

**POLICY REGARDING PROCUREMENT OF
GOODS AND SERVICES AND DISPOSITION OF
PERSONAL PROPERTY BY THE
NORTH TEXAS TOLLWAY AUTHORITY**

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OF PROPERTY
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Table of Contents**

		PAGE
SECTION 1	PURPOSE, ORGANIZATION AND APPLICABILITY OF THIS POLICY; OBJECTIVES; GENERAL DUTIES OF PROCUREMENT SERVICES.....	3
SECTION 2	DEFINITIONS.....	5
SECTION 3	ADVERTISEMENT OF PROCUREMENTS.....	9
SECTION 4	PROCUREMENT THRESHOLDS.....	9
SECTION 5	FORMAL PROCUREMENT METHODS.....	10
SECTION 6	EXEMPTIONS FROM FORMAL PROCUREMENT METHODS	11
SECTION 7	SEPARATE, SEQUENTIAL OR COMPONENT PURCHASES.....	13
SECTION 8	REQUIRED BOARD APPROVAL	13
SECTION 9	CONTRACTS AND MODIFICATION APPROVAL LEVELS.....	13
SECTION 10	CHANGE ORDERS, SUPPLEMENTAL AGREEMENTS AND AMENDMENTS	13
SECTION 11	CONFLICT OF INTEREST; CONTACT WITH THE NTTA	14
SECTION 12	DISADVANTAGED, MINORITY, WOMEN-OWNED AND SMALL BUSIESS PARTICIPATION; COMPLIANCE WITH POLICY	15
SECTION 13	DEBARRED, SUSPENDED, DISQUALIFIED PROPOSERS.....	15
SECTION 14	PUBLIC INFORMATION AND INSPECTION; CONFIDENTIALITY OF INFORMATION IN BIDS OR PROPOSALS.	15
SECTION 15	INTERRUPTION, DELAY, OR CANCELLATION OF PROCUREMENT.....	16
SECTION 16	NONRESIDENT BIDDERS	16
SECTION 17	PROCUREMENT PROTESTS	16
SECTION 18	REVISIONS, WITHDRAWALS AND REJECTIONS OF PROPOSALS.....	17
SECTION 19	PROGRESS PAYMENTS; RETAINAGE AND LIQUIDATED DAMAGES.....	18
SECTION 20	BID SECURITY	18
SECTION 21	DISPOSITION OF SALVAGE OR SURPLUS PROPERTY	18

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STATEMENT OF GENERAL POLICY

It is the policy of the North Texas Tollway Authority (“NTTA”) that procurements shall be conducted on the basis of economic and business merit. NTTA procurements shall operate openly and will be fair to all participants in the procurement process.

The NTTA intends to maintain a cost-effective procurement system in accordance with best management practices. The system will be supported by the cooperation of every NTTA director and employee. The establishment and maintenance of a good procurement system is possible only through an effective and cooperative effort.

In order to accomplish timely and responsible procurement of goods and services in accordance with state law, all departments must cooperate fully. Good planning is essential to expedite the procurement process and to assure that the process is orderly and lawful.

**SECTION 1 PURPOSE, ORGANIZATION AND APPLICABILITY OF THIS POLICY;
OBJECTIVES: GENERAL DUTIES OF PROCUREMENT SERVICES**

1.1 Pursuant to Section 366.033(j) of the Texas Transportation Code, the NTTA shall adopt a written policy governing its procurement of goods and services that are consistent with general laws applicable to the NTTA. This Policy is adopted for that purpose.

1.2 The Board of Directors authorizes the Executive Director to adopt a separate set of internal procedures to assist in the implementation of this Policy. These procedures must be consistent with this Policy. In the event of an inconsistency, this Policy shall control.

1.3 The Policy applies to the procurement activities of the NTTA with the express intent to promote open and fair conduct in all aspects of the procurement process.

This Policy does not apply to (a) the acquisition or disposition of any interest in real property or (b) the procurement or other provisions of any agreement with a public or private entity pursuant to Section 366.302 of the Texas Transportation Code.

PROCUREMENT SERVICES DIVISION

Procurement Services is responsible for ensuring that the NTTA is able to obtain necessary goods and services of high quality in a timely and cost-effective manner that complies with applicable law.

Procurement Services solicits for competitive procurements as required by law, evaluates bids and proposals with the user departments, and makes recommendations to the NTTA Board of Directors for awarding of contracts with a value of \$300,000 or greater.

Procurement Services is a functional support division and should be included in all stages of the acquisition process, through planning, ordering, and receiving of goods and services. As a professional staff, Procurement issues solicitations and purchase orders and facilitates the procurement process to deliver goods and services in a timely manner. This is to ensure compliance with applicable law and the NTTA purchasing policies.

Procurement Services is responsible for providing quality service through effective teamwork and communication with NTTA departments and vendors. Procurement Services fulfills the purchasing needs of the NTTA in a professional, responsive and timely manner in compliance with all NTTA policies and applicable laws. Procurement Services is responsible for conducting procurements in a fair, efficient and equitable manner. Its objective is to encourage maximum participation and competition in all procurements. In doing so, NTTA ensures fairness so that all who wish to compete for the opportunity to do business with the NTTA can do so. This Policy is intended to:

1. Give all vendors full, fair, prompt and courteous consideration;
2. Keep competition open, fair and transparent;
and
3. Observe high standards of truthfulness and ethics in all transactions and correspondence.

GENERAL DUTIES OF PROCUREMENT SERVICES:

1. Observe and enforce the Policy and its associated procedures;
2. Keep abreast of best practices in the field of procurement by other governmental agencies and by private industry;
3. Coordinate, organize, and assist departments in the specification writing process to ensure that specifications are written clearly and concisely and are not written in a manner that unduly restricts competition;
4. Join with other governmental agencies in cooperative purchasing plans when it is in the best interest of the NTTA;
5. Receive, open, and evaluate responses to competitive solicitations;
6. Maintain complete and accurate files as required by law and best practices;
7. Act in a management role as a non-voting member on evaluation committees;

8. Prepare and coordinate with user departments staff reports recommending awards in response to procurement solicitations for NTTA Board of Directors approval;
9. Combine purchases of similar items whenever possible and practical, to allow for better pricing and establish a more competitive atmosphere; and
10. Conduct procurement training for employees.

SECTION 2 DEFINITIONS

As used in this Policy, the following words and terms will have the following meanings.

Amendment - A written modification or revision to a bid document or contract document.

Bid –The response to an invitation to bid.

Bid documents – Forms promulgated by the NTTA that the bidder completes and submits to the NTTA to document the bid on a contract to be let by the NTTA. Bid documents include forms furnished to and completed by the NTTA to procure goods and services.

Bid guaranty – The security (which may be a bid bond) designated in the bid documents for a construction or maintenance contract to be furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

Board – The NTTA Board of Directors.

Change order – Any written alteration to a contract or purchase order executed by the NTTA in accordance with the terms of the contract that unilaterally directs the contractor to make changes to the work.

Competitive sealed bid – A procurement process under which a contract is awarded to the lowest responsible bidder that complies with the NTTA’s criteria for such contract.

Competitive sealed proposals – A procurement method in which offers are solicited and a selection is made using criteria in addition to cost, although reasonableness of cost is a selection criterion.

Component purchases - Purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

Construction contract – a contract requiring the expenditure of public funds for the construction of a turnpike project.

Consultant – A supplier of consulting services to the NTTA.

Consulting service – A service requiring special knowledge, learning, skill, or intelligence, which is provided under a contract that does not involve the traditional relationship of employer and employee. Although a “consultant” may provide consulting services or professional services (or both) to the NTTA, consulting services, as defined in this Policy, excludes professional services as described in this Policy.

Contract – An agreement by which the NTTA procures goods and services or disposes of property, including, without limitation, a purchase order.

Contractor - Used as a general reference for vendors, firms, and consultants doing business with the NTTA.

Cooperative purchasing – The combining of requirements of two or more governmental entities to obtain the benefits of volume purchases and/or reduction in administrative expenses.

Counties of the NTTA – Counties that are members of the NTTA including Collin, Dallas, Denton, and Tarrant.

Director – A member of the NTTA’s Board of Directors.

Disadvantaged Business Enterprise (“DBE”) – A for-profit business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals. In the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals. Also, the firm’s management and daily business operations are controlled by one or more of the socially and economically disadvantaged owners. A DBE is a socially and economically disadvantaged individual whose personal net worth does not exceed the US Department of Transportation’s current threshold.

Emergency –An imminent threat to life, the property of the NTTA or the traveling public or which substantially disrupts or may disrupt the safe and efficient flow of traffic and commerce or which has caused unforeseen damage to machinery, equipment or other property that would substantially interfere with or prohibit the collection of tolls in accordance with the NTTA’s bonding obligations and requirements. A situation or condition similarly affecting the operations of a third party which are subject to a contract with the NTTA to provide goods and services shall likewise constitute an emergency.

Evergreen program – A procurement process by which the NTTA pre-qualifies a pool of individuals, entities or combinations of individuals and entities to provide certain professional or consulting services.

Executive Director – The Executive Director of the NTTA.

Federal-aid project – A contract funded in whole or in part with funds provided by the government of the United States or any department thereof.

Formal procurement – A solicitation which requires a sealed response, such as a competitive sealed bid, competitive sealed proposal, or request for qualifications.

General goods and services – Goods, services, equipment, personal property and any other items procured by the NTTA that are not procured under a construction or maintenance contract and are neither consulting services nor professional services.

Informal procurement – Purchases made for an amount less than fifty thousand dollars (\$50,000)

that are not required to be competitively procured and do not require a sealed response.

Lowest responsible bidder – A bidder who submits a bid or offer to provide the requested goods and services at a cost that is lower than all other bids or offers received from responsible bidders and which meets other requirements of the NTTA. In determining the lowest responsible bidder, the NTTA may consider:

- a) the purchase price
- b) the reputation of the bidder and of the bidder's goods or services
- c) the quality of the bidder's goods or services
- d) the extent to which the goods or services meet the NTTA's needs
- e) the bidder's past relationship with the NTTA
- f) the bidder's compliance with the NTTA Business Diversity Policy and with other goals and policies of, or binding on, the NTTA, if any, regarding the participation by W/M/DBE
- g) the total long-term cost to the NTTA to acquire the bidder's goods or services and
- h) any relevant criteria specifically listed in the bid documents

Maintenance contract – A contract requiring the expenditure of public funds for the maintenance of a turnpike project.

Minority Business Enterprise ("MBE") – A for-profit business concern: (a) which is at least 51 percent owned and controlled by one or more minority person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities, and (b) whose management and daily business operations are controlled by one or more of the minority individuals who own it.

NTTA – The North Texas Tollway Authority.

Officially designated newspaper(s) of the NTTA – Newspaper published in one or more counties of the NTTA that is designated as the official newspaper(s) of the NTTA.

Payment bond – A deposit, pledge, or contract of guaranty supplied by a successful bidder to protect NTTA against loss due to the bidder's failure to pay material suppliers and subcontractors. Acceptable forms of payment bonds are: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas; a surety or blanket bond from a company chartered or authorized to do business in Texas; United States Treasury bond; or certificate of deposit.

Performance bond – A deposit, pledge, or contract of guaranty supplied by a successful bidder to protect NTTA against loss due to the bidder's inability to complete the contract as agreed. Acceptable forms of performance bonds are those listed in the definition of payment bond.

Professional services – A service that involves disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence. It encompasses labor and skill predominantly mental or intellectual in nature, rather than physical or manual.

Professional Services Procurement Act ("PSPA") – Chapter 2254 of the Texas Government Code,

as amended from time to time.

Proposal –Used as a general reference for vendors or firms submitting a response to a solicitation; such as a bid for a Request for Bid (“RFB”); a proposal for a Request for Proposal (“RFP”) and a statement of qualifications for a Request for Qualifications (“RFQ”) or an offer for a Request for Offer (“RFO”).

Proposer – Used as a general reference for vendors or firms submitting a response to a solicitation; for a Request for Bid it is referred to as a “bidder;” for a Request for Proposal, it is referred to as a “proposer;” and for a Request for Qualification, it is referred to as a “Respondent”.

Response – A proposer’s written response to a Request for Qualifications.

Request for Offer (“RFO”) – A type of informal procurement method used in the procurement of goods, services or consulting services in an amount less than fifty thousand dollars (\$50,000). This method is usually utilized for awarding informal procurements based in part on factors other than price.

Request for Proposal (“RFP”) – A written request for proposals concerning goods or services (including, at the NTTA’s option, consulting services) that the NTTA intends to acquire by means of the competitive sealed proposal process.

Request for Qualification (“RFQ”) – A request for qualifications issued for the provision of professional services, or, at the NTTA’s option, consulting services.

Request for Quote – A type of informal procurement method generally used in the procurement of goods in an amount less than fifty thousand dollars (\$50,000). This method is usually utilized for awarding informal procurements based primarily on price.

Salvage property – Personal property (including, without limitation, supplies, equipment and vehicles), other than items routinely discarded as waste, that through use, time or accident is so damaged, used, consumed or outmoded that it has little or no value to the NTTA.

Separate purchases - Separately made purchases of items that in normal purchasing practices would be purchased in one purchase.

Sequential purchases – Purchases made over a period for items that in normal purchasing practices would be purchased in one purchase.

Single-source contract – A contract with a consultant uniquely qualified to provide the services required by the NTTA at a reasonable fee and within the time limitations required by the NTTA.

Sole source – An acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service or construction item.

Solicitation – A request for bid to provide supplies, services, or construction items; a request for a priced offer to sell goods or services. It may be by a Request for Bid or a Request for Proposal.

Supplemental agreement - A bilateral written alteration to a contract, executed by the NTTA and contractor, in accordance with the terms of the contract.

Surplus property – Property (including, without limitation, supplies, equipment and vehicles) not currently needed by the NTTA and not required for the NTTA’s foreseeable needs. Surplus property encompasses used or new property that retains some usefulness for the purpose for which it was intended or for another purpose.

Turnpike project – A facility of any number of lanes, with or without grade separations, owned or operated by the NTTA, and any improvement, extension, or expansion to that highway, including those improvements described in Section 366.003(11) of the Texas Transportation Code.

TxDOT – Texas Department of Transportation.

Unqualified bidder/proposer – A bidder, respondent or proposer that does not meet the minimum qualifications as outlined in the solicitation.

Vendor – A supplier of goods or services to the NTTA.

Women-Owned Business Enterprise (“WBE”) – A for-profit business concern: (a) which is at least 51 percent owned and controlled by one or more women or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (b) whose management and daily business operations are controlled by one or more of the women who own it.

SECTION 3 ADVERTISEMENT OF PROCUREMENTS

3.1 The Dallas Morning News and the Fort Worth Star Telegram are designated as the official newspapers of the NTTA for advertisement of all formal procurements in accordance with applicable state law.

SECTION 4 PROCUREMENT THRESHOLDS

4.1 Formal Procurements

Goods and services, professional services, consulting services, construction contracts, and maintenance contracts costing, or anticipated to cost, fifty thousand dollars (\$50,000) or more, shall be procured utilizing the applicable formal procurement method as coordinated with and approved by Procurement Services. Procurements may not be divided into smaller contracts, purchases, or lots to avoid any dollar limits prescribed in this Policy. All departments are accountable for keeping track of such expenditures and compliance with the limits described herein.

4.2 Informal Procurements

The following informal procurement methods and thresholds shall be utilized for general goods and services under fifty thousand dollars (\$50,000). At the NTTA’s option, they may be

used for consulting services anticipated to cost less than fifty thousand dollars (\$50,000).

4.2.1 Procurements costing, or anticipated to cost ten thousand (\$10,000) or more, but less than fifty thousand dollars (\$50,000) are required to obtain at least three (3) competitive quotes, of which two (2) quotes are required to be from DBEs, MBE's or WBEs businesses. Supporting documentation where quotes could not be obtained from DBE, MBE or WBE businesses must be submitted to the Director of Procurement Services, or Designee, for approval.

4.2.2 Procurements costing, or anticipated to cost less than ten thousand dollars (\$10,000) do not require competitive quotes. However, DBEs, MBEs and WBEs are strongly suggested to be utilized for these procurements where possible.

SECTION 5 FORMAL PROCUREMENT METHODS

5.1 Professional Services

Professional services, as defined by the PSPA are exempted from the competitive bidding process and shall be procured as prescribed in the PSPA.

5.2 Consulting Services

The NTTA may contract for consulting services if the Executive Director reasonably determines that the NTTA cannot adequately perform the services with its own personnel. The NTTA shall base its selection on demonstrated competence, knowledge and qualifications, and on the reasonableness of the proposed fee for the services.

5.3 Goods and Services other than Professional or Consulting Services

General goods and services, except as otherwise exempted by applicable law, costing fifty thousand dollars (\$50,000) or more must be procured as competitive solicitations, sole source acquisitions, or cooperative purchases through the use of appropriate procurement methods.

5.4 Construction and Maintenance

Construction contracts and maintenance contracts may be procured utilizing the following applicable procurement methods:

A. Competitive Bidding

The competitive bidding procurement method must be utilized when awarding a contract to the lowest responsible bidder.

Qualification of Bidders. A potential bidder must be qualified to bid on construction and maintenance contracts of the NTTA and have bidding capacity to perform the work.

B. Design-Build

To the fullest extent allowed by law the NTTA may procure a combination of engineering, design and construction services in a single procurement for a turnpike or other construction project. The procurement may be for a single design-build agreement that includes all design and construction services required to complete the project or may provide for a progressive design-build procedure pursuant to which the design build firm chosen initially provides design services pursuant to a design contract with the option to convert the initial design contract into a design-build agreement or to enter into a separate design-build agreement to complete the project based on further negotiations between the design-build firm and the NTTA. Agreements entered into under this section may provide for any payment methodology authorized by the NTTA including, but not limited to, cost plus or a guaranteed maximum price.

The NTTA may, at the sole discretion of the Executive Director, pay an unsuccessful proposer that submits a proposal meeting all of the NTTA's designated criteria, in response to a design-build procurement, a stipulated amount in accordance with applicable state laws.

C. Alternative Procurement methods for Construction and Maintenance contracts

To the fullest extent permitted by applicable law, alternative procurement methods such as, but not limited to, Construction Manager-at-Risk may be utilized for the construction or maintenance of a turnpike project in accordance with applicable law.

5.5 Evergreen Program

To the fullest extent allowed by law, the NTTA may issue an RFQ or RFP to pre-qualify a pool of individuals, entities, or combinations of individuals or entities to provide professional or consulting services for the NTTA. Pre-qualification is for the sole purpose of assisting the NTTA in the efficient procurement of services and expedited completion of projects.

5.6 Comprehensive Development Agreements

The NTTA may enter into a Comprehensive Development Agreement ("CDA") with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project. To the extent permitted by law, the NTTA is also allowed to negotiate provisions relating to professional and consulting services provided in connection with a CDA. The NTTA may authorize the investment of public and private money, including debt and equity participation, to finance a turnpike project pursuant to a CDA.

SECTION 6 EXEMPTIONS FROM FORMAL PROCUREMENTS METHODS

Purchases made through the following procurement methods shall be exempted from the procurement requirements contained within Section 5 of this Policy.

6.1 Sole Source Procurements

Sole-source purchases are items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies.

6.2 Single Source Procurements

Single-source procurements are services that are available from one prospective consultant because the consultant possesses the demonstrated competence, knowledge and qualifications to provide the services required by the NTTA at a reasonable fee and within the time limitations required by the NTTA. The Executive Director may determine that a single-source can be utilized for the purchase of goods or services entered into after soliciting and negotiating only with one source, usually because of the technology required or uniqueness of the service provided.

6.3 Cooperative Purchasing

Cooperative purchasing occurs when two or more governmental entities coordinate some or all purchasing efforts to reduce administrative costs, take advantage of quantity discounts, share specifications, and create a heightened awareness of legal requirements. Cooperative purchasing can occur through inter-local agreements, state contracts, cooperative purchasing programs, and purchases made under a program that by statute meets all state procurement requirements. The NTTA will undertake cooperative purchasing when it is in the NTTA's best interest and to the extent allowed by law.

6.4 Emergency Purchases

The NTTA may make emergency purchases without using a competitive procurement process when there exists a threat to public health or public safety, or when immediate expenditure is necessary for repairs to NTTA property in order to protect against further loss of or damage to NTTA property, to prevent or minimize serious disruption in critical NTTA services that affect health, safety, or collection of substantial toll revenues, or to ensure the integrity of NTTA records. Other types of work which may qualify for emergency contracts include, but are not limited to, the restoration of the NTTA's technology-based systems, and removal of interference with the NTTA's operations as a result of emergency conditions affecting a third party's operations in accordance with the NTTA's contractual obligations to that party.

6.5 Discretionary Exemptions

Contracts for the purchase of the following items are exempt from the formal procurement processes of Section 5 upon a determination by the Executive Director that the purchase falls within one of the following:

- Personal or professional services, excluding professional services covered by the PSPA.
- Items for which competition is precluded because of the existence of patents, copyrights, secret processes or monopolies.
- Films, manuscripts or books.
- Electric power, gas, water, and other utility services.
- Captive replacement parts or components for equipment.
- Personal property sold
 - At an auction by a state licensed auctioneer,
 - A going out of business sale held in compliance with Subchapter F, Chapter 17, Texas Business and Commerce Code,

- By a potential subdivision of this state, a state agency of this state or an entity of the federal government.
- Other services such as travel, entertainment, postage, dues, memberships and subscriptions, advertising and media-related buys.

SECTION 7 SEPARATE, SEQUENTIAL OR COMPONENT PURCHASES

7.1 All separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements of this Policy are prohibited. An NTTA director or employee or who intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid competitive procurement requirements is subject to discipline.

SECTION 8 REQUIRED BOARD APPROVAL

8.1 Except as otherwise provided in this Policy, each procurement governed by this Policy, whether made through a contract award, a contract change order, supplemental agreement or amendment, that costs or is anticipated to cost three hundred thousand dollars (\$300,000) or more in the aggregate, shall require the approval of or ratification by the Board of Directors, evidenced by a resolution adopted by the Board, even if the original contract did not require Board approval.

SECTION 9 CONTRACTS AND MODIFICATION APPROVAL LEVELS

9.1 Approval authority to enter into contracts or modify existing contracts is assigned to various job levels and ranges of dollar value associated with the level of responsibility. NTTA departmental directors and equivalent level staff may not enter into contracts or modify existing contracts where the contract value, in the aggregate, is above twenty five thousand dollars (\$25,000). Assistant Executive Director level staff may not enter into contracts or modify existing contracts where the contract value, in the aggregate, is above one hundred thousand dollars (\$100,000). The Executive Director may not enter into contracts or modify existing contracts where the contract value, in the aggregate, is three hundred thousand dollars (\$300,000) or more, unless prior approval is given by the Board, in writing, authorizing the Executive Director to execute a specific contract in a greater amount.

SECTION 10 CHANGE ORDERS, SUPPLEMENTAL AGREEMENTS AND AMENDMENTS

10.1 If either the (a) change order, supplemental agreement, or amendment (collectively “contract change”) meets or exceeds three hundred thousand dollars (\$300,000) or (b) the original contract amount, authorized contract changes to date and the proposed contract change would result in a revised contract amount three hundred thousand dollars (\$300,000) or more, either (1) the Board must approve or ratify the contract change by resolution, or (2) the services which are the subject of the proposed contract change shall be separately procured in accordance with this Policy. For purposes of this Section 10, the amount of the contract originally approved by the Board, as adjusted by any contract changes approved by the Board pursuant to this subsection 10.1, shall be defined as the “Contract Amount.”

10.2 Contract changes not subject to Board approval as set forth in subsection 10.1 shall be subject to the requisition approval levels set forth in section 9 of this Policy.

10.3 After Board approval in Section 10.1, if the later contract changes exceeds ten (10) percent of the Contract Amount and/or a single change order, supplemental agreement, or amendment meets or exceeds three hundred thousand dollars (\$300,000), either (1) the Board must approve or ratify the contract change by resolution, or (2) the services which are the subject of the proposed contract change shall be separately procured in accordance with this Policy.

10.4 The contract amount and ten (10) percent rule is reset under Section 10.3 after board approval of a contract change pursuant to Section 10.3.

10.5 Emergencies. Contract changes must be approved by the Board in accordance with subsections 10.1 through 10.4 before being implemented except in one or more of the following circumstances:

- A) When waiting for Board of Director's approval of the contract change will significantly increase costs or significantly delay the completion of the project.
- B) Where the contract change is safety-related in nature and delay will put the NTTA's property, employees, customers or the general public at increased risk of harm.

Exceptions in accordance with this subsection 10.5 must be approved by the Executive Director in writing and Board ratification shall be sought at the next regularly scheduled Board meeting.

SECTION 11 CONFLICT OF INTEREST; CONTACT WITH THE NTTA

11.1 All procurement decisions and activities of NTTA directors shall comply with the NTTA Board of Directors Ethics Policy. All procurement decisions and activities by NTTA employees shall comply with the Employee Ethics Policy. Among other things, a director or employee of the NTTA shall not (a) contract with the NTTA or be directly or indirectly interested in a contract with the NTTA or the sale of property to the NTTA; (b) accept or solicit any gift, favor or service that might reasonably tend to influence that person in the making of procurement decisions or that person knows or should have known is being offered with the intent to influence the person's making of procurement decisions; or (c) accept other compensation that could reasonably be expected to impair the person's independence of judgment in the making of procurement decisions. No proposer shall offer any interest, gift, favor, service or compensation described in the preceding sentence, and any such offer may disqualify the proposer from consideration for the applicable procurement.

11.2 A proposer shall be required to complete a conflict of interest disclosure statement disclosing any business or familial relationships with directors or employees of the NTTA. Such relationship may disqualify the proposer from consideration for the applicable procurement.

11.3 Once a proposer has submitted a bid, proposal or response, it shall refrain from contacting any NTTA director or employee regarding that procurement or disposition, except in accordance with the procedures contained in the bid documents. Any questions concerning the procurement shall be made to the director of Procurement Services or designee. If the proposer has an existing contract with the NTTA, communications between that party and the NTTA's directors and employees shall be limited to that which is necessary to service or implement the existing

contract or other business. The failure of a proposer to comply with this section may disqualify it from consideration for the applicable procurement.

SECTION 12 DISADVANTAGED, MINORITY, WOMEN-OWNED AND SMALL BUSINESS PARTICIPATION; COMPLIANCE WITH POLICY

12.1 The NTTA is committed to promoting contracting opportunities for DBE, MBE, and WBE and small business enterprises through the implementation of the Disadvantaged, Minority, Women-Owned and Small Business Enterprises (“Diversity Policy”). Specific business diversity requirements, if any, applicable to a particular procurement shall be described in solicitation documents and outlined in the Diversity Policy.

SECTION 13 DEBARRED, SUSPENDED, DISQUALIFIED PROPOSERS

13.1 The NTTA may not award a contract to a proposer if:

- A. the proposer is suspended or debarred from contracting with TxDOT or the NTTA;
- B. the proposer is prohibited from rebidding a specific project because of default under a previously awarded bid;
- C. the proposer has not fulfilled the requirements for qualification under this Policy, if any, unless the proposer has substantially complied with the requirements for qualification, as determined by the NTTA;
- D. the proposer is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project; or
- E. the proposer or its subsidiary or affiliate has received compensation from the NTTA to participate in the preparation of the plans or specifications on which the bid or contract is based.

SECTION 14 PUBLIC INFORMATION AND INSPECTION; CONFIDENTIALITY OF INFORMATION IN BIDS OR PROPOSALS

14.1 All bids, proposals, or responses shall be made available for public inspection, through requests made under the Public Information Act, after the contract is awarded and a written agreement has been approved by the Board, if applicable, and executed by the parties. Portions of any proposal, bid or response identified by the proposer as containing trade secrets, proprietary information and/or confidential information shall only be released in compliance with the Public Information Act as set forth below.

14.2 If a bid, proposal or response indicates that it contains trade secrets, proprietary information or confidential information, the NTTA will notify the proposer of any request from the public for inspection of the bid, proposal or response under the Public Information Act or similar "open records" laws. The proposer shall be responsible for asserting to the Attorney General or other reviewing authority or court any right to prevent disclosure of the documents to the public. The NTTA may elect to seek approval of the Attorney General for the non-disclosure of the trade secret or confidential and/or proprietary information.

SECTION 15 INTERRUPTION, DELAY, OR CANCELLATION OF PROCUREMENT

15.1 At the sole discretion of the NTTA, the procurement process may be interrupted, postponed, delayed or cancelled at any time without liability to the NTTA. At the sole discretion of the NTTA, the need for requested work under a specific procurement may be reevaluated or postponed, delayed or cancelled at any time without liability to the NTTA. The NTTA may terminate a procurement process or make any adjustments to the bid documents, RFP or RFQ that NTTA deems necessary and in its best interest.

SECTION 16 NON-RESIDENT BIDDERS

16.1 In accordance with Texas Government Code, Chapter 2252, Subchapter A, bids from bidders who reside in states that grant resident bidder preference for that state's purchases will be treated by the NTTA in the same manner when bidding against a Texas bidder. The NTTA will respond in kind to preferences made by other states. By executing a contract with the NTTA, any successful bidder shall be deemed to have represented to the NTTA that the foregoing requirement has been satisfied.

SECTION 17 PROCUREMENT PROTESTS

17.1 Proposers should direct all protests relating to: advertising of bid notices, RFPs or RFQs; alleged improprieties or ambiguities in bid documents, RFPs or RFQs; deadlines; openings of bids, proposals or responses; contract awards; and all other procurement-related procedures and actions must be made in writing and submitted to the director of Procurement Services no later than five (5) business days after the earlier of the date the protestor was or reasonably should have been aware of the matter giving rise to the protest or the date of the applicable contract award. Each protest must include the following:

- A. the name and address of the protester, and the contractor, provider, vendor or consultant it represents, if different;
- B. the identification number, reference number, or other identifying criteria specified in the bid documents, RFP or RFQ to identify the procurement in question;
- C. a statement of the grounds for protest; and
- D. all documentation supporting the protest

The Director of Procurement Services shall review the information relevant to the protest and shall render a decision on the protest in a prompt manner but not longer than twenty (20) business days after the bid protest was received.

The decision shall contain the action taken and the reasons for such action, and shall be mailed, certified mail, return receipt requested, to the protestor at the address set forth in the bid protest. A copy of the protest and decision shall be retained in the Procurement Service Division of the NTTA Finance Department.

17.2 The protesting party may appeal the decision of the director of Procurement Services to the Executive Director. The appeal must be in writing and must be received in the NTTA office of the Executive Director no later than five (5) business days after receipt of notice of the director of Procurement Services determination. The appeal must include all information contained in the

original written protest, as well as any newly discovered documentation supporting the protest that was not reasonably available to the protester when the original protest was filed.

The Executive Director shall review the information relevant to the appeal and shall render a decision in writing in a prompt manner but not longer than thirty (30) business days after the appeal of the bid protest was received.

17.3 The protesting party may appeal the decision of the Executive Director to the NTTA Board of Directors. The appeal must be in writing and must be received in the Office of the Secretary for the NTTA Board of Directors no later than five (5) business days after receipt of notice of the Executive Director's determination. The appeal must include all information contained in the original written protest, as well as any newly discovered documentation supporting the protest that was not reasonably available to the protester when the original protest was filed.

The NTTA Board of Directors shall review the information relevant to the appeal and shall render a decision, in writing in a prompt manner but not longer than thirty (30) business days after the appeal of the bid protest was received.

The decision of the NTTA Board of Directors shall be final.

SECTION 18 REVISIONS, WITHDRAWALS AND REJECTIONS OF PROPOSALS

18.1 Revision of Submittal by Proposer. A proposer may change a proposal price after it is submitted to the NTTA, but prior to procurement submission deadline, by requesting return of the bid in writing, on company letterhead, by a person authorized to bind the proposer. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids to be considered.

18.2 Withdrawal of Proposal. A proposer may withdraw a proposal by submitting a request in writing, on company letterhead, to director of Procurement Services, by a person authorized to bind the proposer before the time and date of the bid opening.

18.3 Acceptance, Rejection, and Reading of Bids. Bids will be opened and read at a meeting open to the public, held at the time, date and place designated in the notice. The NTTA may not accept a proposal if:

- A. the proposal is submitted by an unqualified bidder/proposer;
- B. the proposal is in a form other than the official bid documents issued to the proposer;
- C. the form and content of the proposal do not comply with the requirements of the proposal documents and/or subsection;
- D. the proposal was received after the time specified in the notice, as may have been extended, or at some location other than as specified in the notice;
- E. the bid guaranty, if required, does not comply with the solicitation;
- F. the proposer is debarred as described in section 13 of this Policy;
- G. the proposal did not otherwise conform with the requirements of this Policy;
- H. more than one proposal involves to a material degree a proposer under the same or different names, as determined by the NTTA; or

I. the proposer did not attend a specified mandatory pre-proposal conference.

18.4 Rejection of Bids. The NTTA may reject for any reason any and all bids opened, read and tabulated under this Policy. It will reject all bids if there is reason to believe collusion may have existed among the bidders. The NTTA may reject all bids if the lowest responsible bidder is higher than the NTTA's estimate, and the NTTA determines that re-advertising the project for bids may result in a significantly decreased lowest responsible bid or that the work should be done by the NTTA.

SECTION 19 PROGRESS PAYMENTS; RETAINAGE AND LIQUIDATED DAMAGES

19.1 In addition to other provisions required by the NTTA, construction and maintenance contracts may provide for the NTTA to make progress payments, which may be reduced by retainage, as work progresses and is approved by the NTTA.

19.2 If a retainage is required, it shall be in an amount as specified in procurement document, until the entire work has been completed and accepted. In the NTTA's sole discretion, the retainage may be released proportionally to completion of the work. Unless the NTTA agrees otherwise in writing, retainage shall not bear interest or be segregated from other funds held by the NTTA.

19.3 Without limiting the NTTA's right to require any other contract provisions, the NTTA, at its sole discretion, may elect to require that a liquidated damages provision be made a part of any contract.

SECTION 20 BID SECURITY

20.1 Requirement for Bid Bond – Bid security may be required for competitive sealed bids, proposals and for other items as prescribed within the solicitation documents. Bid security shall be a bond provided by a surety company authorized to do business in the State of Texas, or otherwise supplied in a form satisfactory to the NTTA. Failure to provide security, when requested in the bid documents, will result in rejection of the bid. If the bidder fails to honor the bid for any reason, then such bid security may be retained by the NTTA.

20.2 Performance, Maintenance and Payment Bonds – Performance, maintenance and payment bonds may be required for competitive sealed bids, proposals and for other items as prescribed in the solicitation documents. Bid security shall be a bond provided by a surety company authorized to do business in the State of Texas, or otherwise secured in a manner satisfactory to the NTTA, in an amount up to 100 percent of the price specified in the bid or proposal.

SECTION 21 DISPOSITION OF SALVAGE OR SURPLUS PROPERTY

21.1 Sale by Bid or Auction. The NTTA may periodically sell the NTTA's salvage or surplus property by competitive bid or auction. Salvage or surplus property may be offered as individual items or in lots at the NTTA's sole discretion.

21.2 Trade-In for New Property. Notwithstanding subsection 21.1, the NTTA may offer

salvage or surplus property as a trade-in for property of the same general type if the Executive Director considers that action to be in the best interest of the NTTA.

21.3 Heavy Equipment. If the salvage or surplus property is earth-moving, material-handling, road maintenance, construction or similar equipment, the NTTA may exercise a repurchase option in a contract in disposing of such types of property. The repurchase price of equipment contained in a previously accepted purchase contract is considered a bid under subsection 21.1.

21.4 Sale to State, Counties, etc. Competitive bidding or an auction is not necessary if the purchaser is the State, or a county, municipality or other political subdivision of the state, or an agency or department of the United States. The NTTA may accept an offer made by any of the foregoing governmental entities before offering the salvage or surplus property for sale at auction or by competitive bidding if such offer delivers fair value to the NTTA.

21.5 Failure to Attract Bids. If the NTTA undertakes to sell property under subsection 21.1 and is unable to do so because no bids are made for the property, the Executive Director may order such property to be destroyed or otherwise disposed of as worthless. Alternatively, the Executive Director may cause the NTTA to dispose of such property by donating it to a civic, educational or charitable organization located in the State or elsewhere in the United States.

21.6 Terms of Sale. Unless otherwise expressly provided in the sale or disposition documents, all salvage or surplus property sold or otherwise disposed of by the NTTA shall be conveyed on an "AS IS, WHERE IS" basis. The location, frequency, payment terms, inspection rights and all other terms of sale shall be determined by the NTTA in its sole discretion.

21.7 Rejection of Offers. The NTTA or its designated representative conducting a sale of salvage or surplus property may reject any offer to purchase such property if the Executive Director or the NTTA's designated representative finds the rejection to be in the best interests of the NTTA.

21.8 Public Notices of Sale. The NTTA shall publish the address and telephone number from which prospective purchasers may request information concerning an upcoming sale through the NTTA website and the NTTA may, but shall not be required to, provide additional notices of a sale by direct mail, telephone, facsimile, the internet or any other means.