

Date July 17, 1997

Number 1

Subject

SMART Contracting Policy

Purpose

To establish rules, procedures, and guidelines governing contract administration.

Scope

The General Manager and Members of the Board.

Procedure

STATEMENT OF POLICY

The General Manager shall be responsible to the Board in both competitive and non-competitive arrangements as follows: for the recommended selection of the contractor; legality and propriety of the procurement; and, contracting procedures utilized. In all cases, the contract shall be awarded in compliance with the current FTA circular governing third party contracting, Michigan Public Act 204, as amended and other applicable federal, state and local laws, rules, and regulations and the terms of any applicable state or federal grant contracts. All contracts for goods in excess of \$50,000 per year, all contracts for services rendered to the Authority, including professional services, in excess of \$50,000 per year, all agreements whereby the Authority is the lessee of real property for an aggregate or single fee in excess of \$50,000 per year, and all lease agreements involving personal property greater than \$50,000 per year, shall be approved by the Board. The General Manager may execute collective bargaining agreements pursuant to the provisions of SMART Policy No. 15.

I. GENERAL CONDITIONS

- A. The General Counsel of the Authority shall review all contracts of the Authority to assure their sufficiency as to form, compliance with laws and regulations, terms of applicable grant contracts, and to otherwise protect the best interest of the Authority.
- B. All competitive procurement transactions in excess of \$2,500 shall be conducted in a manner so as to provide maximum full and open competition.
- C. Proposed procurement actions shall be reviewed by the General Manager to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

- D. Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used only when an adequate specification or more detailed description can not be provided. When used, the description must carefully identify the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation. The Authority will abide by the "Buy America" provisions of the Surface Transportation Assistance Act of 1978 (P. L. 95-599) and applicable FTA regulations (43 FR 57144 and 49 CFR 660).
- E. Positive efforts shall be made by SMART to utilize Disadvantaged Business Enterprise sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts. Efforts shall be taken by the General Manager to implement the Authority's Affirmative Action Policy.
- F. The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of SMART.
- G. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as SMART's EEO/AA Program, contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary sources.
- H. The General Manager shall be responsible for assuring that all firms doing business with the Authority (for construction, equipment, professional services or materials/supplies) are legally and professionally qualified to perform the services at competitive costs and are capable of demonstrating financial responsibility. Financial responsibility will be determined through a review of financial statements, or if unavailable, the General Manager may require sufficient bonding to assure completion of the work contracted for.
- I. Procurement records or files for purchases in amounts in excess of \$2,500, shall provide adequate records to justify the procurement method used, the reason for contractor selection or rejection, the selection of contract type, and the basis for the contract cost or price. In the case of non-competitive solicitations the procurement records should indicate the justification for the non-competitive solicitation.
- J. For all contracts that require Board approval, the General Manager shall certify that the procurement and selection procedures undertaken by staff are in accordance with the laws of the federal and state governments, and that the Board, by adopting the resolution, will not be breaching any duties as defined by these laws.
- K. For all competitive contracts that exceed \$25,000 and all non-competitive contracts that exceed \$15,000 the General Manager shall certify that the procurement and selection procedures undertaken by staff are in accordance with the laws of the

Federal and State governments, and that the Board, by adopting the resolution, will not be breaching any duties as defined by these laws.

- L. For all competitive contracts of \$25,000 or less and for all non-competitive contracts of \$15,000 or less the General Manager shall establish internal administration procedures to be used by the Authority.
- M. The General Manager shall generally establish an evaluation committee for the purpose of evaluating responses to RFP's and providing recommendations to the General Manager. The evaluation committee shall document their proceedings and said documents shall be available to the Board on request.

II. PROCUREMENT PROCEDURES

A. Competitive Contracts

Unless adequate justification exists for a non-competitive arrangement the General Manager shall secure competitive pricing for all contracts between \$2,500 and \$25,000 other than architect/engineering services. For contracts over \$25,000, the General Manager shall publicly advertise.

B. Non-Competitive Contracts

Non-competitive procurements may be utilized if:

1. An exigency or emergency will not permit the delay resulting from following competitive requirements;
2. The good or service to be procured is available from only one source;
3. No acceptable quotes, bids or proposals have been received after following competitive requirements;
4. The Federal Transit Administration authorizes non-competitive negotiations; or.
5. The item is an associated capital maintenance item, i.e. as defined in 49 U.S.C. §5307 (a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced.

C. Equal Opportunity-Affirmative Action

No contract shall be awarded to any consultant, contractor or any other party who is not in compliance with equal opportunity and affirmative action laws of the federal government, the State of Michigan and the Equal Opportunity and Affirmative Action policies of the Authority. The General Manager shall certify compliance of all contractors according to SMART Policy Statement No. 3 - Certification of EEO/AA Requirements.

D. Disadvantaged Business Enterprise

SMART will continue efforts that ensure disadvantaged business enterprises are given the maximum practicable opportunity to participate in the award of contracts for service and supplies. SMART will additionally strive to require that all third party contracts for goods and services will do the following: (1) allocate a designated percentage of their total contract award for disadvantaged business enterprises companies or firms to perform a commercially useful function is defined as executing a distinct element of the work of a contract by actually performing, managing and supervising the work involved, and (2) consider

making a financial or other contribution to an institution, agency, organization, etc., conducting an approved training program for minorities (amount and/or program to be determined and approved by the General Manager in accordance with Board policy). To ensure that a designated percentage of its contracts are placed with disadvantaged business enterprises, the Authority will include, but not limit, its efforts to the following:

1. Contract set-aside arrangements
2. Joint venture arrangements
3. Negotiated agreements
4. Any combination of the above or the introduction of other programs which will provide substantial and reasonable opportunities for minority business participation in SMART created awards.

E. Acquisition of Other Property

The General Manager shall obtain two (2) independent appraisals for real or personal property not normally acquired through competitive bidding, such as the purchase of land. In the acquisition of transit property, the company's independent appraiser may make one of the appraisals, provided they are technically qualified to appraise transit properties and provided their report fully documents and supports their evaluation. The purchase price, for real or personal property, may be negotiated within the limits of the two appraised values.

III. CONTRACT DOCUMENTS

A. Contract Terms

All contracts shall contain such provisions or conditions which protect the best interest of the Authority and shall be in compliance with the terms of applicable federal, state and local laws, regulations and ordinances.

B. Grant Contracts

Where project funding is obtained pursuant to a grant contract, all requirements of the grant shall be adhered to and contractual documents executed by the Authority shall reflect such requirements where appropriate.

C. Remedies

Contracts shall contain such provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions, penalties or liquidated damages as may be appropriate.

D. Indemnification

All procurements contracts and all professional service contracts shall include a provision that the contractor shall indemnify, defend and save harmless the Authority, its officers, agents, employees and members of the Board of the Suburban Mobility Authority For Regional Transportation from any and all liability claims and losses occurring or resulting from any act, omission or negligence of or chargeable to the contractor, its officers, agents, employees, or subcontractors, arising under and pursuant to the contract. Regarding contracts entered into with agencies of departments of the state of Michigan, the following

language shall be applicable: "It is hereby agreed that the AUTHORITY shall assume no liability for any actions or inaction's of the DEPARTMENT, its officers, agents or employees relative to the DEPARTMENT's obligations under the terms of this contract, nor shall the DEPARTMENT assume any liability for any actions or inaction's of the AUTHORITY, its officers, agents or employees relative to the AUTHORITY's obligations under the terms of the contract."

E. Compliance with Laws

All contracts shall include a provision that the consultant or contractor shall, in the performance of the contract, be in compliance with applicable federal, state and local statutes, ordinances and regulations.

F. Insurance

1. All contracts, as applicable, shall provide that the contractor maintain comprehensive general liability insurance in an amount not less than \$1,000,000 including contractual liability (as well as products and completed operations), and automobile insurance of not less than \$250,000/\$500,000/\$250,000 and statutory Worker's Compensation coverage. In instances where the General Manager deems it appropriate, different insurance requirements may be established, provided that if limits are lowered the General Manager shall include such special insurance requirements in the Board resolution approving the contract.
2. All contractors shall be required to furnish certificates of insurance from their insurance carriers showing the amount, extent of coverage and expiration date of the policy and SMART shall generally be named as an additional insured and shall be given thirty (30) days written notice prior to cancellation or expiration of the policy.
3. If the contractor is self-insured, the insurance requirements of Sections 1 and 2 above may be waived by the General Manager provided that the certificate of the appropriate state agency has been furnished to SMART and that the General Manager, in the Board resolution authorizing the execution of the contract, shall certify that appropriate provisions have been made to protect the interest of the Authority.

G. Bonding Requirements

For construction or facility improvement contracts or sub-contracts, the following rules shall apply:

1. Contracts exceeding \$100,000, a bid guarantee from each bidder equivalent to five percent (5%) of the bid price shall be required. The bid guarantee shall consist of a firm commitment such as a bid bond or certified check and with prior approval of the General Manager other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. Contracts exceeding \$100,000, a performance bond on the part of the contractor shall be required, for 100% of the contract price. A "performance bond" is one executed shortly after the award of a contract to secure fulfillment of all the contractor's obligations under such contract.

3. Contracts exceeding \$100,000, a payment bond on the part of the contractor shall be required for 50% of the contract price up to \$1,000,000. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.
 4. Contracts under \$100,000, the following minimum bonds will be required:
 - a) Bid Bonds

0	-	\$100,000	Not mandatory
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 - b) Performance Bonds

\$25,000	-	\$100,000	50%
0	-	\$25,000	Not mandatory
 - c) Payment Bonds

\$50,000	-	\$100,000	25%
0	-	\$ 50,000	Not mandatory
 5. Bid, performance and payment bonds shall not be mandatory on non-construction projects.
 6. When essential to the best interests of the Authority, or as required by law, the General Manager may waive or require bonding, or may increase bonding amounts on any contract or purchase. In determining when bonds should be required, the General Manager shall be guided by the provisions of the FTA External Operating Manual, federal procurement regulations, the State Administrative Manual, and the U.S. Department of Transportation Minority Business Enterprise regulations. If a performance bond is required for the full contract price, the General Manager shall certify, in the Board resolution approving the contract, that the Director of Finance has reviewed the financial statements of the contractor, and is satisfied that the contractor has the potential to perform under the terms of the contract.
- H. Contract Change Orders
- In order to provide a means of effecting uninterrupted progress on any procurements governed by this policy, the General Manager may authorize changes subject to the following:
1. The cumulative amount of such changes shall not increase the total amount of the original approved project contract by more than ten percent (10%).
 2. A single change order shall not be in excess of Fifty Thousand Dollars (\$50,000).
 3. Change orders to a contract that did not initially have board approval causing a contract amount to exceed \$50,000 shall be approved by the board.
 4. It is not the intent of this authorization to allow the General Manager to make change orders that materially change the scope and size of the project.
 5. The General Manager shall also implement such internal policies and procedures as are necessary for the administration of contract change orders.

IV. LEASE AGREEMENTS

A. Ownership

Title to the project equipment shall at all times remain with SMART (lessor) unless otherwise provided for under the terms of the grant contract or administrative regulations. Upon termination of the lease agreement, or if the lessee ceases operations, the equipment shall be returned to SMART in the same condition as when received by the lessee, reasonable wear and tear resulting from use thereof excepted.

B. Use of Property

Unless otherwise agreed to by the Board, equipment shall be operated by the lessee to serve the best interest and welfare of the public.

C. Maintenance of Property

Lessee shall maintain equipment at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by SMART. SMART shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition and proper maintenance of the project equipment.

D. Insurance

Lessee will carry proper insurance covering losses that may be incurred as a result of the operation and maintenance of project equipment and SMART, where practical, will be a named insured upon any such insurance policies maintained by lessee. Lessee shall provide SMART with certificates indicating that such insurance is in effect prior to possession.

E. Self-Insurance

Where the lessee is self-insured, the insurance requirements in paragraph D above may be waived by the General Manager provided that the General Manager, in the Board resolution authorizing the execution of the lease, shall certify that appropriate provisions have been made to protect the interest of the Authority.

F. Indemnification

All lease agreements shall include a provision that the lessee shall indemnify, defend and save harmless the Authority, its officers, agents, employees and members of the Board of the Suburban Mobility Authority for Regional Transportation from any and all liability claims and losses occurring or resulting from any act, omission or negligence of or chargeable to the lessee, its officers, agents, employees, or subcontractors, arising under the pursuant to the lease agreement.