor staff, with resolution reviewed and approved by Omnitrans' Deputy Director of Operations or designee within ten business days.
- 4) In the event of a Title VI complaint regarding discrimination based on race, color, or national origin, information is forwarded to the agency's designated Title VI officer in the Strategic Development Department for investigation and resolution.
- 5) Any complaint regarding injury or damage is forwarded to Human Resources for claims assistance.
- 6) All other claims are routed to the appropriate department designee – for example, Operations Field Supervisors – by the Customer Service Manager for investigation within two business days of initial contact. Investigations will be completed within five business days. The investigation and its results will be recorded in the database, and resolution action handled and filed by the appropriate department.
- 7) Customers are provided written acknowledgment of their complaint within two business days of initial contact, containing a unique reference number for follow-up, if needed.
- 8) Customer comment process progress, investigation status and results are monitored by the Customer Service Manager.

Omnitrans utilizes this procedure to ensure that customer service standards are met.

CONCLUSION

Omnitrans' Standard Operating Procedure for Handling and Processing Customer Comments provides a valuable tool for the agency and its contractors to measure customer service, enhance customer retention and satisfaction, and ensure that best practices are maintained.

ER: NR

Attachments: A. Omnitrans Standard Operating Procedures for Handling and Processing Customer Complaints and Comments
B. PowerPoint Presentation

	EFFECTIVE DATE: March 4, 2020 REVISION DATE:
SUBJECT OmniTrans Standard Operating Procedures for Handling and Processing Customer Complaints and Comments	PREPARED BY: Melissa Castillo APPROVED BY: E. Rogers SIGNATURE: _____ DATED: _____

Overview: OmniTrans is committed to providing safe, quality service to its customers and appreciates the feedback received from the public. Customer complaints, specifically those related to safety, security, accessibility (including Americans with Disabilities Act (ADA) and Civil Rights (Title VI) violations are immediately investigated and addressed. All comments are reviewed by appropriate staff and accepted as an opportunity to enhance our overall transit services.

Goal: Customer comments, both positive and negative, are a natural part of any business. However, a key to maintaining a successful business is to be able to respond to all comments in a timely and efficient manner. To this end, OmniTrans has developed procedures for handling customer comments to:

- Expedite resolution
- Ascertain the trends to take a proactive approach
- Ensure customer response
- Provide centralized handling and processing
- Adhere to Federal guidelines, where appropriate

This procedure will involve all departments; however, it will be directed through the Marketing & Communications department. These procedures will encompass OmniTrans' fixed route (sbX, local, and express), Demand Response and Microtransit services. Each service has comments that are similar, but also have those that are unique.

Justification

Published marketing research has shown that when a customer has a positive experience with a product or organization, he/she will tell five people. However, if a customer has a negative experience, nine people will be told. Sales and Marketing is five times as expensive as customer service. It is highly economical to keep customers. Information gleaned from complainants becomes invaluable when used to determine best practices and methods to utilize in attracting new customers and retaining existing customers. A two percent increase in retention equals a ten percent reduction in costs. If an organization 'fixes' what customers are telling them is wrong, retention of the existing customer base occurs, and positive word of mouth attracts new customers. This more than outweighs the impact of any negative comments.

Overview: Comments and complaints are expressed by customers via use of various platforms that include telephone calls to the Call Center, letters, in person, and multiple digital communication channels.

The Customer Service Manager or designee maintains a database (Trapeze COM) which stores all customer comments/complaints and related investigation details. The Customer Service

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SUBJECT Omnitrans Standard Operating Procedures for Handling and Processing Customer Complaints and Comments	PREPARED BY: Melissa Castillo APPROVED BY: E. Rogers SIGNATURE: _____ DATED: _____

Representative enters the details of the incident in the Trapeze COM database. This database tracks all contact forms. The contact form is forwarded to the Customer Service Manager or designee via the e-mail feature in the software. Within the database, each customer comment/complaint is designated as a customer contact and a unique reference number is assigned for tracking and reporting purposes. For records retention purposes, all customer contacts received are stored and filed permanently within Trapeze COM. Written or digital customer contacts are subject to Omnitrans' record retention policies.

Guidelines

To ensure clarity and objectivity, the following guidelines should be used when recording a customer's comments in the Trapeze COM database-CS Representative screen:

1. When a comment is received by telephone, the Customer Service Representative enters the information in the Trapeze COM database in the CS Representative screen. Comments received in writing should be forwarded to the Customer Service Manager or designee for documenting and responding. Correspondence received via digital communication channels should be forwarded to assigned Customer Service staff responsible for providing initial customer responses and inputting information into the Trapeze COM database. The online customer comment form is currently found on Omnitrans website at:
<http://www.omnitrans.org/about/contact/contact-us/>
2. In the case of telephone calls, the Customer Service Representative should record the details of the customer's comments, commendation, or complaint exactly as the customer relates it. The report should include all information provided by the caller. While some of the details may not seem important, they may prove to be helpful to complete the investigation. The person taking the report should demonstrate compassion and understanding of the caller's problem but should not express guilt or responsibility on the part of Omnitrans at any time during the conversation. The caller is only relating one version of the event. To ensure resolution, it is vital that the Customer Service Representative remain objective and avoid absorbing the caller's emotions. All customer comments are to be considered confidential and, under no circumstances, should they be discussed with Omnitrans employees other than those directly involved with the investigation or resolution of the matter.
3. All information regarding route number, location, direction of travel, date of incident, time of incident, bus number, and date received will be recorded. In most cases, this will require having to ask the caller for this information.

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4. If a customer makes a comment that requires immediate attention, the Trapeze COM database screen should be filled out in the normal manner. In the following cases, however, the department involved will be contacted by Customer Service staff immediately via email: A. Any report of an unsafe situation involving OmniTrans service, equipment or property, or: B. Any report of an employee not in control of his/her behavior, due to possible intoxication, use of drugs, or illness. In these cases, a copy of the report will be forwarded to the Manager of Safety & Regulatory Compliance, the employee's direct Supervisor or Manager and Dispatch Supervisor. Dispatch will also be notified via phone and notified of reported unsafe action. 5. If a complaint is specifically related to a violation of the Americans with Disabilities Act (ADA), the Customer Service Representative may request a brief written confirmation of the event. OmniTrans may choose, at its discretion, to write the report and mail it to the complainant for signature. To ensure that this information will be included in the final report, the Customer Service Representative will provide the customer with the reference number of the Customer Contact Form as generated by the Trapeze COM database via mail on a customer contact card. Complaints found to have violations of the American with Disabilities Act will be investigated following previously outlined procedures; once investigations are complete the Deputy Director of Operations or designee will review findings and post their concurrence with the findings. Any findings not deemed to be reasonable or responsive to the ADA violation related complaint will be require further investigation and follow up by designated investigator. Upon completion of further investigation and follow up, a second review by the Deputy Director of Operations or designee will take place in order to ensure concurrence has been reached. 6. Title VI Complaints (Details in Identifying Title VI-related complaints at the end of this procedure) If a complaint is related to a potential Title VI violation, the Customer Service Representative will notify the Customer Service Manager or designee. The Customer Service Manager or designee will forward Title VI complaints via Trapeze COM to the Planner I for review and documentation. The Planner I will document their findings related to the validity (or not) of the complaint falling under the category of a Title VI complaint in Trapeze COM. 7. The person taking the call should assure the customer that the incident will be investigated, and appropriate action taken. The details of the specific action will not be given to the caller. Customers who insist on knowing the specific action will be reminded that such information is not disclosed to Customer Service and will assist if possible, with resolution. If an injury

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or damages are reported the Customer Service Representative will refer caller to Human Resources Administrative Assistant for assistance with a claim. Once a claim has been submitted, further correspondence related to incident in claim shall be handled by current Insurance Adjustor.

8. If a customer appears to be a chronic complainer or appears to have a vendetta against a Coach Operator, the Director of Operations may recommend that some or all complaints made by that person be deleted from the Coach Operator's personnel file. Should this situation occur, the Coach Operator will be notified that the complaints have been removed.

Anonymous or Third-Party Comments

1. Anonymous Comments. Anonymous complaints received that include all details needed for an investigation should be documented using "Anonymous" as the name. The Customer Service Representative will explain to the customer that, without a name or some other type of contact information, the Customer Service Manager and the designated Investigator may not be able to pursue the matter based on potential unconfirmed or undocumented information. Failure on a customer's behalf to provide contact information results in the inability to provide additional information or updates; if customer should call in the future asking for an update no information will be provided. When possible, customer should be provided information to connect to our partners at WeTip if they would like to report suspicious or dangerous activity and remain anonymous.

2. Third Party Comments. If a third-party comment is received (one that comes from someone who was a witness to the incident, but not directly involved), every effort must be made to obtain the name, address, and telephone number of the person who is being represented by the caller. If this information cannot be obtained, the comment will be considered anonymous and will be processed as described above.

3. Classifications. Customer comments can be classified within Trapeze COM as complaints, commendations, comment/requests, inquiry, lost and found or other. Customer Service Representatives are responsible for designating the complaint subcategories under each classification.

Customer Service Distribution Procedures

1. The Customer Service Representatives will forward the Customer Contact Forms, via the e-mail function in the Trapeze COM software, to the Customer Service Manager or designee daily.

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2. The Customer Service Manager or designee will determine if it is necessary to forward the complaint to another department for research, or if the complaint contains sufficient detail to be answered by the Marketing & Communications department. This is to be completed within two business days from receipt of the complaint.
3. The Customer Service Representative will send a customer acknowledgement card to the customer thanking him/her for his/her comments and/or assuring them the problem will be investigated. This is to be completed at the time the initial contact is received or not more than two business days from the receipt of the complaint.

Distribution to Other Departments

1. The Customer Service Manager or designee will forward complaints, when necessary, to those departments that are impacted by the complaint. This process is to be completed within two business days from the receipt of the complaint.
2. To ensure a timely response to a customer complaint, investigation of the complaint and response to the Customer Service Manager or designee is to be made within five working days after receipt of the complaint.
3. For the purposes of clarity, the Customer Service Manager or designee may distribute customer comments and complaints to impacted departments when the following situation(s) occur:
 - If the comment involves fixed-route or express service: Coach Operator attitude, Coach Operator conduct, unsafe driving, reports of pass-up, early, late or no show, disturbances on the coach, etc., the comment is forwarded to the Operations department.
 - If the comment involves demand response or microtransit services: Coach Operator attitude, Coach Operator conduct, unsafe driving, reports of pass-up, early, late or no show, disturbances on the coach, Call Center or other contract personnel issues etc., the comment is forwarded to the designated Purchased Transportation Contract Services (contractor) designee and the Purchased Transportation Administrator.
 - If the comment involves requests for new service, addition of service, deletion of service, or bus stop placement, the comment is forwarded to the Service Planning section of the Strategic Development department.
 - If the comment involves a potential liability claim, a Customer Contact Form is completed in Trapeze COM and a copy sent via the Trapeze software e-mail to the Human Resources Administrative Assistant for follow-up.

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- Requests for Bus Books and other promotional materials, as well as inquiries regarding promotional activities and media needs, are handled by the Marketing & Communications department.
- If the comment involves vehicle mechanical failures, graffiti, dirty equipment, etc., the comment is forwarded to the Maintenance department.

Response to Customer

All customers who provide their address will be sent a customer acknowledgement card which provides a unique reference number assigned to their complaint/comment in case they would like to follow up with their complaint. If noted in the complaint, the Customer Service Manager will contact customer to inform customers their concerns have been investigated and addressed by the investigator. Customers using digital communication channels will be responded to via email. If email is not an option, initial response will be provided via initial communication channel used by customer. If the complaint is regarding demand response or other contracted service, a formal response prepared by the Purchased Transportation Administrator or designee will be forwarded to the Customer Service Manager who will document and send out correspondence to customer. This is to be completed within ten business days of receipt of the complaint.

Complementary Paratransit and Persons with Disabilities

Complaint management is a feature of a Paratransit service quality assurance and Americans with Disabilities Act (ADA) compliance program that is overseen by OmniTrans' Purchased Transportation Administrator. The primary objective of the program is to utilize passenger feedback to adjust and modify paratransit services to create services that are fully accessible and adaptive to the maximum extent possible to passengers with substantial disabilities.

Internal Communications

In order to accurately complete the Customer Contact Form, the Operations department will forward via email information related to route delays, breakdowns, detours or service disruptions as soon as possible. Efforts will be made to distribute this information to the Marketing & Communications Department, which is responsible for relaying information to the public via established communication channels.

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Identifying Complaints with Violations of the Americans with Disabilities Act (ADA) OmniTrans abides by all federal and state standards and regulations related to providing service to individuals with disabilities. This includes operating under the Federal Americans with Disabilities Act (ADA) of 1990; the Rehabilitation Act of 1973 (Act); United States Department of Transportation (USDOT), and California accessibility requirements. Any denial of, or interference with, the rights of individuals with disabilities seeking full and equal use of OmniTrans' services, or otherwise discriminating against individuals with disabilities may result in state and/or federal penalties, such as those imposed by the ADA and/or Act. Examples of these sorts of comments or complaints include deviation from the following outlined ADA requirements which are regulated by the U.S. Department of Transportation (https://adata.org/factsheet/ADA-accessible-transportation): OVERVIEW OF REQUIREMENTS • Rider information: A public transportation system must provide adequate information on services in accessible formats for persons with different types of disabilities (e.g. information in large print, braille or alternative and electronic format). • Assistance equipment and accessible features: Equipment and facilities such as lifts, ramps, securement devices (straps for securing wheelchairs on board), signage, and communication devices must be in good operating condition. If a feature is out of order, it must be repaired promptly. In the interim, an alternative accessible vehicle or option must be available. • Adequate time to board: Public transit operators must allow adequate time for people with disabilities to board and exit from vehicles. • Service animals allowed: Service animals may accompany people with disabilities in vehicles and facilities. The DOT ADA regulations define a service animal as any guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability, regardless of whether the animal has been licensed or certified by a state or local government. • Priority seating and signs: Fixed-route systems (those operating along a prescribed route) must have signs designating seating for passengers with disabilities. At least one set of forward-facing seats must be marked as priority seating (for people with disabilities). • Operator training: Each public and private transportation operator must ensure that personnel are trained to operate vehicles and equipment safely; properly assist individuals with disabilities in a respectful, courteous way; and recognize that individuals with disabilities have different abilities and needs requiring different types of assistance.

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ARCHITECTURAL REQUIREMENTS

- **Stop announcements:** Stops must be announced at transfer points, major intersections, destination points, and other points so that people with visual impairments understand their location. In addition, the operator must announce any stop at the request of a rider with a disability.
- **Destination information on vehicles:** Vehicles must have destination and route information on the front and boarding side of a vehicle. There are size requirements for the numbers and letters on the route information signs. Destination and route information must be announced.
- **Lifts and Ramps:** Vehicles need a boarding device (e.g. lift or ramp) so that a passenger who uses a wheelchair or mobility device can reach a securement location onboard. Lifts must have a minimum design load of 600 pounds and lift platforms must accommodate a wheelchair measuring 30 inches by 48 inches.
- **Illumination, contrast, and slip-resistant surfaces:** Stepwells and doorways of vehicles must be illuminated. Doors and steps need slip-resistant surfaces.
- **Farebox:** Fareboxes must be located so they do not obstruct passenger flow for boarding the bus.
- **Turning room, handrails, and pull cords:** There must be sufficient turning and maneuvering space for wheelchairs. Handrails and stanchions (vertical rails) in the vehicle must be accessible. A stop control, such as a pull cord or button, should be within reach of wheelchair securement locations.

COMPLEMENTARY PARATRANSIT SERVICE

ADA complementary paratransit service provides origin-to-destination service and must be available where fixed-route service exists. OmniTrans' service policy provides curb-to-curb complementary paratransit service; assistance is provided to the customer to enter and exit the vehicle at the curb. *If a customer needs assistance due to disability, physical barriers in the walkway or adverse weather conditions, the driver may need to offer assistance beyond the curb to the door.*

ADA Paratransit Service Minimum Requirements

- **Service area:** Within a three-quarter mile on either side of a fixed route.
- **Hours and days of service:** Same hours and days as fixed route.
- **Fare:** Fares may not exceed twice the fare that would be charged to an individual paying full fare for a fixed-route trip of similar length, at a similar time of day. A personal care attendant shall not be charged.
- **Response time:** Paratransit service must be provided at any requested time on a particular day in response to a request for service made the previous day. Real time scheduling, in which a call to the transit provider would result in pickup the same day, is allowed but not mandated.

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- **Trip purpose restrictions:** No restrictions or priorities based on trip purpose are allowed.
- The following are not allowed:
 - o Restrictions on the number of trips per eligible individual
 - o Waiting lists for access to the service
 - o Substantial numbers of significantly untimely pickups for initial or return trips
 - o Substantial numbers of trip denials or missed trips
 - o Substantial numbers of trips with excessive trip lengths

TRANSIT FACILITIES

Transit facilities, intermodal centers, rail stations and platforms must meet accessibility standards established by the U.S. DOT. The requirements apply to new construction as well as alterations made to existing facilities and include the following:

- Accessible paths of travel
- Boarding ramps and bridge plates
- Bus stops and shelters
- Curb ramps, doors, elevators, escalators, emergency alarms
- Fare collection, gates and turnstiles, grade crossings, parking
- Passenger drop-off areas, platforms edges, rescue assistance areas
- Restrooms, signs, stairs, public telephones, water fountains, wheelchair spaces

Accessible paths: The accessible path of travel should be as close to the general circulation path as possible. Minimize any additional distance people with disabilities must travel to use ramps, elevators and other accessible features of the path.

Level boarding: Train doorways and station platforms must be at the same level, and gaps between them must be narrow enough for an ambulatory passenger to step across or a wheelchair user to roll across without difficulty. Span gaps using a short bridge plate when necessary for people with disabilities.

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Identifying Title VI-related Complaints

According to Title VI of the Civil Rights Act of 1964, OmniTrans cannot discriminate against individuals based on race, color, or national origin, and must identify, flag, and act on complaints which are of this nature. In some cases, it will be readily apparent that a complaint is Title VI in nature; in other cases, however, it may be difficult to recognize it as being such. In many of the latter cases, the complainant may not even be aware that the complaint is Title VI in nature.

Complaints which are received may fall into two rather broad categories which are subsumed into Title VI-type complaints. These two broad categories can be distinguished as being either 1) **Immediate Service level**, or 2) **Broad Planning or Policy level**.

An **Immediate Service Level complaint** would be one that asserts directly (or indirectly) that an *individual* has experienced immediate, direct, and personal discrimination by some element of the agency based on race, color, or national origin.

These complaints are of a more individual character, and not indicative of an agency-wide procedure.

Examples of these sorts of comments would be as follows:

1. An OmniTrans coach operator refuses to pick *me* up because my race
2. An OmniTrans coach operator threw *me* off the bus or has it in for me because of my race
3. OmniTrans coach operators refuse to pick people up from *this stop* because the customers are of this race
4. *Some OmniTrans Coach Operators* have made derogatory comments of a racial, ethnic, lack of English language proficiency, etc.

****These type of complaints are already addressed by the apparatus we have in place in Trapeze COM, and should continue to be categorized accordingly** (for example, if a rider complains that he was passed up because of his race, it is still categorized as a “pass up”).**

A **Broad Planning or Policy Level complaint** would be *one which indicates that asserts something affects more than one individual (again, because of the complainant’s race, color, or national origin or language usage difference). It compares one person or group to others and appears to be characteristic of agency-wide policies.* This type of complaint must be more comparative in nature. It compares (explicitly or implicitly) what the agency is doing for them versus what it is doing for other communities. These will include coach incidents, public outreach incidents, or involving publications the agency issues. Examples of these sorts of comments would be:

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1. OmniTrans Coaches are always refusing to pick up riders at stops in this part of the community.
2. OmniTrans coach operators are repeatedly abusive to riders along this route or series of stops.
3. OmniTrans never has materials printed up in my language
4. I can't read or write English, and OmniTrans doesn't have someone who will help me by the reading or explaining the material to me
5. My community doesn't speak English, and we need transit materials in our language.
6. I noticed OmniTrans never empties the trash at the bus stop(s) in my community, but the stops are nice and clean in another community.
7. OmniTrans refuses to build a route in my community although we've been asking for it for years.
8. OmniTrans has improved facilities or amenities in that city, but not in my city.
9. OmniTrans is building a BRT corridor in *that* city, but not in ours. Why not?
10. The rich communities are getting more service, but services in the poorer communities are being cut.
11. I notice that people of one race are being repeatedly and systematically discriminated against by OmniTrans.
12. OmniTrans has raised the fares and that disproportionately affects poor people or people of a certain ethnic group.

An important common component of these complaints is an explicit or implied comparison of one group of people or community to another or to everyone else. Comments of this nature should be flagged as a Title VI complaint. Since these are broader, policy-level types of complaints, then they should be addressed in a different way than the individual-level, Civil Rights complaints. As well, a body of boiler-plate type replies should be generated so as to give immediate response to these comments in the interim.



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REVISION DATE:

SUBJECT

Omnitrans Standard Operating Procedures for Handling and Processing Customer Complaints and Comments

PREPARED BY: Melissa Castillo

APPROVED BY: E. Rogers

SIGNATURE: _____

DATED: _____

Attachment B – Online Customer Contact Form

Contact Us

At Omnitrans we recognize the importance of customer suggestions, comments and compliments. If you are pleased with our service let us know. If you have a suggestion or a question, we want to know about it so we can address it immediately. There are several ways you can let us know about your experience with Omnitrans. You may fill out and submit the form below, or call our Information Office (toll free) at **1-800-9-OMNIBUS**. Thank you for taking the time to let us know how we are doing! Your contact information is optional...but if you would like Omnitrans to follow up, please provide your name and an address, phone number, or e-mail address. Thank you!

First Name*	Required
Last Name*	Required
Street Address	
City	
State	CA
ZIP Code	
E-mail*	Required
Phone	(123)-456-7890
Type of Comment	Select One...
Service Type	Select One...
Your comments or suggestions	

Please provide as much information as you can in your comment. Here is a list of important items to note.

- Time and date of the occurrence.
- Location (Street, City) of the occurrence.
- Name, Employee ID number, or description of any Omnitrans employee referred to in your comment.
- Route Number referred to in your comment.
- Direction of travel referred to in your comment.

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SUBJECT OmniTrans Standard Operating Procedures for Handling and Processing Customer Complaints and Comments	PREPARED BY: Melissa Castillo APPROVED BY: E. Rogers SIGNATURE: _____ DATED: _____

Attachment C – Title VI Complaint Procedures



1700 W. Fifth St.
San Bernardino, CA 92411
909-379-7100
www.omnitrans.org

TITLE VI COMPLAINT PROCEDURES

OmniTrans has developed this set of procedures for receiving, investigating and tracking Title VI complaints.

Any person who believes that he or she has been discriminated against on the basis of race, color, or national origin by OmniTrans may file a complaint by submitting a completed Customer Contact Form, by submitting the Contact Us Form at OmniTrans.Org, or by submitting a verbal complaint over the telephone to OmniTrans' Information Desk. This must be done within 180 calendar days of the date of the alleged discrimination. Complaints must state as fully as possible the facts and circumstances surrounding the alleged discrimination.

Upon receiving the complaint, OmniTrans will provide the complainant or his/her representative with an acknowledgement letter within 14 calendar days. Following this acknowledgement letter, OmniTrans will investigate the complaint to determine if it is a potential Title VI violation.

According to Title VI of the Civil Rights Act of 1964, OmniTrans cannot discriminate against individuals based on race, color, or national origin. For a complaint to rise to the level of a Title VI complaint and potential violation, it must indicate disparate treatment or disparate impact due to intentional or unintentional discrimination. This can include long-term or immediate issues of discrimination that OmniTrans fails to resolve, or policy-level issues of disparate service or treatment. A complaint which falls under one of these categories will be regarded as having merit for evaluation except under the following circumstances: unless it clearly appears on its face to be frivolous or trivial; OmniTrans voluntarily concedes noncompliance and agrees to take appropriate remedial action; within the time allotted, the complaint is withdrawn; or, other good cause for not investigating the complaint exists. For monitoring purposes, the complaint will be documented as a Title VI complaint.

OmniTrans will complete the review process and determine the complaint's merit, and inform the complainant of its decision in a Finding Letter or email within 30 calendar days of the date of the acknowledgement letter. In the event a decision is made to not investigate the complaint, the notification shall specifically state the reason for the decision. In the event the complaint is to be investigated, the notification shall inform the complainant that an investigation will take place, and may request additional information needed to assist the investigator in preparing for the investigation. OmniTrans must receive requested information within 21 calendar days of the date of notification requesting additional information. The complainant's failure to provide additional requested information may result in OmniTrans closing the case administratively. A complaint can be administratively closed as well if the complainant no longer wishes to pursue his/her complaint.

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Attachment C - Continued

If the complainant wishes to appeal the decision after this, she/he has 30 calendar days after the date of the Finding Letter to do so in writing to the OmniTrans Customer Service Manager at 1700 W. 5th St, San Bernardino CA 92411.

A person may also file a complaint directly with the Federal Transit Administration at:

**FTA Office of Civil Rights
1200 New Jersey Avenue SE
Washington, DC 20590.**



CUSTOMER COMMENT STANDARD OPERATING PROCEDURES

**Administrative and Finance Committee
September 10, 2020**



CUSTOMER COMMENT & COMPLAINT PROCEDURE

Goals

- **Ascertain Trends & Proactively Address Concerns**
- **Prompt Responses**
- **Expedite Resolutions**
- **Centralized handling, processing and record-keeping**
- **Adherence to federal guidelines**

Call Center

- **1-800-9-OMNIBUS**
- **Mon-Fri 8am-6pm**

San Bernardino Transit Center

- **Mon-Fri 7am-6pm**
- **Sat 9am-5pm**

Written Correspondence

Digital Communication



CUSTOMER FEEDBACK CHANNELS

PROCEDURE OVERVIEW AND TIMELINE

1. Comment Received / Documented



2. Forwarded to Appropriate Department

➡ Within 2 days



3. Staff Investigates / Documents Results

➡ Within 5 days



4. Customer Response Provided

➡ Within 2 days



5. Contact Closed

PROCEDURE DETAILS BY COMMENT TYPE

Forwarded to appropriate department for investigation, resolution

Service



Immediately forwarded to Operations, Safety Depts.

Safety Issues



Investigated by contractor; resolution reviewed / approved by Omnitrans staff within 10 days

ADA & Access



Forwarded to agency's Title VI officer for investigation, resolution

Title VI



Forwarded to Human Resources for claims assistance

Injury / Damages





THANK YOU

ITEM # E4

DATE: September 10, 2020

TO: Committee Chair Sam Spagnolo and
Members of the Administrative & Finance Committee

THROUGH: Erin Rogers, CEO/General Manager

FROM: Art Torres, Director of Procurement

SUBJECT: PROPOSED PROCUREMENT POLICY CHANGES

FORM MOTION

Recommend the Board of Directors:

1. Adopt new policy:
 - Policy 1090 Sustainability Procurement Policy; and
2. Approve proposed revisions to the existing policies:
 - 1000 General Policy
 - 1040 Diversity & Economic Opportunity Policy
 - 1050 Standards of Conduct and Conflict of Interest Policy
 - 1060 Contractor Relations Policy
 - 1070 Special Federal Grantee Requirements and Applicable Laws Policy
 - 2000 Purchasing Thresholds
 - 2010 Emergency Non-Competitive & Cooperative Procurements Policy
 - 3000 Procurement Card Program Policy
 - 4000 Formal Solicitation Policy
 - 5000 Protest Policy
 - 6000 Contract Administration Policy
 - 6010 Debarment Policy
 - 7000 Capital Asset Management Policy

This item was reviewed by the Executive Committee at its September 4, 2020 meeting and was received and forwarded to the Administrative & Finance Committee.

BACKGROUND

Omnitrans receives funding from various sources, most significantly from the Federal Transit Administration (FTA). FTA funds may only be used for necessary and reasonable business-related expenses incurred in the furtherance of the agency's mission and carry additional fiduciary responsibilities. Inherent in these responsibilities is the requirement to operate the agency under policy guidance set forth by the Board of Directors (BOD) and to comply with applicable federal, state, and local regulations. Proper stewardship of Omnitrans funds and risk mitigation are the responsibility of all employees involved in financial transactions. Periodic policy review ensures our policies remain consistent, effective, and current.

Proposed updates emphasize that:

- The Procurement Department is responsible for the acquisition of all supplies, equipment, and services for the agency. Under the authority of the Board of Directors, and through delegation of the Chief Executive Officer (CEO), this department has the sole authority to commit purchases and contracts on behalf of Omnitrans.
- No legal commitment of funds exists without the authority of the Procurement Department, by way of purchase order, contract, change orders, and contract amendments.
- An approved Purchase Requisition (Shopping Cart) must be generated to trigger the procurement cycle, beginning with a solicitation, and/or a Purchase Order, Contract, Change Order or Contract Amendment.

Regularly reviewing policies and procedures is necessary to keep our organization current with regulations, technology, and industry best practices. The Board of Director's (BOD) last review and update was in June of 2017.

DISCUSSION

A total of 14 policies are presented for consideration. Of the 14, one is a proposed new policy, one is proposed for elimination in its entirety, six propose minor language changes, and the remaining six propose changes to purchasing thresholds and processes. Surveys were conducted with like agencies to benchmark and align with best practices and the FTA purchasing thresholds. The most notable change proposed is increasing the CEO's signature authority from \$50K to \$150K for formal procurements; said change is consistent with the agencies polled while remaining below FTA's \$250K Simple Acquisition Threshold (SAT). Also, it is proposed to transfer the authority to release formal procurements from the BOD to the CEO. These two changes alone will significantly streamline the procurement process. A complete summary of the proposed changes is detailed below:

Policy	Title	Change	Justification
1000	General Policy	1)Remove Statutory and Regulatory table 2)Director of Procurement is responsible for implementation vs CEO/GM	1)Instead we will refer to guidelines, removing need to update with new revisions

1040	DIVERSITY & ECONOMIC OPPORTUNITY POLICY	Removed the dollar threshold to participate in DBE program	Minor language changes; consistent with DBE guidelines
1050	STANDARDS OF CONDUCT AND CONFLICT OF INTEREST POLICY	Added lobbying clause to the Lobbying & Gifts section	Minor language changes; lobbying language did not exist
1060	CONTRACTOR RELATIONS POLICY	No significant changes	Minor language changes
1070	SPECIAL FEDERAL GRANTEE REQUIREMENTS AND APPLICABLE LAWS POLICY	Eliminate in its entirety	Addressed generally in 1000, will replace with a separate reference guide, not as a policy
1090	SUSTAINABILITY PROCUREMENT POLICY	Adopt new policy	Consistent with FTA, best practices and ratifies environmental stewardship
2000	PURCHASING THRESHOLDS POLICY	1) Prior categories micro/mini/small/formal: • Increase Micro purchases from up to \$3k to up to \$5k • Eliminate Mini threshold category of \$3k to \$50k • Increase Small Procurements from over \$50k-\$150k to over \$5k-\$150k • Increase Formal Procurements threshold from \$50k to \$150K 2) Streamline process • Remove BOD approval for RFP release •	1) Remains under Federal Acquisition Regulations threshold and consistent with FTA threshold & categories; amounts are comparable to like agencies; maintain transparency by publishing Agency Transparaency Report listing procurements between \$50k-\$150k on our website every month; provide update to Board every two months
2010	EMERGENCY, NON-COMPETITIVE, & COOPERATIVE PROCUREMENTS POLICY	1) CEO/GM responsible for declaring emergency as it relates to procurement vs the BOD, does not change requirement for Chairman's approval for \$150k+ 2) Expands non-competitive procurements to include cooperatives and mutual aid agreements, etc.	1) Expedites approval for informal emergency procurements 2) Maximizes economies of scale/buying power and further expedites the process while

		3)Direct Payment language added	maintaining fair and open procurements. 3)Clarify Direct Payments
3000	PROCUREMENT-CARD PROGRAM POLICY	Increases the threshold from up to \$3k to up to \$5k; clarifies exceptions	Affords expediency for end user; Consistent with assets threshold;
4000	FORMAL SOLICITATION POLICY	1)Reflects new threshold of \$150K 2)Removed definitions; moved collaborative clause/procurement files/cost analysis/bonding/progress payment -addressed in other policies	1)Consistent with new thresholds 2)Appropriate placing
5000	PROTEST POLICY	No significant changes	Minor language changes
6000	CONTRACT ADMINISTRATION POLICY	Increased change order to 10% of contract amount to align with new thresholds; removed procedural steps	For consistency
6010	DEBARMENT POLICY	No significant changes	Minor language changes
7000	CAPITAL ASSET MANAGEMENT POLICY	No significant changes	Minor language changes

CONCLUSION

Recommend the Board of Directors adopt new Policy and approve the updated Procurement Policies.

ER:AT

Attachments: A. Policies Redline Version
B. Policies Clean Version
C. PowerPoint Presentation

 Omnitrans Connecting Our Community. Procurement Policy Manual	Policy 1000 Page 1 of 10
GENERAL PROCUREMENT POLICY	Approved by Omnitrans Board of Directors Date Approved: January 9, 2002 Revised Board Approval: November 5, 2014 Revised Board Approval: June 7, 2017 <u>October 7, 2020</u>

1. ~~PURPOSE AND SCOPE~~ POLICY OVERVIEW

The ~~purpose of this section is to policy~~ -sets forth general procurement policy and standards that will govern the conduct of Omnitrans' ~~acquisition~~procurement activities and of personnel engaged in these activities.

2. PROCUREMENT BACKGROUND

Omnitrans' Statement of Guiding Principles ~~(see Section 3)~~ establishes the framework for Omnitrans' Procurement Policy Manual (Manual), and is approved by the Omnitrans Board of Directors (BOD). Procedures implementing the Procurement Policy Manual will be approved by Omnitrans' CEO/General Manager CEO/GM.

3. STATEMENT OF GUIDING PRINCIPLES FOR OMNITRANS' ACQUISITION SYSTEM

The vision for ~~the~~ Omnitrans' acquisition system is to deliver, on a timely basis, the best value product or service ~~for the Agency~~ in an open and competitive environment, while maintaining the public's trust and fulfilling public policy objectives. Participants in the ~~acquisition~~ (~~procurement~~) process must work together as a team and are empowered to make decisions within their areas of responsibility.

3.1. ~~The~~ Omnitrans' ~~acquisition~~procurement ~~process~~system will:

3.1.1. Be guided by ~~the~~ Omnitrans Strategic Plan.

3.1.2. Satisfy the "client" in terms of cost, quality, and timeliness of the delivered product or service by:

3.1.2.1. Maximizing the use of commercial products and services~~;~~.

3.1.2.2. Using contractors with a track record of successful past performance or who demonstrate a current superior ability to perform~~;~~ ~~and~~.

3.1.2.3. Promoting fair and open competition~~;~~.

3.1.3. Minimize administrative operating costs through effective teamwork~~;~~.

3.1.4. Conduct business with integrity, fairness, and openness~~;~~ ~~and~~.

3.1.5. Fulfill public policy objectives.



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4. ROLE OF THE PROCUREMENT ACQUISITION TEAM

- 4.1. The ~~A~~aacquisition ~~Procurement~~ ~~-t~~Team consists of all participants in Omnitrans procurement acquisition process including representatives of the technical, supply, support services, and procurement communities, and their clients, as well as, contractors who provide products and services.
- 4.2. Each member of the ~~a~~aAcquisition~~Procurement~~ ~~t~~Team will exercise personal initiative and sound business judgment in providing the best value product or service. ~~_to meet the client's needs.~~ In exercising initiative, ~~Omnitrans members of the~~ aAcquisition~~Procurement~~ ~~t~~Team may assume that a strategy, practice, policy or procedure is a permissible exercise of authority if it is in the best interest of the Omnitrans and is not prohibited by law, applicable regulations, or Board adopted policy.

5. PROCUREMENT STANDARDS

- 5.1. Omnitrans will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- 5.2. Members of the ~~Omnitrans Board of Directors (BOD~~Board) will adhere to the standards of conduct adopted by the ~~BOD~~Board. Omnitrans employees will adhere to the standards of conduct approved by the CEO/General Manager under a delegation of authority from the ~~BOD~~Board.
- 5.3. Omnitrans procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration ~~shall~~ould be given to consolidating or unbundling breaking out of 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.
- 5.4. Open and Complete Competition:
 - 5.4.1. Federal Transit Administration (FTA) Circular 4220.1F recommends and Title 49 U.S. Code Section 5325(a) requires that recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary of Transportation—all procurement transactions be conducted in a manner that provides full and open competition as determined by the FTA and consistent with the above stated procurement standards



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~~and the statement of guiding principles. Some of the situations considered to be~~
Restrictive of solicitations competition may include, but are not limited to:

- 5.4.1.1. ~~Placing Restrictive specifications, unreasonable requirements, or unreasonable qualifications; requirements on firms in order for them to qualify to do business;~~
- 5.4.1.2. Noncompetitive pricing practices between firms or between affiliated companies;
- 5.4.1.3. Noncompetitive awards to professionals and other consultants that are on Omnitrans retainer contracts;
- 5.4.1.4. Standards of Conduct and Conflict of Organizational conflicts of interest (Procurement Policy 1050);
- 5.4.1.5. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other salient characteristics of the brand name product; ~~and~~
- 5.4.1.6. Any arbitrary action in the procurement process; ~~and~~
- 5.4.1.7. Development of specification requirements and evaluation criteria, which unnecessarily favor ~~a~~ a specific incumbent contractor.
- 5.4.2. Procurement transactions will be conducted 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. When employing the qualifications based qualifications-based method for contracting for architectural and engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 5.4.3. Omnitrans will have written selection procedures for competitive negotiated procurement transactions that ensure fair, unbiased evaluation of competing proposals by an independent evaluation committee panel appointed by the Director of Procurement or their designee. These procedures will also ensure that all solicitations clearly state the evaluation criteria factors including cost or price, cost or price-related factors, and non-cost or non-price-related criteria factors, and the



GENERAL PROCUREMENT POLICY

~~Approved by Omnitrans Board of Directors~~~~Date Approved: January 9, 2002~~~~Revised Board Approval: November 5, 2014~~~~Revised Board Approval: June 7, 2017~~ October 7, 2020

~~any significant subfactors~~ that will be considered in making the source selection, ~~and their relative importance.~~

5.4.4. Technical requirements shall incorporate a clear and accurate description for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition.

5.4.5. Omnitrans will ensure that all lists of bidders, manufacturers, or products determined to be qualified in advance of the receipt of bids or proposals are current and sufficient to ensure full and open competition. When possible, sufficient time will be allowed to arrange for qualification before receipt of bids or proposals. However, when using grant funds, Omnitrans must allow vendors an opportunity to qualify their products during the solicitation period (FTA Circular 4220.1F).

5.4.6. The Procurement Department maintains a procurement history file which provides an audit trail from the initiation of a purchasing requirement through contract closeout and all other related correspondence.

5.4.7 Cost or price analysis are required for every procurement and subsequent changes. Independent Cost Estimates are required before receiving bids or proposals. All cost/price analyses shall be retained in the procurement files.

6. RESPONSIBILITIES

6.1. The Director of Procurement has primary responsibility for ensuring that the procurement process is in accordance with legal requirements, as interpreted by Omnitrans' General Counsel, and Omnitrans' policies. The Director of Procurement or designee will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. ~~These issues include, but are not limited to, source evaluations, protests, disputes, and claims.~~

6.2. The Director of Procurement is responsible for establishing and implementing procurement policies and issuing instructions. ~~for the implementation of Omnitrans policies;~~

6.3. The Director of Procurement is responsible for establishing material management policies and issuing instructions concerning the storage, distribution, and disposal of goods.



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6.4. All departments are instructed to follow Procurement Policies/Procedures/Instructions as well as Policies/Instruction_ ~~issued by the Director of Procurement regarding the storage, distribution, and issuance of material; and~~

6.5. The CEO/G~~eneral Manager~~ or designee shall execute contracts, purchase orders, modifications, and supplemental agreements in accordance with established thresholds.

7. STATUTORY AND REGULATORY REQUIREMENTS

~~The following Applicable Federal, State and Local laws, policies and other sources of guidance govern the procurement practices of Omnitrans Federal and state laws and regulations and the Master Agreement are applicable to Omnitrans contracts.~~

Federal Statute, Regulations, Policies, and Agreements	Subject
49 U.S.C. Chapter 53	Public Mass Transportation
2 CFR Part 200	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Super Circular”)
49 CFR Part 26	Participation by Minority Business Enterprises; Disadvantage Business Enterprises in Department of Transportation Financial Assistance Programs
FTA Circular 4220.1F	Third Party Contracting Guidance
FTA Circular 5010.1E	Grant Management Guidelines Award Management Requirements
FTA Circular 9030.1EC, Chapter 3	Urbanized Area Formula Program: Program Guidance and Application Instructions Eligible Grant Activities
FTA Master Agreement (applicable version)	Terms of the Master Agreement and Compliance & Conditions of Grantee Administration of Projects Supported & Funded by The FTA



OmniTrans

Connecting Our Community.

Procurement Policy Manual

Policy

1000

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State Codes	Section(s)	Subject
Civil Code	9554	Payment Bonds
Civil Code	3320	Payments to Prime Design Professionals
Code of Civil Procedure	995.311	Bond Issuer Requirements
Government Code	4525 et. seq.	Architect & Engineering Services
Government Code	6250—6270	Public Records Disclosure
Government Code	5956 et. seq.	Infrastructure Projects <u>Financing</u>
Labor Code	1777.1	Debarment by California Labor Commissioner
Public Contract Code	1103	Responsibility <u>Bidder</u> on Public Works Contracts
Public Contract Code	1104	Plans and Specifications <u>Responsibility</u>
Public Contract Code	3300—3400	<u>Specify Classification of Contractor's License and ; Brand Specification</u>
Public Contract Code	4100—4114	<u>Subcontracting Subletting and Subcontracting Fair Practices Act</u>
Public Contract Code	5100—5107	<u>Public Entity. Relief of Bidders</u>
Public Contract Code	6100—6610	Awarding of Contracts
Public Contract Code	7100—7200	Contract Clauses
Public Contract Code	9201—9203	Claims and Disputes
Public Contract Code	10335 et. seq.	Service Contracts, (if applicable to funding source)
Public Contract Code	20101	Prequalification
Public Contract Code	20103.8	Alternative Bids (<u>Additive or Deductive Items</u>)



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Approved by Omnitrans Board of Directors
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Public Contract Code	20104 <u>20104.6</u>	Resolution of Construction Claims
Public Contract Code	20104.50	Progress Payments on Public Works
Public Contract Code	20209 20209.5	Purchase & Sale Contracts; Design/Build Contracts <u>Local Agency Public Construction Act—Purchase & Sale of any Real and Personal Property</u>
Public Contract Code	20216—20217	Bid & Proposal Disclosure; Negotiated Procurement of Certain Equipment; Design/Build et seq.
Public Contract Code	20360 et. seq.	Contracts for Rail Transit System Design
Public Utilities Code	130800— <u>1308280000, et</u> seq.; 130800, et. Seq.	San Bernardino County Transportation BCTA Authority (SBCTA)

~~8. STATE, LOCAL AND FEDERAL CONTROLS~~

~~8.1 This manual was developed in conformance with the standards and limitations established in State, Federal and local law. Applicable State laws, policies and other sources of guidance governing the procurement practices of Omnitrans, in addition to those listed above, are as follows:~~

~~8.1.1—Omnitrans Policies and Instructions.~~

~~8.1.2—Board of Directors' Awards, Actions, and Resolutions.~~

~~8.1.3—Ordinances and regulations of regional and local agencies which have subject matter jurisdiction (on case by case basis).~~

~~8.2—Federal laws and regulations affecting the procurement practices of Omnitrans include, but are not limited to, the following:~~

~~8.2.1—Intermodal Surface Transportation Efficiency Act of 1991, as amended~~



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~~8.2.2 Federal Acquisition Streamlining Act of 1994, 41 USC 403 (11) and 40 USC 481(b), respectfully~~

~~8.2.3 Executive Order 12612 "Federalism" dated October 26, 1987 and other applicable Executive Orders~~

~~8.2.4 FTA Master Agreement, as amended dated October 10, 2016~~

~~8.2.5 Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), dated August 10, 2005~~

~~8.2.6 Fixing America's Surface Transportation Act or "FAST Act," December 4, 2015~~

~~8.2.7 MAP-21, the Moving Ahead for Progress in the 21st Century Act, July 6, 2012~~

~~8.2.8 FAR PART 31 Contract Cost Principles and Procedures~~

~~8.2.9 Relevant decisions of the Courts and the Comptroller General of the United States~~

~~8.3 To the extent that both federal and state laws and regulations apply to a procurement Omnitrans is required to act within the limits of the more restrictive requirements. When Federal funds are used in procurement, Federal procurement requirements must be met or exceeded.~~

~~8.4 The FTA's Best Practices Procurement Manual provides guidance on procurements and examples of best practices.~~

~~8.5 Omnitrans may contract with any department or agency of the United States of America, with any public agency (including, but not limited to, the Department of Transportation, the multicounty designated transportation planning agency, or any transit district, county or city), or with any person upon such terms and conditions as Omnitrans finds to be in its best interest. (PUC Section 130221).~~

~~8.6 Joint Powers Authority, amended by the member entities on July 1, 2016, and San Bernardino County Code of Ordinances, Title 1, Division 4.~~

~~8.7 California Government Code Sections 1090, 1126, 87100, 87306, Resolution No. 140-96, and any other applicable provisions of the Government Code and any conflict of interest Code applicable to Omnitrans employment.~~

9.8.IMPLEMENTATION



GENERAL PROCUREMENT POLICY

~~Approved by Omnitrans Board of Directors~~

~~Date Approved: January 9, 2002~~

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The ~~CEO/General Manager~~ Director of Procurement shall implement the policies herein set forth. Procedural guidance shall be provided in the Procurement Procedures.

10.9. ABOUT THE MANUAL

- a. This manual ~~provides instructions and reference materials for staff in all branches and departments of Omnitrans involved with the procurement process. It~~ establishes responsibilities and documents Omnitrans' continuing efforts to comply with applicable federal, state, county, and local regulations.

b. Sections

- i. This manual is divided into sections of related policies. Those sections are described in "Using This Manual" below. Sections are separated by title pages, and policies within a section will begin with the same number. (For example, all policies in the General Policies section begin with "1.")

c. Policy Numbering

- i. Policies are individual documents. Each section is composed of several policies. Each policy has a unique number (located in the upper right corner of each page) and shows the date on which it was approved for use by the ~~Omnitrans Board of Directors~~. When viewing copies of the same policy, the one with the more recent approval date is the correct one to use.

11.10. USING THIS MANUAL

- a. This manual contains policies governing the procurement of goods and services by Omnitrans. It is divided into the following sections:
- i. General Policies – (1000 series) this section describes the responsibilities, ethics, and objectives behind the procurement process.
 - ii. Informal Procurement Policies – (2000 series) this section describes informal procurements, micro-procurements, mini-procurements, and small procurements.
 - iii. Procurement Card Policies– (3000 series) this section describes the proper use of procurement cards.



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GENERAL PROCUREMENT POLICY

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- iv. Formal Procurement Policies – (4000 series) this section describes the formal procurement process, from bidding to contract award.
- v. Solicitation Protest Policies – (5000 series) this section describes how to handle a protest to a formal procurement contract award.
- vi. Contract Administration Policies – (6000 series) this section describes the administration of a contract, from opening to termination.
- vii. Fixed Asset Management Policies – (7000 series) this section describes the management of fixed assets, from auditing to liquidation of surplus assets.

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DIVERSITY & ECONOMIC OPPORTUNITY POLICY

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Approved by Omnitrans Board of Directors
Date Approved: January 9, 2002
Revised Board Approval: June 7, 2006
Revised Board Approval: October 7, 2009
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1. POLICY STATEMENT

1. POLICY OVERVIEW

- 1.1. ~~It is the policy of Omnitrans, This policy is~~ pursuant to the provisions to U.S. Department of Transportation (DOT), Title 49, Code of Federal Regulations (CFR), Part 26 “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”, and implemented by directive of the Omnitrans Board of Directors (BOD), to promote the utilization of Small and Disadvantaged Business Enterprises (DBE) to the maximum extent feasible. Omnitrans procurement ~~and contracting processes~~ will provide a level playing field, applying race-neutral measures to promote participation by Small and DBE firms. The DBE program is narrowly tailored in accordance with applicable law.
- 1.2. Specific responsibility for developing and implementing the DBE programs has been delegated to the Disadvantaged Business Enterprise Liaison Officer (DBELO) Director of Procurement or designee. Procedures for establishing DBE goals will be coordinated through Procurement. Responsibility for ensuring compliance with Omnitrans’ DBE Policy is shared by all Omnitrans employees.
- 1.3. ~~In furtherance of this policy, Omnitrans requires that all procurements estimated over \$35,000 include all applicable forms in the bid/proposal packages for identification of DBE participation, description of scope of work to be performed, materials supplied, and service or broker function to be performed by each DBE listed.~~

2. DBE Program

- 2.1. Omnitrans is committed to undertaking special efforts, including local outreach, to seek socially and economically disadvantaged firms to attain Omnitrans’ overall DBE goal. DBE goals are established every three years based on projected projects, options years, and sub-recipient opportunities.
- 2.2. ~~It is Omnitrans’ goal endeavors~~ to ensure that DBEs are given an equal opportunity to compete for every Omnitrans procurement, ~~from the smallest to routine requisition to the largest contract.~~
- 2.3. ~~Omnitrans is committed to promote, foster and utilize disadvantaged and small business enterprises as required and defined by Title 49 CFR Part 26. Omnitrans’ procurement and contracting activities shall, at all times, provide a level playing field where DBEs are provided an equal opportunity to fairly compete and participate.~~

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DIVERSITY & ECONOMIC
OPPORTUNITY POLICY

DISADVANTAGED BBUSINESS EENTERPRISE
PROGRAM

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~~2.4.~~ Omnitrans' procurement process is a key element in implementing Omnitrans' DBE policy. DBE certification is achieved through the California State Unified Certification Program (CUCP) and other qualifying programs. Omnitrans will refer potential DBEs to the appropriate certifying agency.

~~2.5.~~

3. ~~TRIENNIAL~~ ANNUAL GOALS

3.1. Omnitrans' Triennial overall goals must be submitted to Federal Transit Administration (FTA) on August 1 every three years for the upcoming ~~three~~ Federal Fiscal Yyear period, ~~which begins~~ October 1 through September 30.

3.2. Omnitrans DBE ~~LO-Liaison Officer~~ shall prepare and submit the Triennial Ggoal and required FTA reports.

3.3. Omnitrans projects the number and types of contracts to be awarded and the number and types of DBEs, ~~likely to be available to compete for contracts~~. DBE contractors will be encouraged by Omnitrans to compete as prime contractors.

~~3.4.~~ Full goal setting methodology is available in Omnitrans' DBE Program Manual. ~~(See Procurement Procedures Manual Appendix).~~

~~3.5.3.4.~~

4. RESPONSIBILITY

4.1. DBELO or designee ~~The Director of Procurement, or his/her designee, serves as Omnitrans' DBE Liaison Officer~~ is responsible for implementing all aspects of the DBE Program. The DBELO shall have a direct reporting relationship to the ~~and reports directly to the~~ CEO/General Manager on all matters concerning the DBE program. ~~The DBELO DBE Officer maintains an "open door" policy and is primarily responsible for the enforcement of the DBE Program.~~

4.2. ~~Omnitrans Board of Directors expects all levels of Omnitrans staff in all Omnitrans departments to both solicit and encourage DBE participation in all contracting opportunities.~~

Procurement Policy Manual

GENERAL POLICIES

STANDARDS OF CONDUCT AND CONFLICT OF INTEREST POLICY

Approved by Omnitrans Board of Directors
Date Approved: January 9, 2002
Revised Board Approval: April 5, 2006
Revised Board Approval: October 3, 2007
Revised Board Approval: ~~June 7, 2017~~
October 7, 2020

1. POLICY OVERVIEW

1.1. This policy establishes Omnitrans' Standards of Conduct and defines its policy on conflicts of interest, gratuities, negotiation for employment, post-Omnitrans employment restrictions and related matters. This policy explains the nature of potential conflicts of interest to employees and explains the potential consequences for violating the policy provisions. This policy applies to all Omnitrans personnel in the exercise of their duties.

~~1.1.1.2.~~ Federal and State law ~~and federal~~ regulations require Omnitrans to prevent actual or perceived conflicts of interest in contracting. Omnitrans personnel are expected to avoid conflicts of interest ~~or appearances thereof~~ and actions which could result in favoritism or appearances thereof.

~~1.2. This policy establishes Omnitrans' Standards of Conduct and defines its policy on conflicts of interest, gratuities, negotiation for employment, post-Omnitrans employment restrictions and related matters. To achieve this goal, this policy explains the nature of potential conflicts of interest to employees, and explains the potential consequences for violating the provisions of this policy. This policy applies to all Omnitrans personnel in the exercise of their duties.~~

2. CONFLICTS OF INTEREST:

2.1 All Omnitrans members, officers, employees and other agents must conduct the procurement process so as to avoid conflicts of interest, real or ~~apparent~~perceived. To maintain full and open competition, no Omnitrans member, officer, employee or other agent, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals, may participate in the selection, award, or administration of any Omnitrans contract ~~if a conflict of interest, prohibited by law, would be involved.~~

2.2 ~~For Federal Transit Administration (FTA) funded contracts, the provisions of this policy in 2.1 above shall also apply when any of those individuals listed has a financial or other interest in the firm selected for award.~~

2.3 ~~In addition to the above, a~~All procurements must be conducted in accordance with the most current version of the "Conflict of Interest Code for Omnitrans" adopted pursuant to the Political Reform Act of 1974 (Government Code section 87500, et. seq., as amended). Omnitrans employees are expected to ~~be familiar~~comply with the Conflict of Interest Code ~~for Omnitrans, and to comply with all requirements contained therein. Such~~

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~~requirements include, but are not limited to, the requirement to file a Statement of Economic Interests Form 700.~~

3. LOBBYING AND GIFTS:

~~3.1— Omnitrans does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business.~~

~~3.2~~ Omnitrans officers, employees, agents and Omnitrans members must comply with applicable Federal and sState-and federal law regarding acceptance of gifts, gratuities, or favors from contractors, potential contractors, or parties to subcontractor agreements. For FTA-funded procurements, nominal value shall mean under fifty dollars (\$50):

~~3.2— 3.2.1 For FTA-funded procurements, Omnitrans officers, employees, agents, or Omnitrans members involved in such procurements may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts; provided that eExceptions may apply if, as determined by the CEO/General Manager, the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. For FTA-funded procurements, nominal value shall mean under fifty dollars (\$50).~~

2. GUIDELINES FOR CONTRACTOR RELATIONSHIPS

2.1. Organizational conflicts in bidding: In order to avoid the appearance of or actual organizational conflicts of interest, the following policies shall apply to Contractors (any ~~third-party~~third-party vendor, contractor or consultant and their employees or subcontractors) providing goods or services to Omnitrans.

2.1.1. No Contractor shall be eligible to bid on any solicitation, procurement or contract developed from plans, specifications or drafted specifications, design, requirements, statements of work, invitations or bids and/or requests for proposals prepared in whole or in part by that Contractor, or on any “follow on” contract as determined in accordance with the most current guidance on interpretation of Government Code section 1090.

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2.1.2. No Contractor may be involved in any aspect of evaluation, selection, or award of a contract for which that person may bid.

2.1.3. No Contractor may participate in any aspect of a procurement for third-party contract management service where the work which is to be reviewed by the ~~third party~~ third-party contract manager has been awarded to that Contractor.

3. NEGOTIATION FOR EMPLOYMENT

3.1. Omnitrans employees considering or negotiating future employment with an organization which has an actual or prospective business relationship with ~~Omnitrans~~ the Agency may not participate in any official action on behalf of ~~the Agency~~ Omnitrans with that organization.

“Negotiating” includes any action that reasonably could be construed as an indication of interest in future employment, ~~including sending letters or resumes, making telephone inquiries or receiving unsolicited proposals from the entity’s representative regarding future employment. It is not necessary that there be any firm offer of employment or that Omnitrans’ employees initiates the contact.~~

3.1.1. Omnitrans employees must file a written notice with their supervisor of any negotiation (including unsolicited proposals) for prospective employment with any entity which has an actual or prospective business relationship with ~~the Agency~~ Omnitrans. A copy of the notice shall be sent to Human Resources to be placed in the employee’s official personnel file. ~~The employee has the burden of determining whether a prospective employer has an actual or prospective business relationship with Omnitrans~~ the Agency.

3.2. Post-OMNITRANS Employment Restrictions

3.2.1. Omnitrans employees who, within a one (1) year prior to their last day of employment with Omnitrans: a) have been significantly involved in procurement activities or project management responsibilities involving a party with an actual or prospective business relationship with ~~Omnitrans~~ the Agency; or b) have had direct responsibility for any matter of financial interest to a party with an actual or prospective business relationship with ~~Omnitrans~~ the Agency, may not be employed by that party to work directly or indirectly with any proposal or contract with Omnitrans, until at least one year after the employee or agent has ceased employment with Omnitrans.

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3.2.2. Omnitrans managers and above may not work directly or indirectly on any proposal or contract with Omnitrans, until at least one year after the employee or agent has ceased employment with Omnitrans.

4. VIOLATIONS AND ENFORCEMENT

- 4.1. The imposition of civil or criminal proceedings notwithstanding, violation of any of the provisions of this policy shall be subject to penalties, sanctions or other disciplinary actions up to, and including, termination of employment. Any disciplinary actions imposed shall remain a permanent part of the employee's personnel file.
- 4.2. The violation of any section of this policy by Omnitrans members or officers will require correction of the violation in any manner provided for under the Political Reform Act, and its implementing regulations, as may be applicable to the violation.
- 4.3. Contractors or subcontractors that violate this policy as relates to an active FTA_-funded procurement may be prohibited from bidding on the procurement;_-or may be subject to other action as deemed appropriate by the CEO/General Manager.
- 4.4. Members Agents of Omnitrans that violate this policy as relates to FTA_-funded procurements may be prohibited from participation on behalf of Omnitrans on federally funded projects, or subject to other action as deemed appropriate by the CEO/General Manager.

~~GENERAL POLICIES~~
CONTRACTOR RELATIONS POLICY

~~Approved by Omnitrans Board of Directors~~
Date Approved: January 9, 2002
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1. POLICY OVERVIEW

- 1.1. ~~Omnitrans maintains an “open door” policy and makes every effort to maintain a good business relationships with all bidders/proposers and suppliers.potential bidders/proposers with whom it does business.~~
 - 1.2. ~~The~~ Procurement employees ~~specifically~~ and all agency management personnel ~~in general under the direction of Omnitrans management~~ assume the responsibility to:
 - 1.2.1. Maintain ethical procurement policies and principles.;
 - 1.2.2. ~~Maintain~~ Conduct open and fair competition.;
 - 1.2.3. ~~Maintain~~ Provide fair and clear scopes of work and technical specifications.;
 - 1.2.4. Observe and maintain honesty and candor in all transactions with suppliers.;
 - 1.2.5. ~~Respect~~ Maintain the confidence of suppliers in the handling of confidential information.;
 - 1.2.6. Remain free from any personal obligation to suppliers.;
 - 1.2.7. Answer all inquiries promptly.;
 - 1.2.8. Decline to take advantage of ~~supplier~~ vendor errors.;
 - 1.2.9. See that all ~~suppliers~~ sales representatives receive a full, fair, and courteous opportunity to present their products.;
 - 1.2.10. Furnish complete and accurate information.;
 - 1.2.11. Promote prompt payment of invoices.;
 - 1.2.12. Keep an open mind to new methods, technologies, procedures, and providers of products and services.;
 - 1.2.13. Encourage testing or demonstration of materials and products.;
- ~~At all times, all Omnitrans employees will~~ operate with integrity and fairness.

2. OBJECTIVE

- 2.1. Through these principles, Omnitrans intends to maintain an atmosphere in which Omnitrans, ~~vendors~~ suppliers, stakeholders and citizens can work together for the provision of goods and services to Omnitrans at a fair and reasonable price.



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GENERAL POLICIES

SPECIAL FEDERAL GRANTEE REQUIREMENTS AND APPLICABLE LAWS POLICY

Approved by Omnitrans Board of Directors
Date Approved: January 9, 2002
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1. POLICY STATEMENT (WOULD LIKE TO STRIKE ENTIRE POLICY AND PERHAPS HAVE AN OFFLINE FLYER FOR PAGES 10-12 FOR REFERENCE AS IT ALREADY ADRESSED IN 1000)

- 1.1. ~~Omnitrans~~, as a recipient of federal assistance, is required to implement ~~as part of its contracting program~~, a variety of federal laws and regulations regarding contractor labor relations, affirmative action for qualified ~~handicapped~~ disabled individuals, domestic preference and environmental protection programs, an inspection and verification procedure to ensure compliance with Omnitrans' specifications, Federal ~~m~~Motor Vehicle Ssafety sStandards, and Buy America Act requirements.
- 1.2. This policy prescribes some of the applicable Federal, State and local laws and regulations for Omnitrans contracts and purchases, and ~~where appropriate~~, indicates the specific contract types and dollar thresholds requiring contractual coverage.
- 1.3. ~~Omnitrans'~~ The Director of Procurement or designee will verify that the required provisions are included in all appropriate solicitations and contracts.
- 1.4. The Procurement Department will be responsible for reviewing these references ~~from time to time in order~~ to note updates to the various regulations.

2. FEDERAL REFERENCES

- 2.1. Federal references include the ~~most recent version~~ latest revision of the following documents:
 - 2.1.1. U.S. Department of Transportation, Federal Transit Administration (FTA), Master Agreement for ~~FT~~Federal Transit Administration Agreements.
 - 2.1.2. FTA Circular on Third Party Contracting Guidance, FTA C 4220-~~1F~~ ~~(or latest revision)~~
 - 2.1.3. FTA Circular C5010-~~1E~~ ~~(or latest revision)~~
 - 2.1.4. Federal Transit Act Amendments of 1991-
 - 2.1.5. Federal Transit Laws, 49 U.S.C. Chapter 53-
 - 2.1.6. Safe Accountable Flexible Efficient Transportation Equity Act-A Legacy for Users (SAFETEA-LU), Title 23 USC
 - 2.1.7. Moving Ahead for Progress in the 21st Century Act (MAP21)

~~GENERAL POLICIES~~

SPECIAL FEDERAL GRANTEE REQUIREMENTS AND APPLICABLE LAWS POLICY

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2.1.8. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively;

2.1.9. 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

2.1.10. Fixing America’s Surface Transportation (FAST) Act

2.1.11. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Super Circular”)

2.1.12. Executive Order 12612, “Federalism,”; and other applicable Executive Orders

2.1.13. Federal Acquisition Regulations, Part 31;

2.1.14. FTA Best Practices Procurement & Lessons Learned Manual;

3. REQUIRED THIRD PARTY CONTRACT CLAUSES AND CERTIFICATIONS, REPORTS AND FORMS

3.1. The following sections represent the most frequently used FTA Grantee Contract clauses and certifications. They are not intended to be all-inclusive listings and Contracting ~~Officers-staff~~ are encouraged to refer to the [2 CFR Part 200 Super Circular](#), FTA Circular 4220.1F, ~~–FTA Master Agreement~~, and the FTA’s Best Practices & Lessons Learned Manual or the FTA Best Practices Procurement website for a more comprehensive listing of Grantee Requirements.

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	REFERENCES
		MASTER AGREEMENT REFERENCE (based on FA MA(17)-10-1 2010)
Required Clauses for All FTA-Assisted Third-Party Contracts and Subcontracts		
No Federal Government Obligations to Third- Parties (Parties (Use of a Disclaimer))		§2f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§3.f
Access to Third Party Contract Records		§15.t
Changes to Federal Requirements		§2.c(1)

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Civil Rights -(Title VI, ADA, EEO (except special DOL construction clause))		<u>§12</u>
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	<u>§12</u>
Incorporation of FTA Terms	Per FTA Circ. 4220.1F	<u>§15.a</u>
<u>EEO</u>	<u>All contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3</u>	<u>Appendix II to Part 200</u>
<u>Energy Conservation</u>		
<u>Veterans Employment</u>	<u>Capital projects, to the extent practicable</u>	
Awards Exceeding \$10,000		
Awards Exceeding \$10,000		
Terminations	If 49 CFR Part 18 applies	<u>§11 and §15.a, which incorporate 49 CFR Part 18</u> <u>Appendix II to 2 CFR Part 200</u>
Special EEO provision for construction contracts	If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply.	<u>§15.a, which incorporates 49 CFR Part 18 and Part 19</u>
Awards Exceeding \$25,000		
Debarment and Suspension	<u>2 CFR 180 and 1200</u>	<u>§3.b</u>
Awards Exceeding \$100,000		
<u>Lobbying</u>		
Awards Exceeding the Simplified Acquisition Threshold (\$150,000)		
Buy America	When tangible property or construction will be acquired	<u>§14.a</u>
<u>Resolution of Disputes, Breaches or Other Litigation</u>		<u>§56</u>
Clean Air <u>Act (42 USC 7401-7671q.)</u>		<u>Appendix II to 2 CFR Part 200</u> <u>§25.b</u>
<u>Clean Water Federal Water Pollution Control Act</u>		<u>§25.c</u> <u>Appendix II to 2 CFR Part 200</u>
Awards Exceeding \$100,000 by Statute Awards Exceeding \$250,000		
<u>Lobbying</u>		<u>§3.d</u>
<u>Administrative, contractual, or legal remedies in instances where contractors violate or</u>		<u>Appendix II to 2 CFR Part 200</u>

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breach contract terms, and provide for such sanctions and penalties as appropriate		
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations	§14.e
Construction Activities		
Construction Employee Protections-Davis-Bacon Act	For Contracts >\$2,000 All prime construction contracts in excess of \$2,000	§24.a(1) Appendix II to 2 CFR Part 200
Contract Work Hours & Safety Standard Acts Construction Employee Protections Contract Work Hours and Safety Standards Act	For contracts exceeding \$100,000. All contracts in excess of \$100,000 that involve the employment of mechanics or labors	§24.a(2) Appendix II to 2 CFR Part 200
Construction Employee Protections - Sec. 1 Copeland Anti-Kickback Act - Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000	§24.a
*Bonding for Construction Activities Exceeding \$100,000 (except as otherwise required by State law)*Bonding 1. A bid guarantee from each bidder equivalent to 10 ten * percent of the bid price. The "bid" guarantee" must 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 the bid, execute such	5% Bid Bond ————— 100% Performance Bond — Payment Bonds equal to: 50% for contracts <\$1M to <\$5M ————— \$2.5M for contracts >\$5M For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected	§15.e(1) 2 CFR 200.325

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[contractual documents as
may be required within
the time specified.](#)

2. [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.](#)

3. [A payment bond on the
part of the contractor for
100 percent of the
contract price. A
“payment bond” is one
executed in connection
with a contract to assure
payment as required by
law of persons supplying
labor and material in the
execution of the work
provided for in the
contract.](#)

[—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.](#)

[A payment bond on the part of
the contractor for 100 percent of
the contract price. A “payment
bond” is one executed in](#)

[*State Of California PPC 204083](#)



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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.		
<u>Equal Employment Opportunities (EEO)</u>	<u>All contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3</u>	<u>Appendix II to 2 CFR Part 200</u>
Seismic Safety	Construction contracts for new buildings or for existing buildings	<u>§23.e</u>
Non-Construction Activities		
Non-construction Employee Protection-Contract Work Hours and Safety Standards Act	For all turnkey, rolling stock, and operational contracts (excluding transportation services contracts) in excess of \$100,000	<u>24.b</u>
Transit Operations		
Transit Employee Protective Arrangements		<u>§24.d</u>
Charter Bus Operation		<u>§28</u>
School Bus Operations		<u>§29</u>
<u>Drug and Alcohol Testing Use and Testing</u>	<u>Safety Sensitive Functions. Applies to Sections 5307, 5309, and 5311 projects</u>	<u>§32.b</u>
<u>Alcohol Misuse and Testing</u>	<u>Safety Sensitive Functions</u>	<u>§32.b</u>
Planning, <u>R</u>esearch, Development and <u>D</u>ocumentation <u>D</u>emonstration Projects		
<u>Patent Rights</u>		<u>§17</u>
<u>Rights in Data and Copyrights</u>		<u>§18</u>

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Rights to Inventions Made Under a Contract or Agreement	Contracts that meet the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”	Appendix II to 2 CFR Part 200 Appendix II Part 200
Special Notification Requirements for States		
Special Notification Requirements for States		§38
Miscellaneous Special Requirements		
Prompt Payment and Return of Retainage	Per 49 CFR Part 26, if grantee meets the threshold for a DBE Program	
Energy Conservation		§26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA	§15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects	§15.m
6002 of the Solid Waste Disposal Act When procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition Procuring solid waste management services in a	For a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors where purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000	2 CFR 200.325

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manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines	For non-Federal entity that is a state agency or agency of a political subdivision of a state, contracts with purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000 2 CFR 200.322.	
ADA Access	Contracts for rolling stock or facilities construction/renovation	§12-g
Assignability Clause	Procurements through assignments Piggyback procurements	§15.a, which incorporates 49 CFR Part 18 and 49 CFR Part 19
Required Certifications, Reports, and Forms		
Bus Testing Certification and Report	Procurements of buses and modified mass-produced mass-produced vans	
TVM Certifications	Procurements of buses and modified mass-produced mass-produced vans	
Buy America Certification	Procurements of steel, iron or manufactured products > \$150,000	
Pre-Award Audit	Rolling Stock Procurements	
Pre-Award Buy America Certification	Rolling Stock Procurements > \$150,000	
Pre-Award Purchaser's Requirement Certification	Rolling Stock Procurements	
Post-Delivery Audit	Rolling Stock Procurements	
Post-Delivery Buy America Certification	Rolling Stock Procurements > \$150,000	
Post-Delivery Purchaser's Requirement Certification	Rolling Stock Procurements	
On-site Inspector's Report	Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	



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Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Rolling Stock Procurements	
Excluded Parties Listing System search	Procurements >\$25,000	
Lobbying Certification	Procurements >\$100,000	
Standard Form LLL and Quarterly Updates (when required)	Procurements >\$100,000 where contractor engages in lobbying activities	
Contract Administration System		
Record of Procurement History		
Protest Procedures		
Selection Procedures		
Independent Cost Estimate	Awards over \$250,000	
Cost/Price Analysis	Awards over \$250,000	
Responsibility Determination		
Justification for Noncompetitive Awards	If applicable	
No excessive bonding requirements		
No exclusionary specifications		
No geographic preferences		
Evaluation of Options		
Exercise of Options		

*Omnitrans follows the more restrictive State bonding requirements ~~for projects~~ projects >\$25,000 of 10% Bid bond, 100% Payment and Performance bonds on applicable public works projects.

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B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

_____ (excluding micro-purchases, except for construction contracts over \$2,000)

<u>TYPE OF PROCUREMENT</u>					
PROVISION	Professional Services/A&E	Operations/management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by use of a disclaimer)	All	All	All	All	All
False Statements or claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies
Civil Rights (Title VI, ADA, EEO Except Special DOL EEO clause for construction projects)	<u>All</u> <u>All contracts that meet the definition of “federally assisted construction contract” in CFR Part 60-1.3</u> <u>Appendix 11 Part 200</u>	All	All	All	All
Special DOL EEO clause for construction projects				>\$10,000	

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Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
<u>Administrative, contractual, or legal remedies instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate Resolution of Disputes, Breaches or Other Litigation</u>	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air Transp./ travel	Foreign air Transp./ travel	Foreign air Transp./ travel	Foreign air Transp./ travel	Foreign air Transp./ travel
Davis-Bacon Act				>\$2,000 (also ferries)	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted)	>\$100,000	>\$100,000 (also ferries)	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (also ferries)	
Bonding				<u>>\$25,000*</u> <u>\$100,000</u>	
Seismic Safety	A and E for new buildings & additions			<u>Contracts for construction of n</u> <u>New buildings and additions</u>	
Transit Employee Protective		Transit			



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**SPECIAL FEDERAL GRANTEE
REQUIREMENTS AND APPLICABLE
LAWS POLICY**

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Arrangements		Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Use and Testing		Transit Operations/ Safety Sensitive			
Alcohol Misuse and testing		Transit Operations			
Patent Rights	Research and Development				
Rights in Data and Copyright Requirements	Research and Development				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA- selected items \$10,000 or more annually.
Conformance with ITS national Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

4. STATE AND LOCAL REFERENCES

- 4.1. Joint Powers Authority, amended by the member entities on July 1, 2016, and -San Bernardino County Code of Ordinances, Title 1, Division 4.
- 4.2. California Government Code Sections 1090, 1126, 87100, 87306, Resolution No. 140-96, and any other applicable provisions of the Government Code and any conflict of interest Code applicable to Omnitrans employment.
- 4.3. All other applicable federal, state and local laws, codes, regulations, and standards.

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PURCHASING THRESHOLDS POLICY

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1. POLICY STATEMENT OVERVIEW

- 1.1. -This policy sets forth the requirements for micro, mini and small purchases. This policy includes other simplified purchasing procedures, such as petty cash and procurement cards. Consistent with guidance set forth ~~by in the~~ Federal Transit Administration (FTA) ~~Circular 4220.1F, Section VI.2.3.a for,~~ the procurement of supplies, materials and equipment, services and miscellaneous procurements that do not exceed an aggregate amount of the simplified acquisition threshold, currently set at \$150,000; ~~that~~ may be procured by the use of Small Purchase Procedures or other simplified methods.
- 1.2. It is the full responsibility of the requisitioning department to ensure funds are available within the department's budget for any requested procurement.
- 1.3. Consistent with the requirements of the Super Circular 2 CFR 200.323 ~~and the guidance provided by the FTA's Circular 4220.1F, Section 6, a cost/price analysis~~ shall be performed in connection with each procurement action. The method and degree of analysis depends on the facts and circumstances surrounding each procurement. As a starting point, Omnitrans will make independent cost estimates before receiving bids or proposals.
- 1.4. A procurement value over \$100,00 requires requisition creation in the Enterprise Resources Planning (ERP) system, which flows through the hierarchy for approval.
- 1.5. Under no circumstances shall procurements be separated into smaller amounts for the purpose of avoiding procurement procedures.

2. PROCUREMENT TYPES

- 2.1. The Omnitrans Procurement Process is divided into two main types of procurement:
 - 2.1.1. Formal – procurements for goods and services in excess of \$150,000. These procurements are approved by the Omnitrans Board of Directors (BOD).
 - 2.1.2. Informal – procurements including petty cash, micro-procurements, mini-procurements, and small procurements.
- 2.2. Procurement personnel use the automated ERP system to plan, conduct, track, and audit procurements.
 - 2.2.1. ~~In some cases,~~ Omnitrans personnel can use PCAL Cards, as specified in Policy 3000 Section 3, "P-Card Program Policy Statement Procurement Card Policies & Procedures."
 - 2.2.2. ~~Various Omnitrans personnel are responsible for the proper conduct of procurements, as specified in Policy 1020, Responsibilities.~~

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2.3. The applicable procedure will depend on the purchase amount. Additional requirements will apply depending on the subject of the procurement:

2.3.1. **\$100.00 and below** – Petty cash procedure, P-Card or Micro-procurement.

2.3.2. **~~\$310,000.00 and below~~** – Micro-Purchase Procedure–~~FTA Circular 4220.1F, Section VI.3.a~~ Super Circular 2 CFR 200.67.

2.3.2.1. Micro-procurements may be used for goods/services costing ~~not more than~~ up to a ~~\$310,000~~ award amount.

2.3.2.2. Micro-procurements do not require action by the ~~Board of Directors~~.

~~2.3.2.3. Although~~ Micro-procurements ~~does not require multiple quotes, purchases~~ shall be of a fair and reasonable price and should be rotated among vendors offering competitive prices for the same quality. Documentation ~~justifying the proving that~~ price is fair and reasonable, and the method of determination shall be retained with each transaction.

~~2.3.2.3, 2.3.2.4.~~ Construction contracts over \$1,000.00 require compliance with State prevailing wage requirements, whereas Federally funded construction contracts over \$2,000 Federal Procurement R requirements compliance with, such as the Davis-Bacon Act and Buy American Act; and specific construction terms, ~~and conditions must be used for these procurements.~~

~~2.3.3. \$3,000.01 to \$50,000.00~~ Mini-Procurement Procedure–~~FTA Circular 4220.1F, Section VI.3.b~~

~~2.3.3.1. Mini procurements may be used for goods/services costing \$3,000.01 and not more than a \$50,000.00 award amount.~~

~~2.3.3.2. Mini procurements shall be processed through a competitive solicitation process whereby a minimum of 3 quotes are obtained. Such quotes are to be documented and filed with each transaction.~~

~~2.3.3.3. If unable to obtain the required quotations, a written justification shall be prepared and filed with each transaction. Sole source and emergency procurements shall follow the requirements in Policy 2010.~~

~~2.3.3.4. Mini procurements do not require action by the Board of Directors.~~

~~2.3.3.5. All construction procurements of \$1,000.00 or more must be reviewed by the Procurement Department.~~

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2.3.4.2.3.3. ~~\$5010,0001.~~ to \$150,000.00 – Small Procurement Procedure ~~– FTA Circular 4220.1F, Section VI.3.b~~

2.3.4.1.2.3.3.1. Small procurements may be used for goods/services at least \$510,001. and not more than a \$150,000.~~00~~ award.

2.3.4.2.2.3.3.2. Small procurements do not require action by the ~~BOD~~ Board of Directors ~~for award and must be signed by the CEO/General Manager.~~

2.3.4.3.2.3.3.3. In compliance with FTA recommendations and requirements, procurements that do not exceed the stated threshold for Small Procurements do not require use of the Formal Procurement procedure.

2.3.4.4.2.3.3.4. ~~In the award of A&E Contracts, Omnitrans will select the most qualified firm and then negotiate a price with that firm only. (See Policy 4050 2.2)~~

2.3.4.5.2.3.3.5. Price or rate quotations obtained for small procurements shall be documented and filed with each transaction.

2.3.5.2.3.4. \$150,000.01 and above – Formal Procurement Procedure ~~– FTA Circular 4220.1F Section VI.3.c~~

2.3.5.1.2.3.4.1. In compliance with FTA recommendations and the requirements of the Super Circular, procurements for goods/services exceeding \$150,000.00 per award require the use of a Formal Procurement process which includes:

2.3.5.1.1.2.3.4.1.1. Acquisition planning and identification of funding sources.

2.3.5.1.2.2.3.4.1.2. Development of Specifications.

2.3.5.1.3. ~~Board authorization to release Invitation for Bids (IFB) and Request for Proposals (RFP).~~

2.3.5.1.4.2.3.4.1.3. Advertisements.

2.3.5.1.5.2.3.4.1.4. Competitive Bid Process.

2.3.5.1.6.2.3.4.1.5. Evaluation of Bids or Proposals.

2.3.4.1.6. ~~BOD~~ Board Authorization of Contract Award.

2.3.6.2.3.5. Procurement of Design-Build ~~– FTA Circular 4220.1F, Section VI.3.h~~

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2.3.5.1. ~~Omintrans~~MNITRANS shall procure design-build services based on the requirements of State law, 49 USC, Section 5325(d)(2) and the recommendations of FTA Circular 4220.1F, Section VI.3.h. ~~Whether the work to be performed is construction predominant or design services predominant will determine if competitive negotiations/sealed bids will apply or if the Brooks Act will be required. However, qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not A&E in nature as defined in 49 USC Section 5325(b)(1), unless required by State law.~~

2.3.6. Architectural Engineering (A&E) Services and Other Services

Omnitrans shall procure A&E services and other services based on the requirements of State law, 49 USC Section 5325(b) and the recommendations of FTA Circular 4220.1F, Section VI.3.f

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**GENERAL PROCUREMENT
EMERGENCY, & NON-COMPETITIVE, &
COOPERATIVE PROCUREMENTS
POLICY**

 Board Approval: ~~October 2, 2019~~ October 7, 2020

1. POLICY OVERVIEW

This policy sets for the guidelines for emergency procurement and non-competitive procurements.

1.2. EMERGENCY PROCUREMENT POLICY

1.1.2.1. In accordance with Public Contract Code (PCC) ~~20134~~ and 22050 (b)(1), Omnitrans may conduct procurement on an emergency basis if the procurement is essential to an Omnitrans requirement to deal with an existing emergency condition, as defined in the section below.

~~1.2. PCC 22050 requires a four-fifth vote and finding by the Board of Directors (Board) that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency, and continued review by the Board of the need for the emergency action.~~

1.3.2.2. For purposes of an emergency procurement under this policy, an "emergency condition", is a great public calamity (such as an extraordinary fire, flood, storm, or other disaster, epidemic, pandemic, riot, terrorist activity, equipment failure), interruption of contracts essential to the provision of daily transit service, or which creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement ~~methods~~ process, and the lack of which would seriously threaten one (1) or more of the following:

1.3.1.2.2.1. The health or safety of any person;

1.3.2.2.2.2. The preservation or protection of property; or

1.3.3.2.2.3. The continuation of necessary Omnitrans functions.

1.4.2.3. The CEO/General Manager (CEO/GM) or designee must declare the emergency. If that any anticipated cost exceeds \$150,000, the CEO/~~General Manager~~ will attempt to get the approval of the Chairman of the Board before authorizing the ~~request~~ expenditure. If actual costs exceed \$150,000, CEO/GM shall make a formal report to the Board of Directors (BOD).

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 EMERGENCY, & NON-COMPETITIVE, &
COOPERATIVE PROCUREMENTS
POLICY

Board Approval: ~~October 2, 2019~~ October 7, 2020

~~2.3. NON-COMPETITIVE PROCUREMENTS/SOLE SOURCE PROCUREMENT POLICY~~

3.1. Procurement of supplies and services, without competition, may be authorized under limited conditions, and subject to written justification documenting the conditions which prevent competitive solicitation. The need for a non-competitive procurement is recognized when Omnitrans' interests are best served. Non competitive procurements include Single or Sole Source Procurement, Cooperative and Collaborative/Piggyback Contracts and Procurements from Government Entities ~~However, Procurement Staff are encouraged to avoid continuation of non-competitive contracts.~~

3.1.1. Collaborative Contracts (Piggybacking)

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment, or services. Where possible, collaborative contracts shall be made available to other government entities.

When a contract resulted from an open and competitive advertisement, evaluation, and award, existing contracts awarded by other governmental entities may be pursued, i.e. Federal GSA Schedules.

~~2.1.1.~~3.1.2.

~~2.2.3.2.~~The conditions and limitations for use of service agreements and emergency procedures are described in Federal Transit Administration (FTA) Circular 4220.1F, Section VI.3.i (1) (b). As stated, 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 one of the following situations prevails:

~~2.2.1.~~3.2.1. The item is available only from a single source, i.e. licensed software, patented material or process, etc.

~~2.2.2.~~3.2.2. The public exigency or emergency for the requirement prevents any delay caused by competitive solicitation. Upon determining that immediate remedial measures to avert or alleviate damage to property or to repair or restore damaged or destroyed Omnitrans property, the CEO/~~General Manager~~ may authorize the expenditure of money for the direct purchase of goods, services

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or construction without the observance of competitive bidding requirements to ensure the facilities and equipment of Omnitrans are available to service the transportation needs of the general public. After any such expenditure, the CEO/~~General Manager~~ shall submit to the ~~BOD~~Board a complete report explaining the necessity of the action.

~~2.2.3.3.2.3.~~ Federal Transit Administration (FTA) authorizes non-competitive negotiations.

~~2.2.4.3.2.4.~~ After solicitation from a number of sources, Omnitrans deems competition inadequate.

~~2.2.5.3.2.5.~~ Public Calamity. In a case such as an extraordinary fire, flood, storm, epidemic, terrorist activity, or other disaster or interruption of contracts essential to the provision of daily transit service or catastrophic failure of revenue producing equipment or facilities, the CEO/~~General Manager~~ declares that public interest and necessity require immediate expenditure of money to safeguard life, health or property and direct Omnitrans to enter into contract(s) without observance of public bidding requirements. After any such expenditure, the CEO/~~General Manager~~ shall submit to the ~~BOD~~Board a complete report explaining the necessity of the action.

~~2.2.6.3.2.6.~~ The item is an associated capital maintenance item procured directly from the original manufacturer or supplier of the item. If this is the case, Omnitrans must certify in writing to the FTA (before approving the contract) that:

~~2.2.6.1.3.2.6.1.~~ The manufacturer or supplier is the only source for such item.

~~2.2.6.2.3.2.6.2.~~ The price of such item is no higher than the price paid for the item by other like customers.

~~2.2.7.3.2.7.~~ For non-FTA funded procurements, and except as may otherwise be limited by applicable law, Omnitrans determines that a non-competitive procurement is in the public interest and in the best interest of Omnitrans.

GENERAL PROCUREMENT
EMERGENCY, & NON-COMPETITIVE, &
COOPERATIVE PROCUREMENTS
POLICY

Board Approval: ~~October 2, 2019~~ October 7, 2020

4. **DIRECT PAYMENTS** – Direct Payments, Exceptions to a Purchase Order

Direct Payments are to be used when it is not practicable for a Purchase Order to be issued. The following list of expenditures are approved to be issued as a Direct Payment/Non-PO. Use of a Purchaser Order in these cases adds no value to the process because of the nature of the expenditure or provider. Provided all pertinent documents are properly approved and budgeted funds are available:

- Debt-related payments including principal, interest, letter of credit, bank and consultant fees directly related to a debt transaction
- Memberships and subscriptions
- Postage
- Escrow Deposits related and other real property transactions
- Grant Awards made by Omnitrans
- Conference registrations and trainings
- Payments for legal settlements and insurance claims.
- Payments to CalPERS, CSAC, health insurance providers and other routine payments associated with the agency's payroll operations
- Payments to other federal, state, county, JPA, special district, municipal or other governmental agencies.
- Payments to utility providers for water, electric, refuse, and other similar services
- Refunds and utility program rebates paid by the agency to customers
- Petty Cash—replenishment of petty cash when Departments have depleted their existing petty cash funds to a level requiring additional resources
- Any payment to Board members or employees, such as reimbursements, travel stipends, etc.

Procurement Policy Manual

**PROCUREMENT-CARD PROGRAM
POLICY STATEMENT**

 Board Approval: ~~October 2, 2019~~ October 7, 2020
1. POLICY STATEMENT OVERVIEW

This policy provides basic guidance and information for Omnitrans' Procurement Card (P-Card) Program. The policy identifies what can be purchased with a P-Card and who can use the P-Card. For more detailed procedures governing the P-Card Program, please refer to Procurement Procedure 3000.

~~It is the policy of Omnitrans those~~ Low-dollar purchases (less than \$35,000) should generally be made using P-procurement cCards. Any procurement request(s) greater than \$35,000, or those that have special purchasing restrictions, must be ordered through the established purchasing process utilizing a purchase order and recorded through the Enterprise Resource Planning (ERP) system.

~~2. PURPOSE~~

~~This policy provides basic guidance and information for Omnitrans' P-Card Program. The policy identifies what can be purchased with a P-Card and who can use the P-Card. For more detailed procedures governing the P-Card Program, please refer to Procurement Procedure 3000.~~

3.2. PROCUREMENT CARD DESCRIPTION AND USE

The P-Card is a ~~corporate liability procurement~~ card that looks like a traditional credit card, and is used in a similar manner, but with Omnitrans as the cardholder. The P-Card is simply a procurement payment method and does not change or modify any existing procurement policy ~~concerning preferred vendors, restricted purchases, documentation requirements, etc.~~ A P-Card may be used to purchase any authorized goods or services ~~for Omnitrans~~ except the following:

- Anything for personal use ~~or non-Omnitrans purposes~~;
- Any order that exceeds the \$35,000 Single Transaction Limit. (A transaction may consist of one or many items. Regardless of the unit price, if an order totals more than \$35,000, a Purchase Order must be issued. it must go through the normal procurement process. Splitting a large ~~order or~~ purchase into multiple transactions, each less than \$35,000, is **not authorized**;
- Alcohol, alcohol products, alcoholic beverages;
- Ammunition or weapons;
- Drugs and narcotics;

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POLICY ~~STATEMENT~~**

Board Approval: ~~October 2, 2019~~ October 7, 2020

- Automotive parts, repairs, or maintenance (excludes ~~Parts—Procurement~~ Department, Maintenance Department);
- Expenses related to any unauthorized travel;
- Instructors or speakers;
- Fixed asset ~~purchase~~ (an item or equivalent with a cost of \$5,000 or more);
- Gasoline, diesel fuel, oil, and grease (excludes ~~Parts—Procurement~~ Department, Maintenance Department, Stops & Stations Workers, ~~and those individual cardholders with authorized travel requests that include rental vehicles~~);
- Leases or other contractual agreements, ~~regardless of cost~~;
- Land leases or rentals;
- Legal fees;
- Hazardous chemicals (contact Safety, Security & Regulatory Compliance);
- Special Occasion Items (flowers, fruit baskets, candy, balloons, etc.);
- Any purchase prohibited by another Omnitrans policy;
- Capital Equipment ~~and controlled assets~~;
- ~~Personal items~~;
- Computer Hardware and Software; (excluding Procurement Department, IT Department)
- Software License Agreements; (excluding Procurement Department, IT Department)
- Maintenance Agreements and Renewals; (excluding Procurement Department, IT Department)
- Material requiring a license to purchase and/or use;
- Medical expenses; (excluding Procurement Department, Human Resources Department)
- Off-site Record Storage;
- Cash Advances, gift certificates (~~except for approved Omnitrans functions~~ excluding Human Resources);
- Unauthorized Business Entertainment;
- Independent Contractors, Consultants and Professional Services;

**PROCUREMENT-CARD PROGRAM
POLICY ~~STATEMENT~~**

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- Systems office furniture;
- Unauthorized Car leases or rentals, ~~except for Managers and above or as authorized; and~~
- Unauthorized Training, ~~except for Managers and above or as authorized.~~

4.3. PROCUREMENT CARD ELIGIBILITY

~~The P-Card is a limited/restricted credit card, imprinted with the name of the person authorized to use it, an account number, and an expiration date.~~ P-Cards users must be authorized and approved by his or her Director and/or Manager and the CEO/General Manager. In order to obtain and use a P-Card, the ~~employee that the card has been issued to user-~~ must be trained and certified in its use.

5.4. PROCUREMENT CARD RESTRICTIONS

P-Cards are individual, not departmental, procurement cards. Therefore, P-Cards cannot be transferred from one employee to another. ~~Any employee who needs a P-Card must submit a written request to his or her Director and/or Manager, who will submit the request to the CEO/General Manager for final approval.~~

P-Card activities shall be monitored and audited on a random basis to ensure ~~that against~~ unauthorized use. ~~goods and services are not purchased.~~ P-Cards used to purchase unallowed items will be cancelled. ~~Anyone who makes Any~~ unauthorized purchases or uses the P-Card in an inappropriate manner, shall ~~be subject~~ the user to disciplinary actions and repayment of unauthorized purchases, and any collection costs or attorneys' fees incurred as a result thereof, ~~including possible termination of employment, criminal prosecution, and repayment of unauthorized or inappropriate purchases, and any collection costs or attorneys' fees incurred as a result thereof.~~

P-Cards that are lost or stolen must be reported immediately to the US Bank at 1-800-344-5696 (24 hours-a-day, 365 days-a-year). The Cardholder MUST also immediately notify the Director of Finance at the first opportunity during normal business hours at (909) 379-7131.

5.1.4.1. Failure to properly follow and comply with the P-Card policy and procedures shall result in cancellation of the P-Card.

5.2.4.2. Upon termination of employment, whether voluntary or involuntary, the P-Card

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**PROCUREMENT-CARD PROGRAM
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 must be immediately ~~forfeited returned to OmniTrans.~~
6.5. ESTABLISHING A P-CARD SYSTEM
6.1.5.1. Setting up a P-Card system for a department requires the following steps:

6.1.1.5.1.1. The department selects employees to use P-Cards to procure goods and services, or for specific expenditures incurred under approved conditions.

6.1.2.5.1.2. The Department Director/Manager submits the recommendation to the CEO/General Manager for approval and requests that P-Cards be issued to designated employee(s).

6.1.3.5.1.3. The P-Card Administrator(s) trains all selected employees in the proper use of P-Cards before the cards are issued.

6.2.5.2. The Procurement Card (P-Card) is designed to increase OmniTrans' efficiency on low-dollar procurements by giving individual departments the authority and responsibility to make the procurements directly from suppliers. In this way, the P-Card eliminates the need for some purchase orders, check requests, and the use of petty cash.

Procurement Policy Manual

**FORMAL SOLICITATION
PROCUREMENT POLICY**

~~Sealed Bids & Competitive Proposals~~
Invitation for Bid & Request for Proposal

 Board Approval: October 7, 2020
1. POLICY STATEMENTOVERVIEW

1.1. Procurements over \$150,000, ~~as defined as in Title 2 Code of Federal Regulations (CFR) Part 200, and contracts for construction of buildings and structures as identified in Public Contract Code Section 20121 exceeding \$4,000~~ shall require a formal procurement process.

1.2. ~~Requirements for goods or services with an aggregate value of \$150,000 per acquisition, or per contract period including option years shall be processed in the same fashion. These requirements include:~~

1.2.1. ~~Rental/lease payments;~~

1.2.2. ~~Maintenance service contracts including option years; and,~~

1.2.3. ~~Construction projects (except as noted above).~~

1.3. ~~NOTE: Purchases in excess of \$50,000, but not greater than \$150,000 shall not require formal authorization for release from Omnitrans' Board of Directors. All purchases in excess of \$150,000, however, shall be processed formally including obtaining authorization for release of solicitation contract award from Omnitrans' Board of Directors.~~

1.4. ~~Tag Ons. A tag on is the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded. In accordance with federal regulations, the use of Tag Ons is strictly prohibited unless a sole source finding is made in accordance with the requirements of Policy 2010.~~

~~Piggybacking (where the contract resulted from an open and competitive advertisement, evaluation, and award). Piggybacking is an assignment of existing contract rights to purchase supplies, equipment, or services. Omnitrans, where possible, will seek to take advantage of existing contracts awarded by other governmental entities for goods and services.~~

~~Federal Cost Principles: Costs or prices based on estimated costs for contracts funded through Federal grants will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with Federal Cost Principle. (2 CFR Part 200 and Federal Acquisition Regulations, Part 31). Omnitrans may reference its own cost principles that comply with applicable Federal cost principles.~~

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2. EXCEPTIONS

There are situations in which procurements that would otherwise meet the requirements for ~~the formal-competitive~~ procurement process are exempt. ~~Policy 2010, such as~~ Emergency ~~Procurements and~~ Non-Competitive/Single or Sole Source Procurement, Cooperative and Collaborative/Piggyback Contracts and Procurements from Government Entities provides more information on exceptions to the formal procurement process.

3. INVITATION FOR BIDS (IFB)

3.1. ~~In support of certain formal procurement transactions, Omnitrans' staff will send out an Formal Invitation for Bids (IFB's) will be solicited~~ when seeking to procure supplies, equipment, materials, and construction projects. The existence of the following factors will determine ~~whether Omnitrans should~~when to use the IFB method ~~of awarding a contract~~:

3.1.1. ~~A complete and~~ adequate, ~~and realistic~~ specifications or ~~a clear~~ sScope of ~~work~~
(SOW) ~~is available~~;

3.1.2. ~~Two or more bidders are willing and able to compete effectively for the contract~~;

3.1.3. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price;

3.1.4. No discussion with bidders is needed after receipt of ~~offers~~bids;

3.1.5. ~~Low bid award is required pursuant to Public Contract Code Section 20121.~~

3.2. ~~When using an IFB process, a~~ Award is made to the lowest, responsive, responsible bidder.

4. REQUEST FOR PROPOSALS (RFP)

~~Formal procurement transactions calling for a Request for Proposals (RFP's) are normally conducted with more than one anticipated source submitting a proposal, and awards are generally made to the responsible firm whose proposal offers Omnitrans the most~~

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~~advantageous terms with price and other factors considered. solicitation documents, which includes a scope of work and terms and conditions, used to secure proposals for services or commodities not clearly defined in terms of exact specifications or manner of delivery of services and where price is not the sole selection criteria and other subjective factors.~~

~~4.1. The competitive negotiations (RFP) process shall be used for:~~

- ~~a. Professional Services~~
- ~~b. Support Services~~
- ~~c. Technical services~~
- ~~d. Operational Services~~
- ~~e. Maintenance Services~~
- ~~f. Architectural and Engineering Services (A&E), or~~
- ~~g. Specialized Transit Equipment as defined.~~

5. RFP ~~(COMPETITIVE PROPOSAL)~~ AWARD PROCESS

~~5.1. Unless all proposals are rejected, c~~Contract award will be made to the responsive and responsible firm(s) offering the most advantageous terms with price and other factors considered.

~~5.1.1. For projects less than \$50,000 Procurements rejects up to \$150,000 shall be , awarded will be made with the authorization of by the CEO/General Manager or his/her designee.~~

~~5.1.2. For projects of \$50,000 or more, Procurementsjects over \$150,000 shall be awarded will be made with the authorization of by the Board of Directors (BOD).~~

~~5.2. Public Award Announcement. Any award announcement issued by Omnitrans for goods and services (including construction services) having an aggregate value of \$500,000 or more shall specify the amount of the Federal funds as a percentage of the total costs of the award.~~

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- 5.3. ~~In all sealed proposal RFP~~ procurements, except for A&E, ~~the award of contracts~~ shall be awarded to the responsive and responsible firm offering the most advantageous pricing terms.
- 5.4. If ~~an~~the award is to be made to other than the bidder offering the most advantageous pricing terms, except for A&E, a full justification memorandum should be prepared and put into the contract file.
- 5.5. ~~In the unlikely event that identical bids are received, the successful proposers will be determined based upon the assessment and evaluation of the proposals by Omnitrans' designated Evaluation Committee.~~
- 5.6. Award of A&E contracts shall be based on ~~demonstrated competence and qualifications, pursuant to a~~ qualifications-based procurement.
- 5.7. ~~The Board of Directors (Board) is not bound by the recommendation of the Evaluation Committee or working staff when they believe their action will further Omnitrans' statutory functions.~~
- 5.7.1.5.6.1. ~~— However, the decision of the Board must be consistent with the solicitation's~~
~~— (RFP) written evaluation criteria and requirements, and must have a rational~~
~~— basis for the decision, which is fully documented for the procurement files.~~
- 5.8. ~~Sound and Complete Agreement~~
- 5.8.1. ~~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 threshold.)~~
 - b. ~~Termination for cause and for convenience by the grantee or sub-grantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000.)~~
- 5.8.2. ~~Contracts shall be reviewed to ensure that each is a sound and complete agreement~~

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6. BONDING

~~6.1. Bonds are required for all construction contracts valued at over \$25,000 Public Contract Code 7103 and in compliance with Title 2 Code of Federal Regulations (CFR) Part 200.325). Bond or surety requirements will not be waived without the permission of the Board of Directors. The following minimum criteria apply:~~

- ~~A bid guarantee equivalent to 10% Public Contract Code 20483 of the bid price, consisting of a firm commitment, such as a bid bond or certified check for all construction contracts valued at over \$25,000. or other negotiable instrument submitted with a bid to ensure the bidder will honor its bid upon acceptance by Omnitrans.~~
- ~~Performance bond equal to 100% of the contract price to ensure contractor completes its obligations under a contract.~~
- ~~Payment bonds required pursuant to Civil Code section 9554 shall be in an amount equal to 100% of the contract price.~~

7. AWARD OF THE CONTRACT

7.1. Upon award of the contract ~~by the Omnitrans' Board of Directors, the Procurement staff will notify unsuccessful bidders~~ will be notified in writing. ~~and, if applicable, return their bid bonds.~~

~~7.2. Bid bonds submitted by the successful bidder will be retained by Procurement staff.~~

~~7.3.7.2. A preliminary notice of award shall be issued to the successful bidder notifying them that they have been selected for award and that an integrated bilateral contract document will be forthcoming. The conformed contract shall include, but not be limited to, the final negotiated terms and conditions, including price, specifications, warranty provisions, etc.~~

~~8. PROGRESS PAYMENTS~~ moved to 6000

~~8.1. Progress Payments. Omnitrans may use progress payments provided the following requirements are met:~~

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- ~~1) Progress payments are considered to be to the best interest of Omnitrans.~~
- ~~2) Progress payments are only made to the contractor for costs incurred in the performance of the contract.~~
- ~~3) Omnitrans must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the Omnitrans' interest in the progress payment.~~

~~8.2. Formal Review of Progress Payments~~

- ~~1) Requests for progress payments shall be formally reviewed with results documented and filed with each Contract.~~

~~9. REQUIRED FEDERAL CLAUSES (ALREADY ADDRESSED IN 1000)~~

- ~~9.1. Contracts staff will review the contract to ensure that all the applicable Federal, State, and local clauses are included.~~
- ~~9.2. These clauses may include, but are not be limited to, the following provisions, as applicable based on the type of services: Civil Rights, Disadvantage Business Enterprise, Buy America, Lobbying, Debarment, and Davis-Bacon Act. Procurement staff will also ensure that, where required, the proper certifications are included with each proposal and signed by the appropriate individual.~~

~~10. DEFINITIONS~~

~~10.1 Competitive Purchases Over \$150,000.01 and Over~~

~~Competitive solicitations are defined as any purchase with a value of \$150,000.01 and above. Purchases of this amount require full and open competition. Formal procurement methods (sealed bid/competitive proposals) must be utilized, and most procurements of this nature are subject to Federal/State requirements. Board of Directors shall approve approval is required prior to the procurement process starting and then prior to contract award. Technical specifications/scope of work and/or any other specific requirements shall be prepared by the requesting department and submitted to the Procurement Department. The Procurement Department will prepare and publicly release an Invitation for Bids (IFB) or a Request for Proposals (RFP), as~~

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~~appropriate. IFBs/RFPs are publicly advertised in newspapers of general circulation, and/or in addition to being posted on Omnitrans.org/bids,’ online bidding system.~~

~~The threshold requirements, as outlined above, apply to the aggregate purchase amount of the required goods or services. It is not Omnitrans’ policy to separate related costs for the express purpose of avoiding the formal solicitation process.~~

~~10.2—Non-Competitive (Sole Source) Procurement~~

~~Under some circumstances, noncompetitive negotiations or “sole source” procurements may prove necessary to obtain goods or services without requiring formal procurement procedures. (Policy 2010).~~

~~11—Options~~

~~Optional items may be included in contracts entered into by Omnitrans. An option is a unilateral right in a contract by which, for a specified time, Omnitrans may elect to purchase additional equipment, supplies, or services called for in the contract or may elect to extend the term of the contract. If Omnitrans chooses to exercise options, the requirements below apply:~~

~~1.—Evaluation of Options~~

- ~~a.—If required in the solicitation, 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 shall be considered a sole source procurement.~~

~~2.—Exercise of Options~~

- ~~a.—Omnitrans must ensure that the exercise of an option is in accordance with the terms and conditions of the option provisions stated in the initial contract awarded.~~
- ~~b.—To the extent possible, the exercise of contract options shall be measured in terms of its ability to either enhance or positively influence staff’s ability to fully support Omnitrans’ strategic plan.~~
- ~~c.—An option may not be exercised unless Omnitrans 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.~~

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~~d. As of May 2002, the FTA has rescinded its five-year contract term limitation for some FTA funded contracts, including "revenue contracts." Good procurement practice requires that Omnitrans enter into contract terms no longer than is minimally necessary to accomplish the purpose of the contract. Therefore, it remains the general practice of Omnitrans to contract for terms not exceeding a five (5) year period, inclusive of options. Procurements of rolling stock and replacement parts remain limited by law to five (5) years.~~

~~12 Federal General Service Administration (GSA) Schedules~~

~~Under certain circumstances, Omnitrans may be permitted to make purchases through Federal GSA supply schedules in accordance with GSA published procedures, as outlined in the Best Practices Procurement Manual. The Procurement Department will determine if the proposed procurement can utilize existing Federal GSA schedules and follow Procurement Procedure 4000.~~

~~12.1 Procurement Department Files (SHOULDN'T THIS BE IN 1000)~~

~~The Procurement Department maintains a procurement history file which provides an audit trail from the initiation of a purchasing requirement through contract closeout. Where appropriate, the files will include documentation such as the requisitions, independent cost estimate, list of sources solicited, specifications/scope of work, original solicitation, amendments, proposals, bid evaluation results, determination that price is fair and reasonable, contract or purchase order, change orders, Board agendas, copies of public notices, insurance documents, evidence of performance/payment or other bond documents, notice of award, notice to proceed, and all other related correspondence.~~

1310 Geographic Restrictions ALREADY ADDRESSED IN 1000

~~Omnitrans will not use geographic preferences in the award of contracts except in the case of procurement of A&E services, where knowledge of local conditions and building codes is a relevant factor in the quality of the A&E services.~~

~~13.1 Progress Payment~~

~~In some circumstances, Omnitrans may enter into contracts that require the use of progress payments. Progress payments shall only be made to the contractor for costs incurred in the performance of the contract. In addition, Omnitrans must obtain title to the property (materials, work in progress, finished goods) for which the progress~~

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~~payments are made. Omnitrans shall not use federal funds to fund payments (advance payments) to a contractor prior to the incurrence of costs by the contractor.~~

1411 Solicitation Bidders List

~~In addition to the general requirement for full and open competition (publicly advertised solicitations), Omnitrans maintains a~~ bidders list shall be maintained of eligible and qualified vendors who have expressed an interest in receiving solicitations. ~~The bidders list contains the names, addresses, and point of contact for entities that will receive the solicitation.~~

1512 Pre-Bid and Pre-Proposal Conference

Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective bidders and proposers to explain complicated specifications and requirements. The conference is chaired by ~~the responsible~~ Procurement Department ~~staff member~~ and is an open forum where potential respondents may address ambiguities in the solicitation documents. Notice of the conference ~~is~~shall be included in the solicitation at the time of issuance. (addenda)

15.112.1 Cost and Price Analysis MOVED TO 1000

~~Some form of e~~Cost or price analysis ~~shall be made and documented for~~are required for ~~every procurement action, including and~~contract modifications subsequent changes, except as indicated in the procedure. The method and degree of analysis is dependent on the facts surrounding the particular procurement. At a minimum, ~~Omnitrans shall develop i~~Independent Cost estimates are required for each procurement before receiving bids or proposals. ~~The intent of performing a cost or price analysis is to ensure Omnitrans receives a fair and equitable price consistent with the required quality, delivery, and overall terms of the transaction.~~ All cost/price analyses ~~will be documented, and such documents~~ shall be retained in the procurement files.

~~SOLICITATION~~ PROTEST POLICY
Protest Process

Board Approval: October 7, 2020

1. POLICY STATEMENT OVERVIEW

- 1.1. The purpose ~~of this Procurement Policy~~ is to establish policy for administrative resolution of protests arising in the ~~procurement acquisition~~ process and to implement applicable Federal Transit Administration (FTA) requirements and California statutes.
- 1.2. The protest policy ~~herein~~ does not include the actions to be taken by Omnitrans ~~officials~~ in reacting to legal actions initiated by dissatisfied contractors in the U.S. Courts ~~pertaining to Omnitrans contract award decisions.~~
- 1.3. Omnitrans shall have the responsibility to resolve protests of all contract awards. ~~As appropriate, staff shall explore and use alternative dispute resolution procedures if it is deemed to be in the best interest of the Agency.~~
- 1.4. ~~Omnitrans shall notify~~ The FTA shall be notified in a timely manner ~~of when it receives~~ a third-party contract protest on contracts funded by the FTA. ~~Omnitrans shall also keep~~ The FTA shall remain informed on the status of such protests.
 - 1.4.1. ~~Omnitrans alone must be responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protest, disputes, and claims. These standards do not relieve Omnitrans of any contractual responsibilities under its contracts.~~ The Federal awarding agency will not substitute its judgment for that of Omnitrans unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. (Title 2, Code of Federal Regulations Part 200.318)
- 1.5. All Omnitrans procurements shall be conducted in a manner which assures that all prospective contractors are provided fair and equal consideration in the selection of the successful contractor and award of Omnitrans contracts in order to preserve and protect the integrity of the procurement system. To that end, any interested party shall have the right to have its complaint considered and resolved administratively by Omnitrans in an economical and expeditious manner.
- 1.6. "Interested party," as used in this Procurement Policy, means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. The term "interested party" includes all vendors, suppliers, contractors or consultants associated with subject procurement. The term may also

~~SOLICITATION~~ ~~PROTEST~~ POLICY
Protest Process

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include a subcontractor or supplier at any tier who shows that he/she has a substantial economic interest in the subject procurement.

1.7. Under certain circumstances, an interested party to procurement may protest to Omnitrans the award of a contract, which may or may not involve the direct application of funds from the FTA, if it is felt that the solicitation contained restrictive specifications or if improprieties are alleged in the procurement.

1.7.1. The mere fact that Omnitrans is a recipient of FTA funds cannot be construed as evidence of the FTA's involvement in a particular procurement.

1.8. Protest procedures are intended to ensure that valid complaints are handled expeditiously and that the protesting firm receives a fair review of the complaint. It is Omnitrans' intent that all protests be resolved at the local level. Spurious protests may be subject to civil proceedings for the recovery of compensatory and/or punitive damages. All protests shall be filed, handled and resolved in a manner consistent with Federal requirements. In all instances involving FTA funds, Omnitrans shall give notice to FTA regarding the protest.

2. APPLICATION

2.1. This Procurement Policy applies to all Omnitrans procurement actions except less than \$3,000 (micro purchases).

3. PROTEST SUBMITTAL CRITERIA – General

3.1. In order for a protest to be considered, the submittal must meet each one of the following criteria:

3.1.1. Must be submitted on a timely basis. "Timely" is defined in Section 5 entitled "Time Limits."

3.1.2. Must be submitted by an Interested Party. "Interested Party" is defined in Section 1 of this Policy;

3.1.3. Must identify the name, address, and telephone number of the protester;

3.1.4. Must identify the solicitation number or contract number being protested;

3.1.5. Must be submitted in writing;

3.1.6. Must include all supporting documentation for each material issue raised in the protest;

~~SOLICITATION~~ ~~PROTEST~~ POLICY
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3.1.7. Must include a detailed statement of the legal and/or factual grounds for each material issue identified in the protest; and

3.1.8. Must describe the resolution to the protest desired by the Interested Party; and

3.1.9. Must be signed by a properly authorized representative of the Interested Party.

3.2. Omnitrans reserves the right to waive minor, non-substantive, or trivial deficiencies in a protest in its sole discretion.

4. AGENCY LEVEL PROTESTS

4.1. The initial protest filed with Omnitrans must comply with the protest submittal criteria detailed above. The following applies to the protest:

4.1.1. The grounds for the protest must be supported to the fullest extent feasible;

4.1.1.1. Additional materials in support of an initial protest will be considered only if filed within the time limits specified in Procurement Procedure 5000, "Time Limits."

4.2. No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logical, clear, and legible.

4.3. Omnitrans' review of any protest will be limited to:

4.3.1. Violations of State or local laws or regulations (Note: Violations of Federal laws or regulations are under the jurisdiction of FTA);

4.3.2. Violations of the Omnitrans' procurement procedures, or the relevant procurement documents;

4.3.3. Violations of the Omnitrans' protest procedures or failure to review a complaint or protest.

5. TIME LIMITS

5.1. Protests must be filed with Omnitrans prior to the bid opening or proposal closing date if the protest is based on:

5.1.1. Unduly restrictive or severely defective specifications or scope of work; Defective specifications must represent a material weakness that affords an undue advantage to one bidder or proposer over another;

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5.1.2. Improprieties that are apparent in any type of solicitation prior to bid opening or proposal closing date; or

5.2. Protests relating to the selection of a Consultant/Contractor must be filed with Omnitrans within three (3) days of the public bid opening for Invitations for Bids and three (3) days of notice of the award of a contract for Request for Proposals. Such protests may be based on:

5.2.1. Omnitrans' failure to adhere to its purchasing procedures, or the relevant procurement documents; or

5.2.2. Omnitrans' failure to adhere to its protest procedures.

5.3. If the specifications for a particular procurement include specific protest procedures and time limits, that information shall take precedence over the time limits in this document.

5.4. If the initial filing is late, a protest may be considered in the following circumstances:

5.4.1. Good cause based on a compelling reason beyond the protester's control, where the lateness is due to the fault of Omnitrans in handling the protest submission;

5.4.2. Omnitrans determines that the protest raised issues significant to a procurement practice or procedure;

or

5.4.3. A court of competent jurisdiction requests, expects, or otherwise expresses interest in Omnitrans' decision.

6. SUBMISSION OF ADDITIONAL INFORMATION

6.1. Any additional information requested or required by Omnitrans from the protester or interested parties must be submitted as quickly as possible, but in no case later than five (5) days after the receipt of such request, unless specifically accepted by Omnitrans.

7. CONFIDENTIALITY

7.1. Materials submitted by a protester will not be withheld from any interested party outside of Omnitrans or from any government agency that may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation.

7.2. If the protester believes that the protest contains proprietary material that should be withheld, the protester should attach a statement to the front page of the protest document.

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7.2.1. The statement should advise that the document may contain proprietary material.

7.2.2. The statement should identify the proprietary information wherever it appears in the document and all such material should be stamped "CONFIDENTIAL," "PROPRIETARY," or "TRADE SECRET," as appropriate.

8. FURNISHING INFORMATION ON PROTESTS

8.1. Omnitrans will, upon request, make available to any interested party, information bearing on the substance of the protest which has been submitted by the protester, or interested parties, except to the extent that withholding of information is permitted or required by law or regulation.

8.1.1. Any comments thereto shall be submitted within a maximum of ten (10) days.

8.1.2. Information identified by the protester as proprietary material, as specified in Section 7.2 above, will be withheld as permitted by law or regulation.

9. WITHHOLDING OF AWARD

9.1. When a protest has been timely filed before the contract award, and unless otherwise determined in consultation with legal counsel, Omnitrans will not make an award prior to the resolution of the protest.

9.2. When a protest has been filed before the opening date of bids or closing date of proposals, Omnitrans will not open solicitations prior to the resolution of the protest.

9.3. When a protest has been filed after the award of a contract and prior to the resolution of the protest, Omnitrans will notify the Contractor to suspend activity, unless Omnitrans determines that:

9.3.1. The items to be procured are urgently required;

9.3.2. Delivery or performance will be unduly delayed by failure to either make the award promptly or to continue with the procurement; or

9.3.3. Failure to make prompt award or to continue with the procurement will otherwise cause undue hardship to Omnitrans or other local, State or Federal governments.

10. PROTEST REVIEW – LEVEL ONE

10.1. If the protest is determined to be timely and meets the criteria in Section 3, Director of Procurement or designee will create an ad hoc Agency Protest Review Panel (Panel) to review all relevant materials associated with the protest.

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10.1.1. The Panel will be composed of two Omnitrans representatives appointed by the Director of Procurement or designee.

10.1.2. The Panel will determine the validity of the protest and what actions will be taken.

10.2. The Panel will be directed to prepare a written report within fifteen (15) working days and to notify the protester and any interested parties of the Panel's findings, actions, and of the procedures for requesting reconsideration.

10.3. The Panel's report may include:

10.3.1. Copies of all relevant bids/proposal;

10.3.2. A copy of the Invitation for Bids or Request for Proposals, including pertinent provisions of the specifications;

10.3.3. Any other documentation that pertains to the protest, including correspondence with the bidders/proposers; and

10.3.4. A statement by Omnitrans explaining its actions and supporting justification.

10.4. A conference on the merits of the protest with members of the Panel may be held at the request of the protester or the Panel. The request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than ten (10) days after the initial protest was filed.

11. PROTEST REVIEW – LEVEL TWO

11.1. The protester or any interested party may request reconsideration of a decision by Omnitrans.

11.2. The request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

11.3. The request for the reconsideration of the Panel's decision must be filed with the CEO/General Manager or designee not later than ten (10) days after the Panel issues its written report.

11.3.1. The protest will not be considered pending during the 10day period identified above, or during any reconsideration period.

11.4. Upon receiving a request for reconsideration, the CEO/General Manager or designee will schedule an informal administrative hearing with the protester and the Panel. The hearing

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will be held not later than fifteen (15) days after the receipt of the request for reconsideration.

- 11.5. The CEO/General Manager or designee will issue, in writing, Omnitrans' final determination of the reconsidered protest within five (5) days of the administrative hearing.

12. IMPACT OF JUDICIAL PROCEEDINGS

- 12.1. Omnitrans may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court.
- 12.2. This restriction does not apply to instances where the court requests, expects, or otherwise expresses interest in Omnitrans' decision.

13. DEFINITIONS

- 13.1. The following terms are used throughout this Policy. In all instances, the terms are defined as noted:
- 13.1.1. Omnitrans is a Joint Powers Authority established under the laws of the State of California and may also be referred to in this Procurement Policy as "the Agency;"
- 13.1.2. "Board" refers to the Board of Directors of Omnitrans;
- 13.1.3. "FTA" refers to the U.S. Department of Transportation Federal Transit Administration;
- 13.1.4. "Days" refers to working days of Omnitrans, when used in context with the Agency's protest procedures, and refers to working days of the Federal Government when used in context with the FTA;
- 13.1.5. The terms "file" or "submit" refer to the date of receipt by Omnitrans and/or FTA;
- 13.1.6. "Exhaustion of administrative remedies at the grantee level" means any action or inaction on the part of Omnitrans, which is prejudicial to the position taken in a written protest filed with the Agency. It may include, but is not limited to:
- 13.1.6.1. A final Omnitrans decision on the merits of the protest;
- 13.1.6.2. A procurement action, such as the award of a contract or rejection of a bid, despite the pendency of the protest;

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- 13.1.6.3. Agency acquiescence in and active support of continued and substantial contract performance despite the pendency of a protest;
- 13.1.7. “Interested party” includes all actual or prospective proposers for a procurement. The term may also include a subcontractor or supplier at any tier who shows that he/she has a direct economic interest in a provision of the solicitation or of the interpretation of such a provision;
- 13.1.8. “Violation of Federal law or regulation” is defined as the infringement of any valid requirement imposed by Federal statute or regulation, which governs the letting of contracts pursuant to a grant agreement;
- 13.1.8.1. However, any protests involving a local matter and/or determinations that are clearly within the discretionary powers of the Agency include, but are not necessarily limited to, determinations of responsiveness and responsibility, and the revision of specifications to incorporate the evaluation of life-cycle costing (LCC) factors in connection with any given procurement.
- 13.1.8.2. In other words, the protester must be able to demonstrate or establish a clear violation of the prohibition against unduly exclusionary and restrictive specifications, a violation of the Buy America requirements, or other specific violation of Federal statute or regulation.
- 13.1.9. “Local” refers to the County of San Bernardino and the State of California.
- 13.1.9.1. When used in conjunction with the phrase “laws and regulations,” “local” means only those laws or regulations associated with the provision of public mass transportation, the exercise of Omnitrans’ powers or the use of public funds. It does not include the purchasing and/or protest procedures used by either of those entities.

CONTRACT ADMINISTRATION POLICY

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1. POLICY OVERVIEW

- 1.1. This policy addresses contract administration, from execution to closeout When a contract is awarded, Procurement's responsibilities change from solicitation to contract administration. ~~This selection describes the policies necessary to administer Omnitrans contracts.~~
- 1.2. Accurate and consistent contract administration is ~~important to ensuring that Omnitrans meets its responsibility to vital to~~ uphold the public trust and maximize the value of public funds ~~by using them as efficiently and cost effectively as possible.~~
- 1.3. ~~This policy covers how Omnitrans administers contracts, from signing to closeout.~~
- 1.4. ~~Omnitrans shall ensure~~ Federal, State, and local funds are expended in a responsible manner through ~~its~~ contract administration activities.
- ~~1.5. Contract administration (those activities performed after a contract has been awarded), ensures that the contractor's performance meets all requirements set forth in the contract.~~
- ~~1.6.1.5.~~ Contracts ~~involving the expenditure of public funds~~ are subject to review and audits, by funding agencies. A central file for ~~post-award~~ contract activities, ~~with all written documentation produced during the life of the contract,~~ shall be maintained in the Procurement Department. ~~The post-award file contents shall include, at a minimum, the executed contract and notice of award/notice to proceed; bond-related documentation; contract required insurance documentation; post-award correspondence concerning the contract; documentation of submittals by the contractor and corresponding approvals by Omnitrans; all documentation relating to changes to the contract, claims, disputes and final close-out of the contract.~~
- ~~1.7. Procurement's role in Omnitrans' contract administration activities is to coordinate all involved parties so that invoice payment, change order approvals, and contract modifications are handled in accordance with Omnitrans procedures and in accordance with federal guidelines regarding documentation requirements. Further, Procurement is tasked with ensuring that all administrative documents including Independent Cost Estimates, Cost/Price Analyses, Price Quotations, written record of procurement history, pre-award and post-award certifications and all other pertinent and necessary~~

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~~memoranda for the record that will make a sound and complete contract file, are properly completed and filed.~~

~~1.8.1.6.~~ Price/cost analysis ~~for changes orders, verification of invoiced costs and contract adherence to budgets and schedules~~ shall be coordinated with the Project Manager and other involved parties. ~~Procurement will maintain the file documentation for these activities.~~

~~1.9.1.7.~~ Ensuring the contractor submits insurance certificates and endorsements; bonding documentation and all other contractually required documentation shall be the responsibility of Procurement.

~~1.10.1.8.~~ Final contract closeout activities will be administered by Procurement. ~~The Contract Manager shall ensure all administrative steps have been accomplished prior to OmniTrans issuing final payment to the contractor.~~

2. AUTHORITY AND RESPONSIBILITY

2.1. The Director of Procurement is responsible for the legal, technical and administrative sufficiency of ~~OmniTrans'~~ contracts and shall seek legal, technical and other advice ~~within OmniTrans~~ in fulfilling these responsibilities.

2.2. ~~Contract administration is the process of enforcing the terms of a contract through such actions as evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments, processing contract modifications and closeout.~~

2.3. The administration and monitoring of the contractor's performance shall be the responsibility of Procurement (for contractual issues) and the Project Manager (for technical issues). rewrite

3. DELEGATION OF AUTHORITY ~~TO OTHER PERSONNEL~~

3.1. The Director of Procurement, ~~as directed by the CEO/General Manager, may delegates~~ contract administration functions to other Procurement staff ~~OmniTrans personnel~~. The delegation must be in writing and include. ~~The contract administration functions, such as: listed below are typical of those delegated:~~

~~3.1.1. — Inspection of the work for compliance with the contract;~~

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~~3.1.2. Issuance of orders to stop and/or resume work where such orders are authorized by the contract excluding suspension of work under "Suspension of Work" article of the General Provisions;~~

~~3.1.3. Negotiation with the contractor, within specified time limits, as to adjustment of contract price and/or time, and recommendation of acceptance or rejection of negotiation results;~~

~~3.1.4. Preparation of Independent Cost Estimates to initiate contract modifications;~~

~~3.1.5. Modification of the contract in accordance with the changes article or other articles of the General Provisions, in each instance not to exceed the dollar amount authorized by the Director of Procurement, including the preparation of and furnishing to the contractor sketches and clarifications within that limitation;~~

~~3.1.6. Preparation and approval of payment estimates. In those cases, releasing retained percentage or remitting liquidated damages, the designee will make his/her recommendations thereon in writing to the Director of Procurement or designee;~~

~~3.1.7. Approval of the contractor's shop drawings, working drawings, materials, equipment, and operations and storage areas;~~

~~3.1.8. Approval of the contractor's progress schedule;~~

~~3.1.9. Issuing orders for supplies or services under the provision of a blanket purchase agreement, a basic ordering agreement, or other contract type that provides the placement of orders under the contract terms;~~

~~Approval of the contractor's invoices.~~

~~3.1.10.3.1.1. Other duties that the Director of Procurement may assign because of special situations (e.g., inspection of items for compliance with required safety standards, or examination of components to ensure that domestic products are delivered); and~~

~~3.1.11.1.1.1. Approval of the contractor's invoices.~~

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~~4. AWARD OF THE CONTRACT~~

~~4.1. Every contract awarded by Omnitrans shall be confirmed. Procurement will conform the scope of work/technical specifications and terms and conditions during the solicitation process however, due to potential conflicts, staff will re-confirm the contract after receipt of proposals, conclusion of negotiations and receipt of Best and Final Offers. Unless otherwise recommended by legal counsel, contract language will include by reference the proposal, Best and Final Offer, and record of negotiations. The final conformed contract should specify the order of precedence as it could impact dispute resolution.~~

~~All enhancements or exceptions agreed upon must be memorialized in the final conformed contract.~~

5.4. PROJECT MANAGEMENT

~~5.1.4.1.~~ The requesting Department Director will designate a Project Manager to ~~oversee each project to ensure the project objectives are met. Generally, tprovide~~ the Scope of Work ~~and oversees each project to ensure it's objectives are met. i~~In the negotiated contract defines specific tasks, milestones, and review procedures, which vary depending on the particular project.

~~5.2.4.2.~~ If a project is ~~c~~Complex or construction-related ~~projects in excess of \$150,000 andand~~ ~~will occurring~~ over an extended period of time, ~~a Department Director may require est~~ that Procurement staff to conduct a competitive solicitation for a third-party Consultant/Contractor to function as Omnitrans' Project Manager, ~~and oversee projects in excess of \$150,000.~~

5.2.1.4.2.1. The Consultant/Contractor ~~will~~ may be required to document the amount of time and money spent on the work related to a particular project for a period specified in the Contract.

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6.5. AMENDMENTS AND CHANGE ORDERS

6.1.5.1. Change Orders are, in effect, unilateral amendments to a contract and may be required periodically to adjust a contract amount or performance period due to unanticipated conditions. ~~Change Orders are written orders, signed by the CEO/GM General Manager directing the Contractor to make a change to the Contract, that the Changes clause authorizes without the Contractor's consent.~~

6.2.5.2. Change Orders that are neither authorized by the Changes clause nor within the general scope of the contract are considered a non-competitive procurement and are subject to the same requirements as noted in Policy 2010, Section 2, "Emergency & Non-Competitive Procurements."

~~6.3.5.3. By adopting this Manual, the Board authorizes the CEO/GM General Manager~~ to authorize an expenditure for extra work either allowable through the Changes Clause or within the general scope of the contract without the necessity of advertising for competitive bids, as follows.

6.3.1.5.3.1. ~~_____~~ Non-public works/construction - The CEO/GM ~~General Manager~~ has the authority to execute individual amendments/change orders up to \$25,000 or ten (10) percent of the original contract amount (whichever is greater).

5.3.2. Public Works/Construction - The CEO/GM ~~General Manager~~ has the authority to execute individual changes orders up to the following limits:

Original Contract Amount	Maximum Individual Change Order Amount
Up to \$50,000	\$5,000 <u>or total contract amount of \$50,000</u>
<u>Over \$50,000 up to \$150,000</u> \$50,001 - \$250,000	10% of the original contract amount <u>or total contract amount of \$150,000</u>

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<u>Original Public Works Contract Amount</u>	<u>Maximum Change Order Amount</u>
<u>\$250,001+</u>	<u>\$25,000 plus 5% of the original contract amount in excess of \$250,000. In no event shall any such change or alteration exceed two hundred ten thousand dollars (\$210,000).</u>
<u>Up to \$45,000</u>	<u>\$5,000 or total contract amount of \$45,000</u>
<u>Over \$45,000 up to \$175,000</u>	<u>10% of the original contract amount or total contract amount of \$175,000</u>

~~6.3.2. The Omnitrans Board of Directors may authorize the CEO/General Manager to execute change orders/amendments up to a total contract amount not to exceed a higher contingency amount.~~

~~6.3.3.5.3. If the changes exceed the amounts above or the contingency amount authorized by the Omnitrans Board of Directors), the CEO/General Manager must seek approval from the Omnitrans Board of Directors.~~

~~5.4. Procurement will verify funding availability for a change/amendment and determine if the proposed change is within the original scope of work; if outside of scope a separate procurement process shall be followed: i. competitive or ii. sole source procurement. Prior to issuing any change order, Procurement will verify funds availability.~~

~~6.4.5.5. The CEO/GM and BOD must approve cardinal changes. If federally funded said change must be processed as a sole source in accordance with Policy 2010 and FTA Circular 4220.1F. for the proposed change order/amendment. Procurement staff will also determine if the proposed change order/amendment contains a change in the original scope of work, which could be grounds for requiring a sole source finding or conducting a separate competitive bid process for the additional work. The CEO/General Manager and the Board of Directors must approve all cardinal changes. No cardinal change to a federally funded contract shall be made unless it is accompanied by a sole source finding made in accordance with the requirements set~~

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~~forth in this procurement manual and Federal Transit Administration FTA Circular 4220.1F.~~

~~6.5.5.6.~~ A cost/price analysis will be completed and documented prior to the issuance of any changes orders or contract modifications whenever such orders or modifications are expected to result in changes to existing cost or price, unless price reasonableness can be established based on the basis of catalog or market price of a commercial product or on the basis of prices set by law or regulation.

~~5.7.~~ To be binding, all contract amendments and change orders shall comply with applicable laws and regulations, be appropriately documented, and properly approved.

6. PROGRESS PAYMENTS

6.1. Progress Payments. Progress payments may be issued provided the following requirements are met:

- 1) Considered to be to the best interest of Omnitrans.
- 2) Issued to the contractor for costs incurred in the performance of the contract.
- 3) Adequate security is obtained, may include taking title, letter of credit or equivalent

6.2. Formal Review of Progress Payments

- 1) Requests for progress payments shall be formally reviewed with results documented and filed with each Contract.

7.

8. FILE ADMINISTRATION

~~8.1. Orderly documentation of the entire procurement process is essential to sound procurement practices. In order to avoid duplication, refer to the Contract File section of Procurement Procedure 6000—Contract Development and Administration.~~

9. ADVANCED PAYMENT TO CONTRACTORS

9.1. Advance Payments are payments made to a contractor before contractor incurs costs. The FTA prohibits the use of FTA funds for Advance Payments (see FTA Circular 4220.1F).

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9.2. If a vendor will accept payment for goods or services only in advance, Procurement will determine if another vendor offering a similar good or service will accept payment after delivery or if the original vendor will accept an alternative payment arrangement (~~i.e., progress payments~~).

9.3. If ~~Procurement cannot locate an~~ alternate vendor is not available, or if other payment terms are unavailable, the Procurement must proceed cautiously and prepare a detailed agreement specifying the delivery period and the terms for canceling the purchase order or contract to receive a prompt full refund.

~~9.4. Requesting department shall consult with Procurement staff before negotiating terms.~~

10. CONTRACT CLOSEOUT

10.1. A completed contract is one which is both physically and administratively complete, and in which all aspect of contractual performance has been accomplished, terminated, or otherwise disposed of by contract modification. A contract shall not be closed if the contract is subject to a claim or dispute, is under appeal or in litigation or if costs have been questioned and not yet resolved (such as overhead, direct and out of pocket expenses, back charges for performance, or extra work).

~~10.2. At least 30 days prior to the contract completion date, Procurement will contact the Project Manager to confirm that all contracted equipment, services and/or goods have been delivered in an acceptable manner; including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by Omnitrans, including those articles and services for which no specific compensation may have been stipulated; and that no consultant/contractor effort will be required after the specified contract completion date and that the contract may be closed out.~~

11. CONTRACT TERMINATION

11.1. ~~All Omnitrans c~~Contracts exceeding \$10,000 must contain provisions enabling Omnitrans to terminate such contracts for the convenience and default of Omnitrans. These provisions shall specify the manner in which such termination will be affected and the basis for settlement. ~~There shall be included in such contracts appropriate provisions specifying causes for which the contracts may be terminated for default.~~

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11.2. The performance of work under a contract may be terminated in part or in whole ~~when~~ OmniTrans, in consultation with its legal counsel, ~~determines that such termination is in its best interests.~~

~~11.3. OmniTrans may terminate contracts for the following reasons:~~

~~11.3.1. Convenience, such as a reduced need for a product or service; or~~

~~11.3.2. Default, which is when the Consultant/Contractor has failed to perform in accordance with contractual terms and conditions.~~

12. LIQUIDATED DAMAGES

12.1. Liquidated damages may be used if there is a reasonable expectation to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. Liquidated damages are not punitive but are to make OmniTrans whole.

12.2. Liquidated damages are an amount assessed against a Consultant/Contractor when it fails to complete delivery, installation, services, or the work as specified in a Contract within the Contract period of performance or schedule.

12.3. ~~If OmniTrans determines that a liquidated damages clause is necessary in a~~ The contract, ~~it~~ shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary and be included in the solicitation.

12.4. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

12.5. The resulting damages assessed against a Consultant/Contractor shall be deducted from any monies due, or which may thereafter become due, to Consultant/Contractor under the Contract.

12.6. Force Majeure applies:

12.6.1. When it is beyond the control of Consultant/Contractor to provide the service, requirements contained in this contract, such as acts of God, strikes, riots, pandemics, or from other similar causes, the Liquidated Damages will be prorated accordingly.

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~~12.6.2. Omnitrans shall be the sole judge of the applicability of the Force Majeure clause as relates to Liquidated Damages.~~

13. CONTRACT CLAIMS AND DISPUTES

~~13.1. It is the policy of Omnitrans to promptly review and evaluate a~~ All contractor claims shall be promptly review and evaluate claims. Contracts over \$150,000 shall include dispute resolution language.

~~13.2. Procurement is responsible for reviewing, evaluating and determining the merit of contractor claims. In making merit determinations, Procurement shall avail themselves of all Omnitrans resources including specialists in the fields of contracting, finance, law, contract audit, engineering and construction, and others. Determinations of merit shall be reviewed by appropriate technical personnel and Omnitrans' Legal Counsel, for legal sufficiency on all claims.~~

~~13.3. The Consultant/Contractor must present, in writing, all contract dispute claims to Omnitrans' Director of Procurement or Omnitrans' designated Construction Manager, if one has been retained.~~

~~13.4. Merit determination is an evaluation of the contractor's claim and facts sufficient to establish that the contractor may or may not be entitled under the terms of the contract to additional compensation and/or a time extension. The amount of compensation or time is subject to quantum determination. The Merit determination must be reviewed and formally approved (or disapproved) by Omnitrans Director of Procurement or his/her designee with advice from Omnitrans' General Counsel and appropriate technical personnel before processing and negotiating the claim with the Contractor.~~

~~13.5, 13.3. The (FTA) has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contract. Omnitrans must comply with the project management guidelines of FTA Circular 5010.1E in processing contractor claims against federally funded contracts. (Contractor claims for federally funded contracts will be processed in accordance with FTA Circular 5010.1E.~~

~~GENERAL PROCUREMENT~~
DEBARMENT POLICY

Board Approval: October 7, 2020

1. POLICY OVERVIEW ~~–DEBARMENT~~

- 1.1. The CEO/General Manager (CEO/GM) or designee may, in the public interest, debar a contractor from entering into contracts ~~with Omnitrans for any of the causes in Section 2.~~ The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measure or mitigating factors should be considered in making any debarment decision.
- 1.2. Debarment constitutes exclusion of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The CEO/G~~eneral Manager~~ or designee may extend the debarment decision to include any affiliates of the contractor if they are: (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond. The Director of Procurement (Director) is responsible for initiating the recommended suspension or debarment actions and obtaining concurrence of legal counsel.

2. CAUSES FOR DEBARMENT

- 2.1. ~~The CEO/General Manager may debar a~~ contractor may be debarred for any of the causes listed below:
 - 2.1.1. Conviction of or civil judgment for:
 - 2.1.1.1. Commission of fraud or a criminal offense in connection with (A) obtaining, (B) attempting to obtain, or (C) performing a public contract or subcontract;
 - 2.1.1.2. Violation of federal or state antitrust statutes relating to the submission of offers;
 - 2.1.1.3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records making false statements tax evasion or receiving stolen property; or
 - 2.1.1.4. Commission of any other offense indicating a lack of business integrity or business honesty ~~that seriously and directly affects the present responsibility of an Omnitrans contractor or subcontractor.~~

~~GENERAL PROCUREMENT~~
DEBARMENT POLICY

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2.1.2. A preponderance of the evidence shows:

2.1.2.1. Violation of the terms of an ~~an-Omnitrans~~ contract or subcontract so serious as to justify debarment, such as:

2.1.2.1.1. Willful failure to perform in accordance with the terms of one or more contracts; or

2.1.2.1.2. A history of failure to perform, or of unsatisfactory performance of one or more contracts.

2.1.2.2. Any other cause of so serious or compelling a nature ~~that it affects the present responsibility of an-Omnitrans contractor or subcontractor.~~

~~2.1.2.3. Violation of Omnitrans' Procurement Policy 1060 Contractor Relations; or~~

~~2.1.2.4.~~ 2.1.2.3. Any other cause the CEO/G~~eneral Manager~~ determines to affect Responsibility as a contractor, including by not limited to suspension or debarment by another government entity.

3. DEBARMENT PROCEDURES

3.1. The Director ~~of Procurement~~ must provide written notice to the contractor proposed for debarment by certified mail, return receipt requested. The ~~CEO/G~~ General Manager shall coordinate with legal counsel and notify the ~~CEO/G~~ General Manager and Board of Directors (BOD) prior to the release of the written notice to the contractor. The written notice of proposed debarment shall include the following information:

3.1.1. ~~That d~~ Debarment is being considered;

~~3.1.2. The reasons for the proposed debarment in terms of sufficient clarity to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based;~~

~~3.1.3.~~ 3.1.2. The cause(s) relied upon in Section 2 for proposing debarment;

~~3.1.4.~~ 3.1.3. ~~That, within 30 calendar days of receipt of the notice, t~~ The contractor must submit in writing within 30 calendar days of receipt of the

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notice, information and argument in opposition to the proposed debarment, including any additional specific information that may raise a genuine dispute over the material facts. ~~The written information and argument in opposition must be received as evidenced by a time/date stamp by OmniTrans' lobby receptionist located at 1700 W. Fifth St., San Bernardino, CA 92411 between the hours of 8:00 am and 5:00 pm, Monday through Friday;~~

~~3.1.5.~~3.1.4. ~~_____~~ OmniTrans' procedures governing debarment decision making;

~~3.1.6.~~3.1.5. ~~_____~~ The potential effect of an actual debarment.

3.2. The CEO/G~~eneral Manager~~'s Decision

3.2.1. In debarment actions not based upon a conviction or civil judgment;~~OmniTrans will do the following:~~

3.2.1.1. ~~Afford the e~~The contractor will be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person presented by OmniTrans; ~~and~~

3.2.1.2. ~~Make a~~A transcribed record of the proceedings (Administrative Record) shall be made and ~~make it~~ available at no cost to the contractor, ~~unless the contractor and the Agency waive the requirement for a transcript.~~

3.2.2. ~~In actions in which a~~Additional proceedings;~~are necessary, pursuant to Section 3.2.1, written Findings of facts shall be prepared.~~ The CEO/G~~eneral Manager~~ shall base the decision on the facts, ~~as found, together with any information and argument submitted by the contractor and any other information in the administrative record.~~

3.2.2.1. The CEO/G~~eneral Manager~~ may refer matters involving disputed material facts ~~to another official~~ Legal Counsel for Findings of Fact. The CEO/G~~eneral Manager~~ may reject any such findings in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous;~~;~~

3.2.2.2. The ~~CEO/General Manager's~~ decision shall be made after the conclusion of the proceedings ~~with respect to disputed facts.~~

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3.2.3. In any action in which the proposed debarment is not based upon a criminal conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

3.2.4. In debarment actions based on a criminal conviction or civil judgment, or in which there is not dispute over material facts the CEO/~~General Manager~~ will make a decision based on all the information contained in the administrative record and based on advice of legal counsel.

3.3. Notice of CEO/~~GM~~~~General Manager~~'s Decision

3.3.1. If the CEO/~~General Manager~~ decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested. The notice shall:

3.3.1.1. Refer to the notice of proposed debarment;

3.3.1.2. Specify the reasons for the debarment; and

3.3.1.3. State the period of debarment.

3.3.2. If debarment is not imposed, the CEO/~~General Manager~~ shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

4. PERIOD OF DEBARMENT

4.1. Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, the debarment should not exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

4.2. The CEO/~~General Manager~~ may extend the debarment for an additional period, if the CEO/~~General Manager~~ determines that an extension is necessary to protect Omnitrans' interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures in Section 3 above shall be followed to extend the debarment.

4.3. The CEO/~~General Manager~~ may reduce the period or extent of debarment, upon the

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contractor's request, supported by documentation, for reasons such as:

- 4.3.1. Newly discovered material evidence~~;~~
- 4.3.2. Reversal of the criminal conviction or civil judgment upon which the debarment was based~~;~~
- 4.3.3. Bona fide change in ownership or management~~;~~
- 4.3.4. Elimination of other causes for which the debarment was imposed~~;~~ ~~or~~
- 4.3.5. Other reasons the CEO/G~~eneral Manager~~ deems appropriate.

5. SCOPE OF DEBARMENT

- 5.1. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor, may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- 5.2. The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.
- 5.3. The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors, if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

6. POLICY OVERVIEW - SUSPENSION

- 6.1. The CEO/G~~eneral Manager~~ may in the public interest, suspend a contractor from entering into any contracts with Omnitrans for any of the causes in Section 7 below.
- 6.2. Suspension is a serious action to be imposed on the basis of substantial evidence, ending

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the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect Omnitrans' interest. ~~In assessing the adequacy of the evidence, Omnitrans should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports and correspondence.~~

- 6.3. The existence of a cause for suspension does not necessarily require that the contractor be suspended. The CEO/G~~eneral Manager~~ will consider the seriousness of the contractor's acts or omissions and may consider remedial measures or mitigating factors. A contractor has the burden of promptly presenting to the CEO/G~~eneral Manager~~ evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. ~~The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.~~

- 6.4. Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The CEO/G~~eneral Manager~~ may extend the suspension decision to include any affiliates of the contractor if they are:

6.4.1. Specifically named, ~~and~~

6.4.2. Given written notice of the suspension and an opportunity to respond.

7. CAUSES OF SUSPENSION

- 7.1. ~~Suspension is an action taken by the CEO/General Manager to be imposed on the basis of substantial evidence, pending the completion of an investigation or legal proceedings when it has been determined that immediate action is necessary to protect Omnitrans' interest. The CEO/General Manager may suspend a~~ contractor may be suspended if suspected upon substantial evidence of:

7.1.1. Commission of fraud or a criminal offense in connection with:

7.1.1.1. Obtaining, ~~;~~

7.1.1.2. Attempting to obtain, ~~;~~ ~~or~~

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7.1.1.3. Performing a public contract or subcontract~~;~~

7.1.2. Violation of Federal or State antitrust statutes relating to the submission of offers~~;~~

7.1.3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property~~;~~

7.1.4. Commission of any other offense indicating a lack business integrity or business responsibility of an Omnitrans contractor or subcontractor~~;~~

7.1.5. Indictment for any of causes above~~;~~

7.1.6. Violation of Omnitrans' Procurement Policy 1060 – Contractor Relations~~;~~

7.1.7. Any other cause the CEO/G~~eneral~~Manager determines to affect Responsibility as a contractor, including by not limited to suspension or debarment by another government entity~~;~~~~or~~

7.1.8. Any other cause of so serious or compelling a nature that it affects the present responsibility of an ~~Omnitrans~~ contractor or subcontractor.

8. SUSPENSION PROCEDURES

8.1. Notice of Suspension

8.1.1. When a contractor and any specifically named affiliates are suspended, they shall be immediately notified of the suspension by certified mail, return receipt requested. The notice of suspension will include the following information:

8.1.1.1. Notice of suspension and that the suspension is based on an indictment or other substantial evidence that the contractor has committed an act listed in Section 7:

8.1.1.2. That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

8.1.1.3. The cause(s) relied upon for imposing suspension;

8.1.1.4. The effect of the suspension;

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8.1.1.5. ~~That, w~~Within calendar 30 days after receipt of the notice, the contractor may submit, in writing, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts. ~~The written information and argument in opposition must be received as evidenced by a time/date stamp by Omnitrans' lobby receptionist located at 1700 W. Fifth St., San Bernardino, CA 92411 between the hours of 8:00 am and 5:00 pm, Monday through Friday; and~~

8.1.1.6. That additional proceedings to decide any disputed material facts will be conducted unless the action is based on an indictment.

8.2. In ~~actions-suspension~~ not based on indictment, Omnitrans shall:

8.2.1. Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person Omnitrans presents; ~~and~~

8.2.2. Make a transcribed record (Administrative Record) of the proceedings and make it available at cost to the contractor; ~~unless the contractor and Omnitrans waive the requirement for a transcript.~~

8.3. CEO/G~~eneral~~ Manager's Decision

8.3.1. In suspension actions based on an indictment; or where the contractor's submission does not raise a dispute over material facts, the CEO/G~~eneral~~ Manager's decision shall be based on all information in the administrative record, including any submission made by the contractor. see above

8.3.2. In actions in which additional proceedings are necessary, written findings of fact shall be prepared. The CEO/G~~eneral~~ Manager shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record; ~~and~~

8.3.3. The CEO/G~~eneral~~ Manager may refer matters to another official for Finding of Facts. The CEO/G~~eneral~~ Manager may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous; ~~and~~

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8.3.4. The CEO/General Manager's decision shall be made after the conclusion of the proceedings with respect to the disputed facts;. 8.3.5. The CEO/General Manager may modify or terminate the suspension or leave it in force; and 8.3.6. Prompt written notice of the CEO/General Manager's decision shall be sent to the contractor and any affiliates involved, by certified mail return receipt requested. 9. PERIOD OF SUSPENSION 9.1. Suspension shall be for a temporary period, pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the CEO/General Manager. If after eighteen <u>(18)</u> months, no legal proceedings or proposed debarment proceedings have been commenced against the contractor, the suspension shall automatically terminate. 10. SCOPE OF SUSPENSION 10.1. The Scope of Suspension shall be the same as that for debarment, except that the procedures of Section 8 shall be used. 11. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION 11.1. The Director of Procurement will assure compliance with federal guidelines by requiring contractor and subcontractor certification regarding debarment or suspension. 11.2. During an open solicitation, When an indictment, charge, civil judgment, criminal conviction, 11.3.11.2. default of a contract is indicated the Director of Procurement shall: 11.3.1.11.2.1. Request such additional information from the proposer/bidder as the Director of Procurement deems necessary in order to make a determination of the proposer/bidder responsibility; and 11.3.2.11.2.2. Notify the CEO/General Manager prior to proceeding with an award where a proposer/bidder indicates the existence of an indictment, charge, conviction or civil judgment. 11.4.11.3. Proposers/bidders who do not furnish such information as may be requested by the	
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~~Director of Procurement~~ shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the proposer/bidder not responsive/responsible.

~~11.5.11.4.~~ The Director ~~of Procurement~~ will maintain a list of all debarments and suspensions. The list of those persons ineligible to contract with Omnitrans will be a public record.



~~FIXED-CAPITAL~~ ASSET MANAGEMENT
POLICY

Board Approval: ~~October 2, 2019~~ October 7, 2020

1. POLICY OVERVIEW

- 1.1. Omnitrans shall meet its responsibility to uphold the public trust by prioritizing funding to achieve or maintain capital assets (Assets) in a state of good repair; dispose of ~~a~~Assets in a timely and prudent manner; and maximize the value of public funds by keeping track of fixed assets and promptly disposing of ~~a~~Assets that are no longer needed in an efficient and cost-effective manner.
- 1.2. ~~Fixed-a~~Asset control is under the general responsibility of the Finance Department.
- 1.3. Omnitrans' fiscal year budget identifies the ~~fixed-a~~Assets that have been authorized by the Board of Directors (BOD) for procurement.
- 1.4. ~~Fixed-a~~Asset control encompasses the following seven major categories:
 - 1.4.1. Land
 - 1.4.2. Buildings and Improvements
 - 1.4.3. Revenue Equipment
 - 1.4.4. Service Vehicles and d Equipment
 - 1.4.5. Shop and Garage Equipment
 - 1.4.6. Furniture and Office Equipment
 - 1.4.7. Intellectual Property (including software)

~~An~~ ~~fixed-a~~Asset shall be defined as a transit operating property or equipment owned by Omnitrans and having an expected life in service of one (1) year or more at the time of ~~its~~ installation and a unit cost greater ~~than the transit system's capitalization cutoff of \$5,000.~~ that Fixed assets also include an addition, improvement, modification, replacement, re-arrangement, reinstallation, renovation, or alterations to capital assets that materially increase the value of the assets (apart from ordinary repairs and maintenance).

- 1.5. Assets are capitalized in accordance with Generally Accepted Accounting Principles (GAAP) issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB). ~~Fixed assets also include an addition, improvement, modification, replacement, re-arrangement, reinstallation, renovation, or alterations to capital assets that materially increase the value of the assets (apart from ordinary repairs and maintenance).~~



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~~FIXED-CAPITAL~~ ASSET MANAGEMENT POLICY

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1.6. ~~OmniTrans-r~~Reportable acquisitions encompass Federal Transit Administration (FTA) reportable and FTA non-reportable controllable asset acquisition costs.

1.6.1. Reportable acquisition costs are defined ~~in FTA Circular 5010.1E~~ as the net invoice price cost of modifications, attachment accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose.

1.6.2. Non-reportable costs as ~~defined in 5010.1E~~ are inspection, installation, transportation, taxed duty or protective in-transit insurance.

2. ASSET TAGS

2.1. ~~Upon receipt by OmniTrans, a~~All ~~a~~Assets shall be assigned and marked with a unique identification number (ID), and/or via submission of an Asset Reporting Form to the Finance Department.

2.1.1. The Finance Department is responsible for maintaining ~~a~~Asset information and complying with post-award reporting requirements to FTA, ~~on all active assets that meet the requirements of FTA Circular 5010.1E~~ including reports of significant events, Federal Financial Report, and Milestone Progress Reports.

2.2. The Finance Department shall be responsible for creating ~~a~~Asset numbers for all land and buildings and reporting on those ~~as well as reporting on the and~~ other ~~a~~Assets.

3. ASSET RECORDS

3.1. The Finance Department shall gather the information necessary to maintain the ~~a~~Asset database.

~~3.2. The asset database shall include the following information, but is not limited to:~~

~~3.2.1. Description and Identification Number of the item;~~

~~3.2.2. Acquisition date;~~

~~3.2.3. Acquisition costs including taxes, delivery charges, and discounts taken;~~

~~3.2.4. Name of titleholder if other than OmniTrans;~~

~~3.2.5. Rate and type of depreciation;~~

~~3.2.6. Federal grant number under which it was procured;~~

~~3.2.7. Percentage mix of funding sources;~~

~~3.2.8. Serial, and/or vehicle identification numbers;~~

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~~3.2.9. Vendor;~~

~~3.2.10. Location, custodian, condition and use of the asset; and~~

~~3.2.11. Disposition data including the date of disposal and sale price (when applicable)~~



~~FIXED-CAPITAL~~ ASSET MANAGEMENT
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ASSET OWNERSHIP

~~3.3.3.2.~~ Fixed ~~a~~Assets acquired entirely with State and Local funds are the sole property of Omnitrans. Omnitrans is free to use and dispose of such ~~a~~Assets in accordance with the direction of the ~~BOD~~Board of Directors.

~~3.3.1.3.2.1.~~ If, however, the ~~a~~Asset is included as revenue financing for a subsequent FTA grant, then it shall be treated as though FTA retained an interest in it.

~~3.4.3.3.~~ For fixed ~~a~~Assets acquired ~~by Omnitrans~~ with FTA or other Federal project (grant) funds, ~~the title will not be taken by FTA but will be vested~~ with Omnitrans subject to the conditions outlined in the current version of FTA Circular 5010.1E.

4. INVENTORY

- 4.1. An asset which has either reached the end of its useful life, or for which early replacement will result in vastly improved safety, reliability, efficiency, and/or productivity, may be retired from service and disposed of according to FTA Circular 5010.1E for Capital Assets and Omnitrans policies for Controllable Assets.
- 4.2. Assets valued at \$5,000 or less may be retired or disposed of with the approval of the CEO/General Manager, and report back to the Board of Directors.
- 4.3. Assets valued at more than \$5,000 may only be retired or disposed of on the instructions of the Board of Directors.
- 4.4. FTA funded assets are governed by FTA in Circular 5010.1E.
- 4.5. Complete records shall be maintained on the disposition of all excess and retired assets by the Finance Department.
- 4.6. Assets may be disposed of either through sale, trade, transfer, relocation, scrap, or when irreparable damages result in an insurance loss.

5. PHYSICAL INVENTORY

- 5.1. The Finance Department will conduct a physical inventory of all fixed assets at least once every two years. The inventory will note the location and condition of all assets, and the results reconciled with records.
- 5.2. Any discrepancies will be investigated. In connection with this inventory, Omnitrans certifies the existence, current use, and continued need for the asset or real property for purposes specified in its approved FTA grants.

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1. POLICY OVERVIEW

This policy sets forth general procurement policies and standards that will govern the conduct of Omnitrans' procurement activities and of personnel engaged in these activities.

2. PROCUREMENT BACKGROUND

Omnitrans' Statement of Guiding Principles establishes the framework for Omnitrans' Procurement Policy Manual (Manual) and is approved by the Omnitrans Board of Directors (BOD). Procedures implementing the Procurement Policy Manual will be approved by Omnitrans' CEO/General Manager CEO/GM).

3. STATEMENT OF GUIDING PRINCIPLES FOR OMNITRANS' ACQUISITION SYSTEM

The vision for Omnitrans' acquisition system is to deliver, on a timely basis, the best value product or service in an open and competitive environment, while maintaining the public's trust and fulfilling public policy objectives. Participants in the procurement process must work together as a team and are empowered to make decisions within their areas of responsibility.

3.1. Omnitrans' procurement process will:

3.1.1. Be guided by Omnitrans Strategic Plan.

3.1.2. Satisfy the "client" in terms of cost, quality, and timeliness of the delivered product or service by:

3.1.2.1. Maximizing the use of commercial products and services.

3.1.2.2. Using contractors with a track record of successful past performance or who demonstrate a current superior ability to perform.

3.1.2.3. Promoting fair and open competition.

3.1.3. Minimize administrative operating costs through effective teamwork.

3.1.4. Conduct business with integrity, fairness, and openness.

3.1.5. Fulfill public policy objectives.

4. ROLE OF THE PROCUREMENT TEAM

4.1. The Procurement Team consists of all participants in Omnitrans procurement process including representatives of the technical, supply, support services, procurement communities, and contractors who provide products and services.

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4.2. Each member of the Procurement team will exercise personal initiative and sound business judgment in providing the best value product or service. In exercising initiative, the Procurement team may assume that a strategy, practice, policy or procedure is a permissible exercise of authority if it is in the best interest of Omnitrans and is not prohibited by law, applicable regulations or Board adopted policy.

5. PROCUREMENT STANDARDS

5.1. Omnitrans will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of the contracts or purchase orders.

5.2. Members of the BOD will adhere to the standards of conduct adopted by the BOD. Omnitrans employees will adhere to the standards of conduct approved by the CEO/GM under delegation of authority from the BOD.

5.3. Omnitrans procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or unbundling of 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.

5.4. Open and Complete Competition:

5.4.1. Federal Transit Administration (FTA) Circular 4220.1F recommends and Title 49 U.S. Code Section 5325(a) requires that recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary of Transportation. Restrictive solicitations may include, but are not limited to:

5.4.1.1. Restrictive specifications, unreasonable requirements, or unreasonable qualifications.

5.4.1.2. Noncompetitive pricing practices between firms or between affiliated companies.

5.4.1.3. Noncompetitive awards to professionals and other consultants that are on Omnitrans retainer contracts.

5.4.1.4. Organizational conflicts of interest or other conflicts of interest, as further addressed in the Standards of Conduct and Conflict of (Procurement Policy 1050)).

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- 5.4.1.5. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other salient characteristics of the brand name product.
- 5.4.1.6. Any arbitrary action in the procurement process.
- 5.4.1.7. Development of specification requirements and evaluation criteria, which unnecessarily favor a specific contractor.
- 5.4.2. Procurement transactions will be conducted 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. When employing the qualifications-based method for contracting for architectural and engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 5.4.3. Omnitrans will have written selection procedures for competitive negotiated procurement transactions that ensure fair, unbiased evaluation of competing proposals by an independent evaluation committee appointed by the Director of Procurement or their designee. These procedures will also ensure that all solicitations clearly state the evaluation criteria that will be considered in making the source selection.
- 5.4.4. Technical requirements shall incorporate a clear and accurate description for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition.
- 5.4.5. Omnitrans will ensure that all lists of bidders, manufacturers, or products determined to be qualified in advance of the receipt of bids or proposals are current and sufficient to ensure full and open competition. When possible, sufficient time will be allowed to arrange for qualification before receipt of bids or proposals. However, when using grant funds, Omnitrans must allow vendors an opportunity to qualify their products during the solicitation period (FTA Circular 4220.1F).
- 5.4.6. The Procurement Department maintains a procurement history file which provides an audit trail from the initiation of a purchasing requirement through contract closeout and all other related correspondence.

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5.4.7 Cost or price analysis are required for every procurement and subsequent changes. Independent Cost Estimates are required before receiving bids or proposals. All cost/price analyses shall be retained in the procurement files.

6. RESPONSIBILITIES

6.1. The Director of Procurement has primary responsibility for ensuring that the procurement process is in accordance with legal requirements, as interpreted by Omnitrans' General Counsel, and Omnitrans' policies. The Director of Procurement or designee will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

6.2. The Director of Procurement is responsible for establishing and implementing procurement policies and issuing instructions.

6.3. The Director of Procurement is responsible for establishing material management policies and issuing instructions concerning the storage, distribution, and disposal of goods.

6.4. All departments are instructed to follow Procurement Policies/Procedures/Instructions as well as Policies/Instruction.

6.5. The CEO/GM or designee shall execute contracts, purchase orders, modifications, and supplemental agreements in accordance with established thresholds.

7. STATUTORY AND REGULATORY REQUIREMENTS

Applicable Federal, State and Local laws, policies and other sources of guidance govern the procurement practices of Omnitrans.

8. IMPLEMENTATION

The Director of Procurement shall implement the policies herein set forth. Procedural guidance shall be provided in the Procurement Procedures.

9. ABOUT THE MANUAL

a. This manual establishes responsibilities and documents Omnitrans' continuing efforts to comply with applicable federal, state, county, and local regulations.

b. Sections

i. This manual is divided into sections of related policies. Those sections are described in "Using This Manual" below. Sections are separated by title pages,

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and policies within a section will begin with the same number. (For example, all policies in the General Policies section begin with “1.”)

c. Policy Numbering

- i. Policies are individual documents. Each section is composed of several policies. Each policy has a unique number (located in the upper right corner of each page) and shows the date on which it was approved for use by the BOD. When viewing copies of the same policy, the one with the more recent approval date is the correct one to use.

10. USING THIS MANUAL

- a. This manual contains policies governing the procurement of goods and services by Omnitrans. It is divided into the following sections:
 - i. General Policies – (1000 series) this section describes the responsibilities, ethics, and objectives behind the procurement process.
 - ii. Informal Procurement Policies – (2000 series) this section describes informal procurements, micro-procurements, mini-procurements, and small procurements.
 - iii. Procurement Card Policies– (3000 series) this section describes the proper use of procurement cards.
 - iv. Formal Procurement Policies – (4000 series) this section describes the formal procurement process, from bidding to contract award.
 - v. Solicitation Protest Policies – (5000 series) this section describes how to handle a protest to a formal procurement contract award.
 - vi. Contract Administration Policies – (6000 series) this section describes the administration of a contract, from opening to termination.
 - vii. Fixed Asset Management Policies – (7000 series) this section describes the management of fixed assets, from auditing to liquidation of surplus assets.

 OmniTrans Connecting Our Community. Procurement Policy Manual	Policy 1040 Page 1 of 2
DIVERSITY & ECONOMIC OPPORTUNITY POLICY DISADVANTAGED BUSINESS ENTERPRISE PROGRAM	Board Approval: October 7, 2020

1. POLICY OVERVIEW

- 1.1. This policy is pursuant to the provisions of U.S. Department of Transportation (DOT), Title 49, Code of Federal Regulations (CFR), Part 26 “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” and implemented by directive of the Omnitrans Board of Directors (BOD), to promote the utilization of Small and Disadvantaged Business Enterprises (DBE) to the maximum extent feasible. Omnitrans procurement process will provide a level playing field, applying race-neutral measures to promote participation by Small and DBE firms. The DBE Program is narrowly tailored in accordance with applicable law.
- 1.2. Specific responsibility for developing and implementing the DBE program has been delegated to the Disadvantaged Business Enterprise Liaison Officer (DBELO) or designee. Procedures for establishing DBE goals will be coordinated through Procurement. Responsibility for ensuring compliance with Omnitrans’ DBE Policy is shared by all Omnitrans employees.
- 1.3. Omnitrans requires that all federally funded procurements include all applicable forms in the bid/proposal packages for identification of DBE participation,

2. DBE PROGRAM

- 2.1. Omnitrans is committed to undertaking special efforts, including local outreach, to seek socially and economically disadvantaged firms to attain Omnitrans’ overall DBE goal. DBE goals are established every three years based on projected projects, options years, and subrecipient opportunities.
- 2.2. Omnitrans endeavors to ensure that DBEs are given an equal opportunity to compete for every Omnitrans procurement.
- 2.3 Omnitrans procurement process is a key element in implementing Omnitrans’ DBE policy. DBE certification is achieved through the California State Unified Certification Program (CUCP) and other qualifying programs. Omnitrans will refer potential DBEs to the appropriate certifying agency.

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3. TRIENNTIAL GOALS

- 3.1. Omnitrans' Triennial overall goals must be submitted to Federal Transit Administration (FTA) on August 1 every three years for the upcoming Federal Fiscal Year period, October 1 through September 30.
- 3.2. Omnitrans DBELO shall prepare and submit the Triennial Goal and required FTA reports.
- 3.3. Omnitrans projects the number and types of contracts to be awarded and the number and types of DBEs. DBE contractors will be encouraged by Omnitrans to compete as prime contractors.
- 3.4. Full goal setting methodology is available in Omnitrans' DBE Program Manual.

4. RESPONSIBILITY

- 4.1. DBELO or designee is responsible for implementing all aspects of the DBE Program. The DBELO shall have a direct reporting relationship to the CEO/General Manager on all matters concerning the DBE Program.

STANDARDS OF CONDUCT AND
CONFLICT OF INTEREST POLICY

Board Approval: October 7, 2020

1. POLICY OVERVIEW

- 1.1. This policy establishes Omnitrans' Standards of Conduct and defines its policy on conflicts of interest, gratuities, negotiation for employment, post-Omnitrans employment restrictions and related matters. This policy explains the nature of potential conflicts of interest of employees and explains the potential consequences for violating the policy provisions. This policy applies to all Omnitrans personnel in the exercise of their duties.
- 1.2. Federal and State law and regulations require Omnitrans to prevent actual or perceived conflicts of interest in contracting. Omnitrans personnel are expected to avoid conflicts of interest and actions which could result in favoritism or appearances thereof.

2. CONFLICTS OF INTEREST

- 2.1 All Omnitrans members, officers, employees, and other agents must conduct the procurement process so as to avoid conflicts of interest, real or perceived. To maintain full and open competition, no Omnitrans member, officer, employee or other agent, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals, may participate in the selection, award, or administration of any Omnitrans contract if a conflict of interest, prohibited by law or regulation, would be involved.
- 2.2 All procurements must be conducted in accordance with the most current version of the "Conflict of Interest Code for Omnitrans" adopted pursuant to the Political Reform Act of 1974 (Government Code section 87500, et. seq., as amended). Omnitrans employees are expected to comply with the Conflict of Interest Code.

3. GIFTS

- 3.1 Omnitrans officers, employees, agents and Omnitrans members who participate in the selection, award or administration of third-party agreements may not accept gifts, gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontractor agreements. The foregoing restriction shall not apply if, as determined by the CEO/General Manager, the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. Where federal funds are involved, nominal value shall mean under fifty dollars (\$50). Where only state funds are involved, the state gift limits shall apply.

STANDARDS OF CONDUCT AND
CONFLICT OF INTEREST POLICY

Board Approval: October 7, 2020

4. GUIDELINES FOR CONTRACTOR RELATIONSHIPS

4.1. Organizational conflicts in bidding: In order to avoid the appearance of or actual organizational conflicts of interest, the following policies shall apply to Contractors (any third-party vendor, contractor or consultant and their employees or subcontractors) providing goods or services to Omnitrans.

4.1.1. No Contractor shall be eligible to bid on any solicitation, procurement or contract developed from plans, specifications or drafted specifications, design, requirements, statements of work, invitations or bids and/or requests for proposals prepared in whole or in part by that Contractor, or on any “follow on” contract as determined in accordance with the most current guidance on interpretation of Government Code section 1090.

4.1.2. No Contractor may be involved in any aspect of evaluation, selection, or award of a contract for which that person may bid.

4.1.3. No Contractor may participate in any aspect of a procurement for third-party contract management service where the work which is to be reviewed by the third-party contract manager has been awarded to that Contractor.

5. NEGOTIATION FOR EMPLOYMENT

5.1. Omnitrans employees considering or negotiating future employment with an organization which has an actual or prospective business relationship with Omnitrans may not participate in any official action on behalf of Omnitrans with that organization.

“Negotiating” includes any action that reasonably could be construed as an indication of interest in future employment.

5.1.1. Omnitrans employees must file a written notice with their supervisor of any negotiation (including unsolicited proposals) for prospective employment with any entity which has an actual or prospective business relationship with Omnitrans. A copy of the notice shall be sent to Human Resources to be placed in the employee’s official personnel file.

5.2. Post-OMNITRANS Employment Restrictions

5.2.1. Omnitrans employees who, within a one (1) year prior to their last day of employment with Omnitrans: a) have been significantly involved in procurement activities or project management responsibilities involving a party with an actual or prospective business relationship with Omnitrans; or b) have had direct

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STANDARDS OF CONDUCT AND CONFLICT OF INTEREST POLICY	Board Approval: October 7, 2020

responsibility for any matter of financial interest to a party with an actual or prospective business relationship with Omnitrans, may not be employed by that party to work directly or indirectly with any proposal or contract with Omnitrans, until at least one year after the employee or agent has ceased employment with Omnitrans.

5.2.2. Omnitrans managers and above may not work directly or indirectly on any proposal or contract with Omnitrans, until at least one year after the employee or agent has ceased employment with Omnitrans.

6. VIOLATIONS AND ENFORCEMENT

- 6.1. The imposition of civil or criminal proceedings notwithstanding, violation of any of the provisions of this policy shall be subject to penalties, sanctions, or other disciplinary actions up to, and including, termination of employment. Any disciplinary actions imposed shall remain a permanent part of the employee's personnel file.
- 6.2. The violation of any section of this policy by Omnitrans members or officers will require correction of the violation in any manner provided for under the Political Reform Act, and its implementing regulations, as may be applicable to the violation.
- 6.3. Contractors or subcontractors that violate this policy as relates to an active FTA funded procurement may be prohibited from bidding on the procurement or may be subject to other action as deemed appropriate by the CEO/General Manager.
- 6.4. Any person(s) who violates this policy as relates to FTA funded procurements may be prohibited from participation on behalf of Omnitrans on federally funded projects, or subject to other action as deemed appropriate by the CEO/General Manager.

CONTRACTOR RELATIONS POLICY

Board Approval: October 7, 2020

1. POLICY OVERVIEW

- 1.1. Omnitrans maintains an “open door” policy and makes every effort to maintain good business relationships with all bidders/proposers and suppliers.
- 1.2. Procurement employees and all agency management personnel assume the responsibility to:
 - 1.2.1. Maintain ethical procurement policies and principles.
 - 1.2.2. Conduct open and fair competition.
 - 1.2.3. Provide fair and clear scopes of work and technical specifications.
 - 1.2.4. Observe and maintain honesty and candor in all transactions with suppliers.
 - 1.2.5. Maintain the confidence of suppliers in the handling of confidential information.
 - 1.2.6. Remain free from any personal obligation to suppliers.
 - 1.2.7. Answer all inquiries promptly.
 - 1.2.8. Decline to take advantage of supplier errors.
 - 1.2.9. See that all suppliers receive a full, fair, and courteous opportunity to present their products.
 - 1.2.10. Furnish complete and accurate information.
 - 1.2.11. Promote prompt payment of invoices.
 - 1.2.12. Keep an open mind to new methods, technologies, procedures, and providers of products and services.
 - 1.2.13. Encourage testing or demonstration of materials and products.
 - 1.2.14. Operate with integrity and fairness.

2. OBJECTIVE

- 2.1. Through these principles, Omnitrans intends to maintain an atmosphere in which Omnitrans, suppliers, stakeholders and citizens can work together for the provision of goods and services to Omnitrans at a fair and reasonable price.

SUSTAINABLE PROCUREMENT POLICY

Board Approval: October 7, 2020

1. POLICY OVERVIEW

1.1. Omnitrans encourages innovation and efficiency improvements. By adopting environmentally friendly purchasing practices, Omnitrans can reduce its environmental impact, reduce costs and liabilities, and improve environmental quality, consistent with the current FTA Circular 4220 Environmental Protections.

1.2 This policy outlines the Omnitrans' preference for environmentally friendly products, showcases Omnitrans' environmental stewardship, and directs Omnitrans departments to practice environmental sustainability to the extent possible. The primary goals are to minimize environmental impacts and promote the purchase of recycled and environmentally preferred products that:

- Conserve natural resources and materials
- Reduce the consumption of space in landfills
- Increase employee awareness that many used items can serve an additional purpose

2. GENERAL POLICIES

2.1. Whenever feasible, each department should make every reasonable effort to purchase and use recycled products or products with recycled content, to the extent such use does not adversely affect health, safety, operational efficiency, or effectiveness, as determined by each department. Nothing in this policy shall be construed as requiring the purchasing of products that do not perform adequately or are not available at a reasonable price.

2.2. Departments will review purchasing specifications and contract requirements, and where feasible, will revise such specifications and contract requirements to encourage the use of recycled products and other environmentally preferred products. Departments shall consider the ability of a product and its packaging to be reused, reconditioned, or recycled. Departments should purchase products which minimize waste and toxic by-products in their manufacturing, use, recycling, and disposal processes.

3. RECYCLED PRODUCT PREFERENCE

Whenever the Director of Procurement or designee, purchases services, supplies, materials, and/or equipment through the use of a competitive process for evaluation purposes, a price preference may be given to recycled products, reusable products offered as alternatives to

SUSTAINABLE PROCUREMENT POLICY

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disposable products, and products designed to be recycled, where they are offered as alternatives to non-recyclable products.

The Recycled Product Preference does not apply to bids conducted jointly with other public agencies, nor when prohibited by state or federal statutes or regulations, or as may otherwise be exempted.

When bid submissions are evaluated, a five percent (5%) Recycled Product Preference shall be deducted from the total dollar amount bid by vendors on competitive quotes and bids that contain recycled or reusable products, and from the total evaluated aggregate proposal score obtained by such vendors.

The total amount of Recycled Product Preference granted in a single bid shall not exceed five-thousand dollars (\$5,0000) over a non-recyclable products vendor.

The award shall be made at the full price of the quote, bid or proposal. In the case of an absolute tie and no other tie-breaker policy is applicable, an award will be made to the recyclable/reusable products vendor. In the case of a tie between recyclable/reusable products vendors, and no other tie-breaker policy is applicable, the award will be determined by lot.

4. COORDINATION WITH OTHER LOCAL GOVERNMENTS AND AGENCIES

To the greatest extent feasible, the Omnitrans will cooperate with neighboring governmental agencies to develop a comprehensive, consistent, and effective procurement effort intended to stimulate the market for recycled products, reusable products, and products designed to be recycled.

5. IT EQUIPMENT

5.1. Preference shall be given to electronic products that:

- Have Bronze registration or higher under the Electronic Products Environmental Assessment Tool (EPEAT), or which meet similar energy efficiency standards
- Are Energy Star-rated or meet similar energy efficiency standards

SUSTAINABLE PROCUREMENT POLICY

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6. PROMOTION

6.1 Omnitrans business cards, letterhead stationery, envelopes, business forms, and other documents should use recycled products for where feasible. Such items should be labeled “Printed on Recycled Paper” to promote the use of postconsumer content.

6.2 Omnitrans mailings and publications should be printed using non-toxic inks.

6.3 All Omnitrans offices and Departments should promote the recycling of office wastepaper by providing recycling bins for employees use.

PURCHASING THRESHOLDS POLICY

Board Approval: October 7, 2020

1. POLICY OVERVIEW

- 1.1. This policy sets forth the requirements for micro, mini and small purchases. This policy includes other simplified purchasing procedures, such as petty cash and procurement cards. Procurement of supplies, materials and equipment, services and miscellaneous procurements that do not exceed an aggregate amount of the simplified acquisition threshold, currently set at \$250,000 may be procured by the use of Small Purchase Procedures or other simplified methods.
- 1.2. It is the full responsibility of the requisitioning department to ensure funds are available within the department's budget for any requested procurement.
- 1.3. Consistent with the requirements of the Super Circular 2 CFR 200.323 an independent cost estimate, and a cost or price analysis shall be performed in connection with each procurement action. The method and degree of analysis depends on the facts and circumstances surrounding each procurement. As a starting point, Omnitrans will make independent cost estimates before receiving bids or proposals.
- 1.4. A procurement, including change orders and amendments, valued over \$100 requires requisition (shopping cart) creation in the Enterprise Resources Planning (ERP) system, which flows through the hierarchy for approval, excluding P-Card transactions.
- 1.5. Under no circumstances shall procurements be separated into smaller amounts for the purpose of avoiding procurement procedures.

2. PROCUREMENT TYPES

- 2.1. The Omnitrans Procurement Process is divided into two main types of procurement:
 - 2.1.1. Formal – procurements for goods and services in excess of \$150,000. These procurements are approved by the Omnitrans Board of Directors (BOD).
 - 2.1.2. Informal – procurements including petty cash, micro-procurements, and small procurements.
- 2.2. Procurement personnel use the automated ERP system to plan, conduct, track, and audit procurements.
 - 2.2.1. Omnitrans personnel can use P-Cards, as specified in Policy 3000, “P-Card Program Policy Statement.”
- 2.3. The applicable procedure will depend on the purchase amount. Additional requirements will apply depending on the subject of the procurement:

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2.3.1. **\$100.00 and below** – Petty cash procedure, P-Card.

2.3.2. **\$5,000.00 and below** – Micro-Purchase Procedure- Super Circular 2 CFR 200.67.

2.3.2.1. Micro-procurements may be used for goods/services costing up to a \$5,000 award amount.

2.3.2.2. Micro-procurements do not require action by the BOD.

2.3.2.3. Micro-procurements shall be of a fair and reasonable price and should be rotated among vendors offering competitive prices for the same quality. Documentation justifying the price is fair and reasonable, and the method of determination shall be retained with each transaction.

2.3.2.4. Construction contracts over \$1,000 require compliance with State prevailing wage requirements. In addition, federally funded construction, alteration or repair contracts over \$2,000 require compliance with the Davis-Bacon Act and Buy America Act. Specific construction terms also apply.

2.3.3. **\$5,001 to \$150,000** – Small Procurement Procedure

2.3.3.1. Small procurements may be used for goods/services at least \$5,001. and not more than a \$150,000 award.

2.3.3.2. Small procurements do not require action by the BOD.

2.3.3.3. In compliance with FTA recommendations and requirements, procurements that do not exceed the stated threshold for Small Procurements do not require use of the Formal Procurement procedure.

2.3.3.4. Price or rate quotations obtained for small procurements shall be documented and filed with each transaction.

2.3.4. **Above \$150,000** – Formal Procurement Procedure

2.3.4.1. Procurements for goods/services exceeding \$150,000 per award require the use of a Formal Procurement process which includes:

2.3.4.1.1. Acquisition planning and identification of funding sources

2.3.4.1.2. Development of Specifications

2.3.4.1.3. Advertisements

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2.3.4.1.4. Competitive Bid Process

2.3.4.1.5. Evaluation of Bids or Proposals

2.3.4.1.6. BOD Authorization for Solicitation Release and Contract Award

2.3.5. Procurement of Design-Build

- 2.3.5.1. Omnitrans shall procure design-build services based on the requirements of State law, 49 USC Section 5325(d)(2) and the recommendations of FTA Circular 4220.1F, Section VI.3.h.

2.3.6. Architectural Engineering (A&E) Services and Other Services

Omnitrans shall procure A&E services and other services based on the requirements of State law, 49 USC Section 5325(b) and the recommendations of FTA Circular 4220.1F, Section VI.3.f

**EMERGENCY, NON-COMPETITIVE,
COOPERATIVE PROCUREMENTS, &
DIRECT PAYMENT POLICY**

Board Approval: October 7, 2020

1. POLICY OVERVIEW

This policy sets for the guidelines for emergency procurement and non-competitive procurements.

2. EMERGENCY PROCUREMENT

- 2.1. In accordance with Public Contract Code (PCC) 22050 (b)(1), Omnitrans may conduct procurement on an emergency basis if the procurement is essential to an Omnitrans requirement to deal with an existing emergency condition, as defined in the section below.
- 2.2. For purposes of an emergency procurement under this policy, an "emergency condition", is a great public calamity (such as an extraordinary fire, flood, storm, or other disaster, epidemic, pandemic, riot, terrorist activity, equipment failure), interruption of contracts essential to the provision of daily transit service, or which creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement process, and the lack of which would seriously threaten one (1) or more of the following:
 - 2.2.1. The health or safety of any person.
 - 2.2.2. The preservation or protection of property.
 - 2.2.3. The continuation of necessary Omnitrans functions.
- 2.3. The CEO/General Manager (CEO/GM) or designee must declare the emergency. If any anticipated cost exceeds \$250,000, the CEO/GM will attempt to get the approval of the Chairman of the Board before authorizing the expenditure. If actual costs exceed \$250,000, CEO/GM shall make a formal report to the Board of Directors (BOD) and seek ratification of the emergency action.

3. NON-COMPETITIVE PROCUREMENTS

- 3.1. Procurement of supplies and services, without competition, may be authorized under limited conditions, and subject to written justification documenting the conditions which prevent competitive solicitation. The need for a non-competitive procurement is recognized when Omnitrans' interests are best served. Non-competitive procurements include Single or Sole Source Procurement, Cooperative and Collaborative/Piggyback Contracts and Procurements from Government Entities.

**EMERGENCY, NON-COMPETITIVE,
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Board Approval: October 7, 2020

3.1.1. Collaborative Contracts (Piggybacking)

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment, or services. Where possible, collaborative contracts shall be made available to other government entities.

When a contract resulted from an open and competitive advertisement, evaluation, and award, existing contracts awarded by other governmental entities may be pursued, i.e. Federal GSA Schedules.

- 3.2. The conditions and limitations for use of service agreements and emergency procedures are described in Federal Transit Administration (FTA) Circular 4220.1F, Section VI.3.i (1) (b). As stated, 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 one of the following situations prevails:

3.2.1. The item is available only from a single source, i.e. licensed software, patented material or process, etc.

3.2.2. The public exigency or emergency for the requirement prevents any delay caused by competitive solicitation. Upon determining that immediate remedial measures to avert or alleviate damage to property or to repair or restore damaged or destroyed OmniTrans property, the CEO/GM may authorize the expenditure of money for the direct purchase of goods, services or construction without the observance of competitive bidding requirements to ensure the facilities and equipment of OmniTrans are available to service the transportation needs of the general public. After any such expenditure, the CEO/GM shall submit to the BOD a complete report explaining the necessity of the expenditure and seek ratification of the emergency action.

3.2.3. Federal Transit Administration (FTA) authorizes non-competitive negotiations.

3.2.4. After solicitation from a number of sources, OmniTrans deems competition inadequate.

3.2.5. Public Calamity. In a case such as an extraordinary fire, flood, storm, epidemic, terrorist activity, or other disaster or interruption of contracts essential to the provision of daily transit service or catastrophic failure of revenue producing equipment or facilities, the CEO/GM declares that public interest and necessity

**EMERGENCY, NON-COMPETITIVE,
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DIRECT PAYMENT POLICY**

Board Approval: October 7, 2020

require immediate expenditure of money to safeguard life, health or property and direct Omnitrans to enter into contract(s) without observance of public bidding requirements. After any such expenditure, the CEO/GM shall submit to the BOD complete report explaining the necessity of the action.

3.2.6. The item is an associated capital maintenance item procured directly from the original manufacturer or supplier of the item. If this is the case, Omnitrans must certify in writing to the FTA (before approving the contract) that:

3.2.6.1. The manufacturer or supplier is the only source for such item.

3.2.6.2. The price of such item is no higher than the price paid for the item by other like customers.

3.2.7. For non-FTA funded procurements, and except as may otherwise be limited by applicable law, Omnitrans determines that a non-competitive procurement is in the public interest and in the best interest of Omnitrans.

4. DIRECT PAYMENTS – Direct Payments, Exceptions to a Purchase Order

Direct Payments are to be used when it is not practicable for a Purchase Order to be issued. Expenditures, included in the following list but not limited to, are approved to be issued as a Direct Payment/Non-PO. Use of a Purchaser Order in these cases adds no value to the process because of the nature of the expenditure or provider. Provided all pertinent documents are properly approved and budgeted funds are available:

- Debt-related payments including principal, interest, letter of credit, bank and consultant fees directly related to a debt transaction
- Memberships and subscriptions
- Postage
- Escrow Deposits related and other real property transactions
- Grant Awards made by Omnitrans
- Conference registrations and trainings
- Payments for legal settlements and insurance claims.
- Payments to CalPERS, CSAC, health insurance providers and other routine payments associated with the agency's payroll operations

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COOPERATIVE PROCUREMENTS, &
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- Payments to other federal, state, county, JPA, special district, municipal or other governmental agencies.
- Payments to utility providers for water, electric, refuse, and other similar services
- Refunds and utility program rebates paid by the agency to customers
- Petty Cash—replenishment of petty cash when Departments have depleted their existing petty cash funds to a level requiring additional resources
- Any payment to Board members or employees, such as reimbursements, travel stipends, etc.

PROCUREMENT-CARD PROGRAM POLICY

Board Approval: October 7, 2020

1. POLICY OVERVIEW

This policy provides basic guidance and information for Omnitrans' Procurement Card (P-Card) Program. The policy identifies what can be purchased with a P-Card and who can use the P-Card. For more detailed procedures governing the P-Card Program, please refer to Procurement Procedure 3000.

Low-dollar purchases (less than \$5,000) should generally be made using P-Cards. Any procurement request(s) greater than \$5,000, or those that have special purchasing restrictions, must be ordered through the established purchasing process utilizing a purchase order and recorded through the Enterprise Resource Planning (ERP) system.

2. PROCUREMENT CARD DESCRIPTION AND USE

The P-Card is a card that looks like a traditional credit card, and is used in a similar manner, but with Omnitrans as the cardholder. The P-Card is simply a procurement payment method and does not change or modify any existing procurement policy. A P-Card may be used to purchase any authorized goods or services except the following:

- Anything for personal use
- Any order that exceeds the \$5,000 Single Transaction Limit. (A transaction may consist of one or many items. Regardless of the unit price, if an order totals more than \$5,000 a Purchase Order must be issued. Splitting a large purchase into multiple transactions, each less than \$5,000, is **not authorized**)
- Alcohol, alcohol products, alcoholic beverages
- Ammunition or weapons
- Drugs and narcotics
- Automotive parts, repairs, or maintenance (excluding Procurement Department, Maintenance Department)
- Expenses related to any unauthorized travel
- Instructors or speakers
- Fixed asset (an item or equivalent with a cost of \$5,000 or more)
- Gasoline, diesel fuel, oil, and grease (excluding Procurement Department, Maintenance Department, Stops & Stations Workers)
- Leases or other contractual agreements

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- Land leases or rentals
- Legal fees
- Hazardous chemicals (contact Safety, Security & Regulatory Compliance)
- Special Occasion Items (flowers, fruit baskets, candy, balloons, etc.)
- Any purchase prohibited by another Omnitrans policy
- Capital Equipment
- Computer Hardware and Software (excluding Procurement Department, IT Department)
- Software License Agreements (excluding Procurement Department, IT Department)
- Maintenance Agreements and Renewals (excluding Procurement Department, IT Department)
- Material requiring a license to purchase and/or use
- Medical expenses (excluding Procurement Department, Human Resources Department)
- Off-site Record Storage
- Cash Advances, gift certificates (excluding Human Resources)
- Unauthorized Business Entertainment
- Independent Contractors, Consultants and Professional Services
- Systems office furniture
- Unauthorized Car leases or rentals
- Unauthorized Training
- Public Works Projects

3. PROCUREMENT CARD ELIGIBILITY

P-Cards users must be authorized and approved by his or her Director and/or Manager and the CEO/General Manager. In order to obtain and use a P-Card, the user must be trained and certified in its use.

4. PROCUREMENT CARD RESTRICTIONS

P-Cards are individual, not departmental, procurement cards. Therefore, P-Cards cannot be

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transferred from one employee to another.

P-Card activities shall be monitored and audited on a random basis to ensure against unauthorized use. P-Cards used to purchase unallowed items will be cancelled. Any unauthorized purchases or uses the P-Card in an inappropriate manner, shall subject the user to disciplinary actions and repayment of unauthorized purchases, and any collection costs or attorneys' fees incurred as a result thereof, including possible termination of employment, criminal prosecution. ***P-Cards that are lost or stolen must be reported immediately to the US Bank at 1-800-344-5696 (24 hours-a-day, 365 days-a-year). The Cardholder MUST also immediately notify the Director of Finance at the first opportunity during normal business hours at (909) 379-7131.***

- 4.1. Failure to properly follow and comply with the P-Card policy and procedures shall result in cancellation of the P-Card.
- 4.2. Upon termination of employment, whether voluntary or involuntary, the P-Card must be immediately forfeited.

5. ESTABLISHING A P-CARD SYSTEM

- 5.1. Setting up a P-Card system for a department requires the following steps:
 - 5.1.1. The department selects employees to use P-Cards to procure goods and services, or for specific expenditures incurred under approved conditions.
 - 5.1.2. The Department Director/Manager submits the recommendation to the CEO/General Manager for approval and requests that P-Cards be issued to designated employee(s).
 - 5.1.3. The P-Card Administrator(s) trains all selected employees in the proper use of P-Cards before the cards are issued.
- 5.2. The Procurement Card (P-Card) is designed to increase Omnitrans' efficiency on low-dollar procurements by giving individual departments the authority and responsibility to make the procurements directly from suppliers. In this way, the P-Card eliminates the need for some purchase orders, check requests, and the use of petty cash.

FORMAL SOLICITATION POLICY
Invitation for Bid & Request for Proposal

Board Approval: October 7, 2020

1. POLICY OVERVIEW

- 1.1. Procurements over \$150,000, shall require a formal procurement process, including contracts for construction or repair of buildings and structures as identified in Public Contract Code section 20121 exceeding \$4,000.

2. EXCEPTIONS

There are situations in which procurements that would otherwise meet the requirements for competitive procurement process are exempt, such as Emergency Procurements, Non-Competitive/Single or Sole Source Procurement, Direct Payments, Cooperative and Collaborative/Piggyback Contracts and Procurements from Government Entities.

3. INVITATION FOR BIDS (IFB)

- 3.1. Formal IFB's will be issued when seeking to procure supplies, equipment, materials, and construction projects. The existence of the following factors will determine when to use the IFB method:
- 3.1.1. Complete and adequate, specifications or Scope of Work (SOW).
 - 3.1.2. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - 3.1.3. Two or more bidders are willing and able to compete effectively for the contract.
 - 3.1.4. No discussion with bidders is needed after receipt of bids.
 - 3.1.5. Low bid award is required pursuant to Public Contract Code section 20121.
- 3.2. IFBs will be publicly advertised and publicly open at the time and place prescribed in the invitation.
- 3.3. Award is made to the lowest, responsive, responsible bidder.

4. REQUEST FOR PROPOSAL (RFP)

- 4.1 RFPs are solicitation documents, which include a scope of work and terms and conditions, used to secure proposals for services or commodities not clearly defined in terms of exact specifications or manner of delivery of services and where price is not the sole selection criteria and other subjective factors.

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4.1.1 The RFP must identify all evaluation factors and their relative importance; however, the numerical or percentage ratings or weights need not be disclosed.

4.1.2 RFPs will be publicly advertised.

5. RFP AWARD PROCESS

5.1. Contract award will be made to the responsive and responsible firm(s) offering the most advantageous terms with price and other factors considered.

5.1.1. Procurements up to \$150,000 shall be awarded by the CEO/General Manager or designee.

5.1.2. Procurements over \$150,000 shall be awarded by the Board of Directors (BOD).

5.2. RFP procurements, except for A&E, shall be awarded to the responsive and responsible firm offering the most advantageous pricing terms.

5.3. If an award is to be made to other than the bidder offering the most advantageous pricing terms, except for A&E, a full justification memorandum should be prepared and put into the contract file.

5.4. Award of A&E contracts shall be based on a qualifications-based procurement.

6. BONDING

A bid guarantee equivalent to 10% of the bid price, consisting of a firm commitment, such as a bid bond or certified check for all construction contracts valued at over \$25,000.

7. AWARD OF THE CONTRACT

Upon award of the contract unsuccessful bidders will be notified in via the on-line bidding system.

8. SOLICITATION BIDDERS LIST

A bidders list shall be maintained of eligible and qualified vendors who have expressed an interest in receiving solicitations.

9. PRE-BID AND PRE-PROPOSAL CONFERENCE

Pre-bid and pre-proposal conferences are used in complex procurements as a means of briefing prospective bidders and proposers to explain specifications and requirements. The conference is chaired by Procurement Department and is an open forum where potential respondents may address ambiguities in the solicitation documents. Notice of the conference shall be included in the solicitation at the time of issuance (addenda).

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1. POLICY OVERVIEW

- 1.1. The purpose is to establish policy for administrative resolution of protests arising in the procurement process and to implement applicable Federal Transit Administration (FTA) requirements and California statutes.
- 1.2. The protest policy does not include the actions to be taken by Omnitrans in reacting to legal actions initiated by dissatisfied contractors in the U.S. Courts
- 1.3. Omnitrans shall have the responsibility to resolve protests of all contract awards.
- 1.4. The FTA shall be notified in a timely manner of a third-party contract protest on contracts funded by the FTA. The FTA shall remain informed on the status of such protests.
 - 1.4.1. The Federal awarding agency will not substitute its judgment for that of Omnitrans unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. (Title 2, Code of Federal Regulations Part 200.318)
- 1.5. All Omnitrans procurements shall be conducted in a manner which assures that all prospective contractors are provided fair and equal consideration in the selection of the successful contractor and award of Omnitrans contracts in order to preserve and protect the integrity of the procurement system. To that end, any interested party shall have the right to have its complaint considered and resolved administratively by Omnitrans in an economical and expeditious manner.
- 1.6. "Interested party," as used in this Procurement Policy, means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. The term "interested party" includes all vendors, suppliers, contractors or consultants associated with subject procurement. The term may also include a subcontractor or supplier at any tier who shows that he/she has a substantial economic interest in the subject procurement.
- 1.7. Under certain circumstances, an interested party to procurement may protest to Omnitrans the award of a contract, which may or may not involve the direct application of funds from the FTA, if it is felt that the solicitation contained restrictive specifications or if improprieties are alleged in the procurement.
 - 1.7.1. The mere fact that Omnitrans is a recipient of FTA funds cannot be construed as evidence of the FTA's involvement in a particular procurement.

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1.8. Protest procedures are intended to ensure that valid complaints are handled expeditiously and that the protesting firm receives a fair review of the complaint. It is Omnitrans' intent that all protests be resolved at the local level. Spurious protests may be subject to civil proceedings for the recovery of compensatory and/or punitive damages. All protests shall be filed, handled, and resolved in a manner consistent with Federal requirements. In all instances involving FTA funds, Omnitrans shall give notice to FTA regarding the protest.

2. APPLICATION

2.1. This Procurement Policy applies to all Omnitrans procurement actions except less than \$5,000 (micro purchases).

3. PROTEST SUBMITTAL CRITERIA – General

3.1. In order for a protest to be considered, the submittal must meet each one of the following criteria:

- 3.1.1. Must be submitted on a timely basis. "Timely" is defined in Section 5 entitled "Time Limits."
- 3.1.2. Must be submitted by an Interested Party. "Interested Party" is defined in Section 1 of this Policy;
- 3.1.3. Must identify the name, address, and telephone number of the protester;
- 3.1.4. Must identify the solicitation number or contract number being protested;
- 3.1.5. Must be submitted in writing;
- 3.1.6. Must include all supporting documentation for each material issue raised in the protest;
- 3.1.7. Must include a detailed statement of the legal and/or factual grounds for each material issue identified in the protest; and
- 3.1.8. Must describe the resolution to the protest desired by the Interested Party; and
- 3.1.9. Must be signed by a properly authorized representative of the Interested Party.

3.2. Omnitrans reserves the right to waive minor, non-substantive, or trivial deficiencies in a protest in its sole discretion.

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4. AGENCY LEVEL PROTESTS

4.1. The initial protest filed with Omnitrans must comply with the protest submittal criteria detailed above. The following applies to the protest:

4.1.1. The grounds for the protest must be supported to the fullest extent feasible;

4.1.1.1. Additional materials in support of an initial protest will be considered only if filed within the time limits specified in Procurement Procedure 5000, "Time Limits."

4.2. No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logical, clear, and legible.

4.3. Omnitrans' review of any protest will be limited to:

4.3.1. Violations of State or local laws or regulations (Note: Violations of Federal laws or regulations are under the jurisdiction of FTA);

4.3.2. Violations of the Omnitrans' procurement procedures, or the relevant procurement documents;

4.3.3. Violations of the Omnitrans' protest procedures or failure to review a complaint or protest.

5. TIME LIMITS

5.1. Protests must be filed with Omnitrans prior to the bid opening or proposal closing date if the protest is based on:

5.1.1. Unduly restrictive or severely defective specifications or scope of work; Defective specifications must represent a material weakness that affords an undue advantage to one bidder or proposer over another;

5.1.2. Improprieties that are apparent in any type of solicitation prior to bid opening or proposal closing date; or

5.2. Protests relating to the selection of a Consultant/Contractor must be filed with Omnitrans within three (3) days of the public bid opening for Invitations for Bids and three (3) days of notice of the award of a contract for Request for Proposals. Such protests may be based on:

5.2.1. Omnitrans' failure to adhere to its purchasing procedures, or the relevant procurement documents; or

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5.2.2. Omnitrans' failure to adhere to its protest procedures.

5.3. If the specifications for a particular procurement include specific protest procedures and time limits, that information shall take precedence over the time limits in this document.

5.4. If the initial filing is late, a protest may be considered in the following circumstances:

5.4.1. Good cause based on a compelling reason beyond the protester's control, where the lateness is due to the fault of Omnitrans in handling the protest submission;

5.4.2. Omnitrans determines that the protest raised issues significant to a procurement practice or procedure;

or

5.4.3. A court of competent jurisdiction requests, expects, or otherwise expresses interest in Omnitrans' decision.

6. SUBMISSION OF ADDITIONAL INFORMATION

6.1. Any additional information requested or required by Omnitrans from the protester or interested parties must be submitted as quickly as possible, but in no case later than five (5) days after the receipt of such request, unless specifically accepted by Omnitrans.

7. CONFIDENTIALITY

7.1. Materials submitted by a protester will not be withheld from any interested party outside of Omnitrans or from any government agency that may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation.

7.2. If the protester believes that the protest contains proprietary material that should be withheld, the protester should attach a statement to the front page of the protest document.

7.2.1. The statement should advise that the document may contain proprietary material.

7.2.2. The statement should identify the proprietary information wherever it appears in the document and all such material should be stamped "CONFIDENTIAL," "PROPRIETARY," or "TRADE SECRET," as appropriate.

8. FURNISHING INFORMATION ON PROTESTS

8.1. Omnitrans will, upon request, make available to any interested party, information bearing on the substance of the protest which has been submitted by the protester, or interested parties, except to the extent that withholding of information is permitted or required by

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law or regulation.

8.1.1. Any comments thereto shall be submitted within a maximum of ten (10) days.

8.1.2. Information identified by the protester as proprietary material, as specified in Section 7.2 above, will be withheld as permitted by law or regulation.

9. WITHHOLDING OF AWARD

9.1. When a protest has been timely filed before the contract award, and unless otherwise determined in consultation with legal counsel, Omnitrans will not make an award prior to the resolution of the protest.

9.2. When a protest has been filed before the opening date of bids or closing date of proposals, Omnitrans will not open solicitations prior to the resolution of the protest.

9.3. When a protest has been filed after the award of a contract and prior to the resolution of the protest, Omnitrans will notify the Contractor to suspend activity, unless Omnitrans determines that:

9.3.1. The items to be procured are urgently required;

9.3.2. Delivery or performance will be unduly delayed by failure to either make the award promptly or to continue with the procurement; or

9.3.3. Failure to make prompt award or to continue with the procurement will otherwise cause undue hardship to Omnitrans or other local, State or Federal governments.

10. PROTEST REVIEW – LEVEL ONE

10.1. If the protest is determined to be timely and meets the criteria in Section 3, Director of Procurement or designee will create an ad hoc Agency Protest Review Panel (Panel) to review all relevant materials associated with the protest.

10.1.1. The Panel will be composed of two Omnitrans representatives appointed by the Director of Procurement or designee.

10.1.2. The Panel will determine the validity of the protest and what actions will be taken.

10.2. The Panel will be directed to prepare a written report within fifteen (15) working days and to notify the protester and any interested parties of the Panel's findings, actions, and of the procedures for requesting reconsideration.

10.3. The Panel's report may include:

10.3.1. Copies of all relevant bids/proposal;

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10.3.2. A copy of the Invitation for Bids or Request for Proposals, including pertinent provisions of the specifications;

10.3.3. Any other documentation that pertains to the protest, including correspondence with the bidders/proposers; and

10.3.4. A statement by Omnitrans explaining its actions and supporting justification.

10.4. A conference on the merits of the protest with members of the Panel may be held at the request of the protester or the Panel. The request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than ten (10) days after the initial protest was filed.

11. PROTEST REVIEW – LEVEL TWO

11.1. The protester or any interested party may request reconsideration of a decision by Omnitrans.

11.2. The request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

11.3. The request for the reconsideration of the Panel's decision must be filed with the CEO/General Manager or designee not later than ten (10) days after the Panel issues its written report.

11.3.1. The protest will not be considered pending during the 10day period identified above, or during any reconsideration period.

11.4. Upon receiving a request for reconsideration, the CEO/General Manager or designee will schedule an informal administrative hearing with the protester and the Panel. The hearing will be held not later than fifteen (15) days after the receipt of the request for reconsideration.

11.5. The CEO/General Manager or designee will issue, in writing, Omnitrans' final determination of the reconsidered protest within five (5) days of the administrative hearing.

12. IMPACT OF JUDICIAL PROCEEDINGS

12.1. Omnitrans may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court.

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12.2. This restriction does not apply to instances where the court requests, expects, or otherwise expresses interest in Omnitrans' decision.

13. DEFINITIONS

13.1. The following terms are used throughout this Policy. In all instances, the terms are defined as noted:

13.1.1. Omnitrans is a Joint Powers Authority established under the laws of the State of California and may also be referred to in this Procurement Policy as "the Agency;"

13.1.2. "Board" refers to the Board of Directors of Omnitrans;

13.1.3. "FTA" refers to the U.S. Department of Transportation Federal Transit Administration;

13.1.4. "Days" refers to working days of Omnitrans, when used in context with the Agency's protest procedures, and refers to working days of the Federal Government when used in context with the FTA;

13.1.5. The terms "file" or "submit" refer to the date of receipt by Omnitrans and/or FTA;

13.1.6. "Exhaustion of administrative remedies at the grantee level" means any action or inaction on the part of Omnitrans, which is prejudicial to the position taken in a written protest filed with the Agency. It may include, but is not limited to:

13.1.6.1. A final Omnitrans decision on the merits of the protest;

13.1.6.2. A procurement action, such as the award of a contract or rejection of a bid, despite the pendency of the protest;

13.1.6.3. Agency acquiescence in and active support of continued and substantial contract performance despite the pendency of a protest;

13.1.7. "Interested party" includes all actual or prospective proposers for a procurement. The term may also include a subcontractor or supplier at any tier who shows that he/she has a direct economic interest in a provision of the solicitation or of the interpretation of such a provision;

13.1.8. "Violation of Federal law or regulation" is defined as the infringement of any valid requirement imposed by Federal statute or regulation, which governs the letting of contracts pursuant to a grant agreement;

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13.1.8.1. However, any protests involving a local matter and/or determinations that are clearly within the discretionary powers of the Agency include, but are not necessarily limited to, determinations of responsiveness and responsibility, and the revision of specifications to incorporate the evaluation of life-cycle costing (LCC) factors in connection with any given procurement. 13.1.8.2. In other words, the protester must be able to demonstrate or establish a clear violation of the prohibition against unduly exclusionary and restrictive specifications, a violation of the Buy America requirements, or other specific violation of Federal statute or regulation. 13.1.9. “Local” refers to the County of San Bernardino and the State of California. 13.1.9.1. When used in conjunction with the phrase “laws and regulations,” “local” means only those laws or regulations associated with the provision of public mass transportation, the exercise of Omnitrans’ powers or the use of public funds. It does not include the purchasing and/or protest procedures used by either of those entities.

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1. POLICY OVERVIEW

- 1.1. This policy addresses contract administration, from execution to closeout. When a contract is awarded, Procurement's responsibilities change from solicitation to contract administration.
- 1.2. Accurate and consistent contract administration is vital to uphold the public trust and maximize the value of public funds.
- 1.3. Federal, State, and local funds are expended in a responsible manner through contract administration activities.
- 1.4. Contracts are subject to review and audits.
- 1.5. Ensuring the contractor submits insurance certificates and endorsements; bonding documentation and all other contractually required documentation shall be the responsibility of Procurement.
- 1.6. Final contract closeout activities will be administered by Procurement prior to issuing final payment to the contractor.

2. AUTHORITY AND RESPONSIBILITY

- 2.1. The Director of Procurement is responsible for the legal, technical, and administrative sufficiency of contracts and shall seek legal, technical, and other advice in fulfilling these responsibilities.
- 2.2. The administration and monitoring of the contractor's performance shall be the responsibility of the Project Manager. The Project Manager shall notify Procurement prior to a non-performance issue becoming perpetual to remedy through the contractual process.

3. DELEGATION OF AUTHORITY

- 3.1. The Director of Procurement delegates contract administration functions to other Procurement staff. The delegation must be in writing and specify the functions delegated.

4. PROJECT MANAGEMENT

- 4.1. The requesting Department Director will designate a Project Manager to provide the Scope of Work and oversee each project to ensure its objectives are met. In the negotiated contracts, the Scope of Work defines specific tasks, milestones, and review procedures, which vary depending on the particular project.

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- 4.2. Complex or construction-related projects exceeding \$150,000 and occurring over an extended period of time, may require Procurement staff to conduct a competitive solicitation for a third-party Consultant/Contractor to function as Omnitrans' Project Manager.

- 4.2.1. The Consultant/Contractor will be required to document the amount of time and money spent on the work related to a particular project for a period specified in the Contract.

5. AMENDMENTS AND CHANGE ORDERS

- 5.1. Change Orders are, in effect, amendments to a contract and may be required periodically to adjust a contract amount or performance period due to unanticipated conditions. Bilateral Change Orders are signed by the CEO/GM and the Contractor when an agreed upon change order can be negotiated. Unilateral Change Orders are written orders, signed by the CEO/GM directing the Contractor to make a change to the Contract.
- 5.2. Change Orders that are neither authorized by the Changes clause nor within the general scope of the contract are considered a non-competitive procurement and are subject to the same requirements as noted in Policy 2010, Section 2, "Emergency & Non-Competitive Procurements."
- 5.3. CEO/GM may authorize an expenditure for extra work either allowable through the Changes Clause or within the general scope of the contract without the necessity of advertising for competitive bids, as follows.
- 5.3.1. Non-public works/construction - The CEO/GM has the authority to execute individual amendments/change orders up to \$25,000 or ten (10) percent of the original contract amount (whichever is greater).
- 5.3.2. Public Works/Construction - The CEO/GM has the authority to execute individual changes orders up to the following limits:

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Original Contract Amount	Maximum Change Order Amount
Up to \$50,000	\$5,000 or up to the total contract amount of \$50,000
Over \$50,000 up to \$150,000	10% of the original contract amount or up to the total contract amount of \$150,000
Original Public Works Contract Amount	Maximum Change Order Amount
Up to \$45,000	\$5,000 or up to the total contract amount of \$45,000
Over \$45,000 up to \$175,000	10% of the original contract amount or up to the total contract amount of \$175,000

5.3.3. If the changes exceed the amounts above or the contingency amount originally authorized by the BOD, the CEO/GM must seek approval from the BOD.

- 5.4. Procurement will verify funding availability for a change/amendment and determine if the proposed change is within the original scope of work; if outside of scope a separate procurement process shall be followed: i.e. competitive or ii. sole source procurement.
- 5.5. The CEO/GM and BOD must approve cardinal changes. Cardinal changes, if authorized, may only be made by mutual agreement between Omnitrans and the Contractor, and may not be made by a unilateral Change Order. If federally funded said change must be processed as a sole source in accordance with Policy 2010 and FTA Circular 4220.1F.
- 5.6. A cost/price analysis will be completed and documented prior to the issuance of any change orders or contract modifications whenever such orders or modifications are expected to result in changes to existing cost or price, unless price reasonableness can be established based on the basis of catalog or market price of a commercial product or on the basis of prices set by law or regulation.
- 5.7. To be binding, all contract amendments and change orders shall comply with applicable laws and regulations, be appropriately documented, and properly approved.

6. PROGRESS PAYMENTS

- 6.1. Progress Payments. Progress payments may be issued provided the following requirements are met:
 - 1) Considered to be to the best interest of Omnitrans or required in accordance with applicable law.

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2) Issued to the contractor for costs incurred in the performance of the contract.

3) Adequate security is obtained, may include taking title, letter of credit or equivalent.

6.2. Formal Review of Progress Payments. Requests for progress payments shall be formally reviewed with results documented and filed with each Contract.

7. ADVANCED PAYMENT TO CONTRACTORS

7.1. Advance Payments are payments made to a contractor before contractor incurs costs. The FTA prohibits the use of FTA funds for Advance Payments (see FTA Circular 4220.1F).

7.2. If a vendor will accept payment for goods or services only in advance, Procurement will determine if another vendor offering a similar good or service will accept payment after delivery or if the original vendor will accept an alternative payment arrangement.

7.3. If an alternate vendor is not available, or if other payment terms are unavailable, Procurement must proceed cautiously and prepare a detailed agreement specifying the delivery period and the terms for canceling the purchase order or contract to receive a prompt full refund.

8. CONTRACT CLOSEOUT

8.1. A completed contract is one which is both physically and administratively complete. A contract shall not be closed if the contract is subject to a claim or dispute, is under appeal or in litigation or if costs have been questioned and not yet resolved (such as overhead, direct and out of pocket expenses, back charges for performance, or extra work).

9. LIQUIDATED DAMAGES

9.1. Liquidated damages may be used if there is a reasonable expectation to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. Liquidated damages are not punitive but are to make Omnitrans whole.

9.2. Liquidated damages are an amount assessed against a Consultant/Contractor when it fails to complete delivery, installation, services, or the work as specified in a Contract within the Contract period of performance or schedule.

9.3. The contract file shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary and be included in the solicitation.

9.4. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

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9.5. The resulting damages assessed against a Consultant/Contractor shall be deducted from any monies due, or which may thereafter become due, to Consultant/Contractor under the Contract.

9.6. Force Majeure applies:

9.6.1. When it is beyond the control of Consultant/Contractor to provide the service, or requirements contained in the contract, as a result of causes such as acts of God, strikes, riots, pandemics, or from other similar causes, as more specifically set forth in the contract. Liquidated Damages will be prorated according to the contract terms.

10. CONTRACT CLAIMS AND DISPUTES

10.1. All contractor claims shall be promptly reviewed and evaluated.

10.2. Procurement is responsible for reviewing, evaluating, and determining the merit of contractor claims. Determinations of merit shall be reviewed by appropriate technical personnel and legal counsel.

10.3. (Contractor claims for federally funded contracts will be processed in accordance with FTA Circular 5010.1E.

DEBARMENT POLICY

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1. POLICY OVERVIEW

- 1.1. The CEO/General Manager (CEO/GM) or designee may, in the public interest, debar a contractor from entering contracts. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measure or mitigating factors should be considered in making any debarment decision.
- 1.2. Debarment constitutes exclusion of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The CEO/GM or designee may extend the debarment decision to include any affiliates of the contractor if they are: (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond. The Director of Procurement (Director) is responsible for initiating the recommended suspension or debarment actions and obtaining concurrence of legal counsel.

2. CAUSES FOR DEBARMENT

- 2.1. A contractor may be debarred for any of the causes listed below:
 - 2.1.1. Conviction of or civil judgment for:
 - 2.1.1.1. Commission of fraud or a criminal offense in connection with (A) obtaining, (B) attempting to obtain, or (C) performing a public contract or subcontract;
 - 2.1.1.2. Violation of federal or state antitrust statutes relating to the submission of offers;
 - 2.1.1.3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records making false statements tax evasion or receiving stolen property; or
 - 2.1.1.4. Commission of any other offense indicating a lack of business integrity or business honesty.
 - 2.1.2. A preponderance of the evidence shows:
 - 2.1.2.1. Violation of the terms of a contract or subcontract so serious as to justify debarment, such as:

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2.1.2.1.1. Willful failure to perform in accordance with the terms of one or more contracts; or

2.1.2.1.2. A history of failure to perform, or of unsatisfactory performance of one or more contracts.

2.1.2.2. Any other cause of so serious or compelling a nature.

2.1.2.3. Any other cause the CEO/GM determines to affect Responsibility as a contractor, including by not limited to suspension or debarment by another government entity.

3. DEBARMENT PROCEDURES

3.1. The Director must provide written notice to the contractor proposed for debarment by certified mail, return receipt requested. The CEO/GM shall coordinate with legal counsel and notify the and Board of Directors (BOD) prior to the release of the written notice to the contractor. The written notice of proposed debarment shall include the following information:

3.1.1. Debarment is being considered.

3.1.2. The cause(s) relied upon in Section 2 for proposing debarment.

3.1.3. The contractor must submit in writing within 30 calendar days of receipt of the notice, information, and argument in opposition to the proposed debarment, including any additional specific information that may raise a genuine dispute over the material facts.

3.1.4. Procedures governing debarment decision making.

3.1.5. The potential effect of an actual debarment.

3.2. The CEO/GM's Decision

3.2.1. In debarment actions not based upon a conviction or civil judgment:

3.2.1.1. The contractor will be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person presented by Omnitrans.

3.2.1.2. A transcribed record of the proceedings (Administrative Record) shall be made and available at no cost to the contractor.

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3.2.2. Additional proceedings: The CEO/GM shall base the decision on the facts.

3.2.2.1. The CEO/GM may refer matters involving disputed material facts Legal Counsel for Findings of Fact. The CEO/GM may reject any such findings in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

3.2.2.2. The decision shall be made after the conclusion of the proceedings.

3.2.3. In any action in which the proposed debarment is not based upon a criminal conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

3.2.4. In debarment actions based on a criminal conviction or civil judgment, or in which there is not dispute over material facts the CEO/GM will make a decision based on all the information contained in the administrative record and based on advice of legal counsel.

3.3. Notice of CEO/GM's Decision

3.3.1. If the CEO/GM decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested. The notice shall:

3.3.1.1. Refer to the notice of proposed debarment;

3.3.1.2. Specify the reasons for the debarment; and

3.3.1.3. State the period of debarment.

3.3.2. If debarment is not imposed, the CEO/GM shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

4. PERIOD OF DEBARMENT

4.1. Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, the debarment should not exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

4.2. The CEO/GM may extend the debarment for an additional period, if the CEO/GM determines that an extension is necessary to protect Omnitrans' interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon

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which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures in Section 3 above shall be followed to extend the debarment.

- 4.3. The CEO/GM may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as:

- 4.3.1. Newly discovered material evidence.
- 4.3.2. Reversal of the criminal conviction or civil judgment upon which the debarment was based.
- 4.3.3. Bona fide change in ownership or management.
- 4.3.4. Elimination of other causes for which the debarment was imposed.
- 4.3.5. Other reasons the CEO/GM deems appropriate.

5. SCOPE OF DEBARMENT

- 5.1. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor, may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- 5.2. The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.
- 5.3. The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors, if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

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6. POLICY OVERVIEW - SUSPENSION

- 6.1. The CEO/GM may in the public interest, suspend a contractor from entering into any contracts with Omnitrans for any of the causes in Section 7 below.
- 6.2. Suspension is a serious action to be imposed on the basis of substantial evidence, ending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect Omnitrans' interest.
- 6.3. The existence of a cause for suspension does not necessarily require that the contractor be suspended. The CEO/GM will consider the seriousness of the contractor's acts or omissions and may consider remedial measures or mitigating factors. A contractor has the burden of promptly presenting to the CEO/GM evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists.
- 6.4. Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The CEO/GM may extend the suspension decision to include any affiliates of the contractor if they are:
 - 6.4.1. Specifically named.
 - 6.4.2. Given written notice of the suspension and an opportunity to respond.

7. CAUSES OF SUSPENSION

- 7.1. A contractor may be suspended if suspected upon substantial evidence of:
 - 7.1.1. Commission of fraud or a criminal offense in connection with:
 - 7.1.1.1. Obtaining.
 - 7.1.1.2. Attempting to obtain.
 - 7.1.1.3. Performing a public contract or subcontract.
 - 7.1.2. Violation of Federal or State antitrust statutes relating to the submission of offers.
 - 7.1.3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
 - 7.1.4. Commission of any other offense indicating a lack business integrity or business responsibility of an Omnitrans contractor or subcontractor.

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- 7.1.5. Indictment for any of causes above.
- 7.1.6. Violation of Omnitrans' Procurement Policy 1060 – Contractor Relations.
- 7.1.7. Any other cause the CEO/GM determines to affect Responsibility as a contractor, including by not limited to suspension or debarment by another government entity.
- 7.1.8. Any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor or subcontractor.

8. SUSPENSION PROCEDURES

8.1. Notice of Suspension

- 8.1.1. When a contractor and any specifically named affiliates are suspended, they shall be immediately notified of the suspension by certified mail, return receipt requested. The notice of suspension will include the following information:
 - 8.1.1.1. Notice of suspension and that the suspension is based on an indictment or other substantial evidence that the contractor has committed an act listed in Section 7:
 - 8.1.1.2. That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;
 - 8.1.1.3. The cause(s) relied upon for imposing suspension;
 - 8.1.1.4. The effect of the suspension;
 - 8.1.1.5. Within calendar 30 days after receipt of the notice, the contractor may submit, in writing, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts
 - 8.1.1.6. That additional proceedings to decide any disputed material facts will be conducted unless the action is based on an indictment.

8.2. In suspension not based on indictment, Omnitrans shall:

- 8.2.1. Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person Omnitrans presents.

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- 8.2.2. Make a transcribed record (Administrative Record) of the proceedings and make it available at cost to the contractor.

8.3. CEO/GM's Decision

- 8.3.1. In suspension actions based on an indictment or where the contractor's submission does not raise a dispute over material facts, the CEO/GM's decision shall be based on all information in the administrative record, including any submission made by the contractor.
- 8.3.2. In actions in which additional proceedings are necessary, written findings of fact shall be prepared. The CEO/GM shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.
- 8.3.3. The CEO/GM may refer matters to another official for Finding of Facts. The CEO/GM may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.
- 8.3.4. The CEO/GM's decision shall be made after the conclusion of the proceedings with respect to the disputed facts.
- 8.3.5. The CEO/GM may modify or terminate the suspension or leave it in force; and
- 8.3.6. Prompt written notice of the decision shall be sent to the contractor and any affiliates involved, by certified mail return receipt requested.

9. PERIOD OF SUSPENSION

- 9.1. Suspension shall be for a temporary period, pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the CEO/GM. If after eighteen (18) months, no legal proceedings or proposed debarment proceedings have been commenced against the contractor, the suspension shall automatically terminate.

10. SCOPE OF SUSPENSION

- 10.1. The Scope of Suspension shall be the same as that for debarment, except that the procedures of Section 8 shall be used.

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11. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

- 11.1. The Director will assure compliance with federal guidelines by requiring contractor and subcontractor certification regarding debarment or suspension.
- 11.2. During an open solicitation, when an indictment, charge, civil judgment, criminal conviction, default of a contract is indicated the Director shall:
 - 11.2.1. Request such additional information from the proposer/bidder as deemed necessary in order to make a determination of the proposer/bidder responsibility.
 - 11.2.2. Notify the CEO/GM prior to proceeding with an award where a proposer/bidder indicates the existence of an indictment, charge, conviction, or civil judgment.
- 11.3. Proposers/bidders who do not furnish such information shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the proposer/bidder not responsive/responsible.
- 11.4. The Director will maintain a list of all debarments and suspensions. The list of those persons ineligible to contract with Omnitrans will be a public record.

 OmniTrans Connecting Our Community Procurement Policy Manual	Policy 7000 Page 1 of 3
CAPITAL ASSET MANAGEMENT POLICY	Board Approval: October 7, 2020

1. POLICY OVERVIEW

- 1.1. Omnitrans shall meet its responsibility to uphold the public trust by prioritizing funding to achieve or maintain capital assets (Assets) in a state of good repair; dispose of Assets in a timely and prudent manner; and maximize the value of public funds by keeping track of fixed assets and promptly disposing of Assets that are no longer needed in an efficient and cost-effective manner.
- 1.2. Asset control is under the general responsibility of the Finance Department.
- 1.3. Omnitrans' fiscal year budget identifies the Assets that have been authorized by the Board of Directors (BOD) for procurement.
- 1.4. Asset control encompasses the following seven major categories:
 - 1.4.1. Land
 - 1.4.2. Buildings and Improvements
 - 1.4.3. Revenue Equipment
 - 1.4.4. Service Vehicles and Equipment
 - 1.4.5. Shop and Garage Equipment
 - 1.4.6. Furniture and Office Equipment
 - 1.4.7. Intellectual Property (including software)
- 1.5. An Asset shall be defined as a transit operating property or equipment owned by Omnitrans and having an expected life in service of one (1) year or more at the time of installation and a unit cost greater than \$5,000. Fixed assets also include an addition, improvement, modification, replacement, re-arrangement, reinstallation, renovation, or alterations to capital assets that materially increase the value of the assets (apart from ordinary repairs and maintenance). Assets are capitalized in accordance with Generally Accepted Accounting Principles (GAAP) issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).
- 1.6. Reportable acquisitions encompass Federal Transit Administration (FTA) reportable and FTA non-reportable controllable asset acquisition costs.
 - 1.6.1. Reportable acquisition costs are defined as the net invoice price cost of modifications, attachment accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose.

CAPITAL ASSET MANAGEMENT POLICY

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1.6.2. Non-reportable costs are inspection, installation, transportation, taxed duty or protective in-transit insurance.

2. ASSET TAGS

2.1. All Assets shall be assigned and marked with a unique identification number (ID), and/or via submission of an Asset Reporting Form to the Finance Department.

2.1.1 The Finance Department is responsible for maintaining Asset information and complying with post-award reporting requirements to FTA, including reports of significant events, Federal Financial Report, and Milestone Progress Reports.

2.2. The Finance Department shall be responsible for creating Asset numbers for all land and buildings and reporting on those and other Assets.

3. ASSET RECORDS

3.1. The Finance Department shall gather the information necessary to maintain the Asset database.

4. ASSET OWNERSHIP

4.1. Assets acquired entirely with State and Local funds are the sole property of Omnitrans. Omnitrans is free to use and dispose of such Assets in accordance with the direction of the BOD.

4.1.1. If, however, the Asset is included as revenue financing for a subsequent FTA grant, then it shall be treated as though FTA retained an interest in it.

4.2. Assets acquired with FTA or other Federal project (grant) funds, will be vested with Omnitrans subject to the conditions outlined in the current version of FTA Circular 5010.1E.

5. INVENTORY

5.1. An asset which has either reached the end of its useful life, or for which early replacement will result in vastly improved safety, reliability, efficiency, and/or productivity, may be retired from service and disposed of according to FTA Circular 5010.1E for Capital Assets and Omnitrans policies for Controllable Assets.

5.2. Any assets may be retired or disposed of with the approval of the CEO/General Manager, and subsequently reported to the BOD at the next regularly scheduled BOD meeting.

5.3. FTA funded assets are governed by FTA in Circular 5010.1E.



Connecting Our Community

Procurement Policy Manual

Policy 7000

Page 3 of 3

CAPITAL ASSET MANAGEMENT POLICY

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5.4. Complete records shall be maintained on the disposition of all excess and retired assets by the Finance Department.

5.5. Assets may be disposed of either through sale, trade, transfer, relocation, scrap, or when irreparable damages result in an insurance loss.

6. PHYSICAL INVENTORY

6.1. The Finance Department will conduct a physical inventory of all fixed assets at least once every two years. The inventory will note the location and condition of all assets, and the results reconciled with records.

6.2. Any discrepancies will be investigated. In connection with this inventory, Omnitrans certifies the existence, current use, and continued need for the asset or real property for purposes specified in its approved FTA grants.



PROCUREMENT POLICY UPDATE

**Administrative & Finance Committee
September 10, 2020**



BACKGROUND

- Procurements are conducted in a fair and transparent manner
- All are cost effective and issued in good faith to insure the best interest of the agency
- Strict adherence to FTA funding requirements
- The Board of Directors reviews and approves policy revisions; last revision was in June 2017
- Proposed changes are the result of a continuous improvement process
- Proposed changes reviewed by legal counsel

OVERVIEW

- **14 Policies Proposed for Consideration**
 - One new – Policy 1090 Sustainability Procurement Policy
 - Eliminate one in its entirety – Policy 1070 Federal Grantee Requirements and Applicable Laws Policy
 - Six propose minor language changes
 - Six propose change in purchasing thresholds and processes

PROPOSED CHANGES

- Revisions incorporate consistent language and provide continuity
- Removing procedural steps which will be updated and included in upcoming update to Procedure Manual
- Proposed changes intended to shorten the procurement cycle and expedite award of contracts

POLICY 2000 – PURCHASING THRESHOLDS

- Procurements at/below \$150,000 to be issued by CEO
- POs or Contracts exceeding \$150K require BOD approval
- RFP release approval by BOD will no longer be required

AGENCY BENCHMARK SURVEY

- Up to
\$100,000

RTA



- Up to
\$100,000

SBCTA



- Up to
\$200,000

NCTD



- Up to
\$250,000

VVTA



TRANSPARENCY REPORT

- To ensure full disclosure, a monthly report was created and began posting to [Omnitrans.org](https://omnitrans.org) in June
- Procurements between \$50,000 and \$150,000 are listed in each report
- Details include awardee, dollar amount and description of work
- Reports are posted monthly on Omnitrans' website
- Bi-monthly Procurement report to Board

TRANSPARENCY CONTINUES



GETTING AROUND AGENDAS BUSINESS/EMPLOYMENT

to ride, and contactless
standing, we advise waiting

[Click here for details.](#)

PlanetBids

Note: In order to access the online bidding system, you must install Adobe Flash Player 10.1 or higher.
[Install the latest Adobe Flash Player.](#)

[Contracting/Purchasing Opportunities](#)
[Register as a Bidder](#)
[Category/Commodity codes](#)

Disadvantaged Business Enterprise (DBE) Program

Omnitrans administers a DBE program in accordance with 49 CFR Part 26: Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation (DOT) Programs, as a condition of financial assistance agreements with the DOT.

[2019 Omnitrans DBE Program](#)
[DBE Program Information](#)

Transparency Reports

Procurements between \$50,000-\$150,000:

[June 2020 \[PDF\]](#)
[May 2020 \[PDF\]](#)

Important Links

[PO Terms and Conditions](#)
[Regulatory Requirements](#)
[How to Do Business](#)

AGENDAS BUSINESS/EMPLOYMENT NEWS AND RESOURCES ABOUT

[CAREERS](#)

[PROCUREMENT](#)

[ACTIVE PROCUREMENTS](#)

[TRANSIT ADVERTISING](#)

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TRANSPARENCY CONTINUES

June's Report

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PO / Contract 06/01/20 - 06/30/20

	PO/Contract #	Description	Posting Date	Vendor#	Amount
P	4500037833	Local Purchase Order1 ANGELICAJ	06/16/20	6487 HUITT-ZOLLARS, INC.	111,948.00
C	4400001413	Bus Filters MNT20-69C	06/30/20	1344 MUNCIE RECLAMATION & SUPPLY CO.	75,219.00
C	4400001414	Bus Filters MNT20-69D	06/30/20	3139 VEHICLE MAINTENANCE PROGRAM, INC	79,387.00

ADDITIONAL CHANGES

- Policy 1000 thru 1060 contain no significant changes
- Policy 1070 is removed in its entirety; it is redundant to policy 1000 and will be replaced as reference guide in Policy Manual
- Policy 1090 new proposed policy to ratify our strategic objective for Zero Emission Fleet by 2040
- Policy 2010 gives CEO authority to declare and react to emergencies, circling back to BOD

PROPOSED CHANGES

- Policy 3000 Procurement Card Program - increases threshold from \$3K to \$5K; adds clarity
- Policy 4000 Formal Solicitation - reflects new \$150K threshold adds clarity
- Policy 6000 Contract Administration Policy - states change order authority of 10 percent of contract amount

GREEN PROCUREMENT

New Sustainability Policy 1090; Establishes Omnitrans' green procurement strategy:

- Current Low Emissions CNG Bus fleet
- Upcoming Zero Emission Bus fleet in accordance with California Air Resources Board 2040 mandate

RECOMMENDATION

Staff recommends the Board:

1. Adopt policy 1090 – Sustainable Procurement Policy
2. Approve proposed revisions to existing policies



THANK YOU

ITEM # E5

DATE: September 10, 2020

TO: Committee Chair Sam Spagnolo and
Members of the Administrative & Finance Committee

FROM: Erin Rogers, CEO/General Manager

SUBJECT: TRANSITION TO HYBRID/IN-PERSON MEETINGS

FORM MOTION

Recommend the Board approve the transition to hybrid/in-person Committee meetings; continue virtual Board meetings and reevaluate in January.

BACKGROUND

In July and September, respectively, staff provided the Executive Committee and the Board of Directors an update on upgrades to the technology that supports the Board and Committee Meetings. These upgrades include: 1) the technology in the Boardroom such as displays, presentation control, sound, and telephonic equipment; and 2) implementation of an agenda management software, PrimeGov. At that time, the Executive Committee also discussed the possibility of a transition back to in-person meetings. During this discussion, it was determined that due to the continued uncertainty of the COVID-19 pandemic, Omnitrans would continue to hold meetings via Zoom. Staff was directed to return to the Executive Committee for further discussion in September.

After further discussion at its' September 4, 2020 meeting, the Executive Committee provided direction to staff to transition to hybrid/in-person Committee meetings starting in October, continue with virtual Board meetings, and reevaluate the transition to hybrid/in-person Board meetings in January.

DISCUSSION

The Governor of California's Executive Orders N-25-20, N-29-20, and N-35-20 allow public meetings to be held virtually and remain in compliance with the Brown Act. These executive orders are still in place, however, many of our JPA members and similar local agencies have begun to meet in-person, or at least explore meeting in-person.

Staff has evaluated options to maintain social distancing in an in-person Board or Committee meeting. The recommended approach is to offer hybrid/in-person meetings. This will allow Board

Members who desire to participate in-person to do so, while still offering the Zoom meeting format to Members who prefer a virtual alternative. This approach will work for all Committee meetings and when the Board desires to transition to hybrid/in-person meetings, it would accommodate up to 12 Board Members participating in-person.

Once more than 12 Board Members desire to participate in person, both the Boardroom and the Library Conference Room would be used to allow for social distancing. An audio and video link will connect the Library Conference Room to the main conference room. Initially, staff recommends continuing to offer the public only remote access via Zoom. In addition, staff in-person participation would be limited to Directors or presenters; other staff would continue to participate via Zoom.

CONCLUSION

Staff has installed the equipment necessary to offer a hybrid/in-person meeting alternative for Committee and Board meetings. Based on direction provided by the Executive Committee, staff recommends beginning hybrid/in-person meetings for Committee meetings starting in October and continuing virtual Board meetings and re-evaluating in January. This phased approach will provide alternatives to Board members while allowing staff the time to gain more experience with the technology and evaluate required safety protocols.

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