



**REGIONAL  
TRANSIT AUTHORITY**  
OF SOUTHEAST MICHIGAN

## Executive and Policy Committee Meeting

Friday, November 13, 2015

9:00 AM

Regional Transit Authority of Southeast Michigan

1001 Woodward Ave., Suite 1400

Detroit, MI 48226

### AGENDA

1. Call to order
2. Approval of Agenda
3. Approval of the July 10, 2015 meeting summary
4. Approval of the September 11, 2015 meeting summary
5. Public comment
6. RTA Policy Discussion
7. New Business
8. Adjourn

*The Committee may, at its discretion, revise this agenda or take up any other issues as need and time allow.*

*Request for reasonable accommodations at RTA meetings require advance reservations.*

*Individuals with disabilities requiring assistance should contact RTA Information Services at least 48 hours in advance of the meeting. Contact Virginia Lickliter at 313-402-1020.*

*Documents and information are available in a variety of formats. Contact the RTA Information Center at [info@rtamichigan.org](mailto:info@rtamichigan.org) or call 313-402-1020 to discuss your format need. Further information can be found at [www.rtamichigan.org](http://www.rtamichigan.org) or by calling Virginia Lickliter at 313-402-1020.*

Proposed Meeting Summary  
Regional Transit Authority  
Executive and Policy Committee Meeting  
Friday, July 10, 2015

1. Call to order at 9:12 am.

Committee Members Present:

Elisabeth Gerber, Acting Chair; Mark Gaffney; Dr. Curtis Ivery; Tim Soave; Paul Hillegonds (via conference call)

RTA Representatives Present:

Michael Ford; Tiffany Gunter; Virginia Lickliter

2. Approval of Agenda

Moved by Tim Soave and supported by Dr. Curtis Ivery to approve the agenda with the notation that items 5 and 6 are action items. The agenda was approved unanimously as amended.

3. Approval of Meeting Summary

It was noted that both Tim Soave and Roy Rose were in attendance at the April 16, 2015 Executive and Policy Committee Meeting and should be added to the list of committee members present.

Moved by Dr. Curtis Ivery and supported by Tim Soave to approve the April 16, 2015 Meeting Summary as amended. The meeting summary was approved unanimously.

4. Public Comments

There were none.

5. Policy Documents - Action

a. Title VI

Michael Ford presented the draft Title VI document as provided in the meeting packet.

Elisabeth Gerber asked if there is room within Title VI to make provisions for sexual orientation within the discrimination clauses. Tiffany Gunter stated that in Section II there is a statement in the first paragraph that states "furthermore, the RTA will not exclude persons based on....." and that sexual orientation could be added to that statement if the committee chooses to do so. Ms. Gerber stated that she would like to see that happen.

Ms. Gerber also commented that in Section III, under RTA Committees and specifically under the section related to the Citizens Advisory Committee, the business and faith community should be included as advocates that make up the body of the CAC.

Ms. Gerber further commented that it is useful that the RTA staff person who oversees compliance is different from the staff person who handles complaints.

Ms. Gerber referred to sentences within Section VII; B; 2 – *Referral to Review Staff* – “Additionally, staff may recommend improvements to the processes relative to Title VI, as appropriate. Staff shall forward their recommendations to the Chief Executive Officer for concurrence.” Ms. Gerber commented that concurrence of changes to the policy should be a board action. Tiffany Gunter asked for confirmation that Ms. Gerber’s intention would be for a change to first be recommended by the Executive and Policy Committee to the board for approval and then to be approved by the board. Ms. Gerber confirmed that the same process that initially approves the policy should be used for amending it.

Moved by Curtis Ivery and supported by Tim Soave to recommend the Title VI Policy document as amended to the full board for approval. The policy is recommended unanimously.

b. Limited English Proficiency Plan

Michael Ford presented the Limited English Proficiency Plan as provided in the meeting packet.

Elisabeth Gerber noted that the plan would appear to apply to service as well as helping people engage and contribute to decision making. The intent seems scattered throughout the document but Ms. Gerber noted she would prefer a direct statement as to what members of the public the plan applies to.

Ms. Gerber also noted that under the section The Four-Factor Analysis, Factor 2 – Frequency of Contact with LEP Individuals, the list of providers surveyed should include AAATA.

Ms. Gerber asked for clarification of the term “Safe Harbor”. Tiffany Gunter noted that there is a distinction that is made between a translator and an interpreter. A translation would be a written document where as an interpreter would orally translate a document. The Safe Harbor stipulation prevents the RTA from having to translate hard copy documents in every language spoken in the RTA planning area. However, the RTA is still obligated to provide an interpreter, if asked. Michael Ford stated that Safe Harbor could be clarified better in the document.

Mark Gaffney asked the process for publishing the RTA website in Arabic and Spanish. Tiffany Gunter stated that RTA Staff is currently looking into the process for publishing a multi-lingual site.

Ms. Gerber asked if the RTA has a legal obligation to provide materials in an accessible format for individuals with limited literacy skills. Ms. Gunter stated that she did not know of any but would check into it.

Moved by Mark Gaffney and supported by Dr. Curtis Ivery to recommend the Limited English Proficiency Plan with the suggested changes to the full Board for approval. The plan is recommended unanimously.

c. FOIA

Michael Ford presented the Freedom of Information Act documents as provided in the meeting packet.

Elisabeth Gerber asked what the main changes are from the previous policy. Tiffany Gunter stated that the fee structure is the main change. The fee structure had never been required to be spelled out in the policy until now.

Mark Gaffney asked if the fee structure in the policy standard for authorities around Michigan. Tiffany Gunter stated that it is standard for agencies. Mr. Gaffney asked if the filing for information process standard. Ms. Gunter stated that staff reviewed the policies of several other agencies around Michigan when writing the policy and our policy is consistent with the others.

Moved by Tim Soave and supported by Mark Gaffney to recommend the FOIA policy to the full Board for approval. The policy is recommended unanimously.

d. Drug-Free Work Place

Michael Ford presented the Drug-Free Work Place policy as provided in the meeting packet.

Elisabeth Gerber asked for clarification that the policy applies only to RTA staff and employees and not employees of the providers.

Paul Hillegonds asked if this policy and the rest of the policies discussed are consistent with policies of the local provider policies or are there major differences that should be communicated to the providers. Tiffany Gunter stated that from an administrative perspective, the policy is consistent with other agencies but from an operational perspective, the RTA has not entered into that phase of operations yet. Ms. Gerber asked if the policy should be shared with the providers to inform them of the RTA policy. Michael Ford stated that it could be shared at PAC and Provider Executives' meetings.

Mark Gaffney cited the section titled *Follow-up* and stated that the wording might be softened by changing it to: “the RTA may offer an employee who violates this policy or tests positive the opportunity to return to work, *for example*, on a last-chance basis” and allow for different circumstances that fall into grey areas, such as exposure as opposed to actual use.

Moved by Tim Soave and supported by Dr. Curtis Ivery to recommend the Drug-Free Work Place policy as amended to the full Board for approval. The policy is recommended unanimously.

## 6. Procurement Policy Amendment – Action

Michael Ford presented a proposed amendment to the Procurement Policy as provided in the meeting packet.

Tim Soave stated that he views having the Board approve the language of RFPs as an over-reach. He believes that the writing of RFPs is an administrative function, the staff does a good job of listening and taking advice from the board and they were hired to perform this duty. Dr. Curtis Ivery echoed Mr. Soave’s sentiment and stated that he is not for dissecting or micro-managing an RFP but as a board, he believes the board has a fiduciary responsibility to look at the limits set. He stated that \$250,000 is a lot of money and a large amount to not have some board involvement. Elisabeth Gerber stated that the amendment strictly adds a provision that the Board must approve the language of an RFP if the anticipated contract will be over \$250,000 and the approval of the contract is another provision. Mr. Soave suggested that a provision within the section of the policy that deals with RFPs would be a better place for the amendment rather than being a general statement within the policy document. Elisabeth Gerber stated that the language of the RFP is consequential and substantive and affects the pool of bids that are received. Mark Gaffney suggested that the process begin with informing the Board of an impending RFP and who the lead staff person on the RFP allowing interested board members the informal opportunity to discuss it with staff. A draft would then be presented to the full board for comment or to add input.

Tiffany Gunter raised the concern that discussing the content of an RFP in a public meeting prior to its release could give an unfair advantage to local vendors who attend RTA Board meetings.

A motion was made by Tim Soave and supported by Mark Gaffney to postpone further consideration of the amendment to such time that the Executive and Policy Committee can meet with Board Member Alma Smith and RTA counsel Melvin Mustovitz to further consider the issue. The motion to postpone further consideration of the amendment to the Procurement Policy was approved unanimously.

## 7. New Business

Michael Ford reported that staff has been working with the FTA to get a categorical exclusion for an environmental analysis of the Woodward Corridor. He also reported that the FTA had visited the previous week to tour the corridor and to discuss questions they had. A decision is anticipated by the end of the month.

Megan Owens asked if the FTA's decision has any impact on the LPA. Tiffany Gunter stated that the LPA will move forward as part of the environmental analysis but the traffic analysis will need to be redone along Woodward where major new developments are planned or completed since the adoption of the LPA.

8. Moved by Mark Gaffney to adjourn the meeting and supported by Tim Soave. Meeting adjourned at 10:42

DRAFT

Proposed Meeting Summary  
Regional Transit Authority  
Executive and Policy Committee Meeting  
Friday, September 11, 2015

**1. Call to order at 12:02 pm**

Committee Members Present:

Paul Hillegonds, Chair; Roy Rose; Tim Soave

RTA Representatives Present:

Michael Ford; Tiffany Gunter; Virginia Lickliter

Others in attendance:

Cornelius Henry, Detroit People Mover; Deanna Donahoo, SEMCOG

**2. Approval of Agenda**

Committee members present agreed to follow the presented agenda.

**3. Approval of Meeting Summary**

Approval of the July 10, 2015 Meeting Summary was deferred to the October 2015 meeting.

**4. Public Comments**

There were none.

**5. Budget Amendment for FY15-16 – Information**

Michael Ford presented the Budget Amendment for FY 15-16 as included in the meeting packet.

Tim Soave reported that the amendment had been discussed at the previous Finance and Budget Committee Meeting. It was discussed by line item but lack of a quorum prevented it from being recommended to the full board. It is expected to be recommended at the next meeting.

Paul Hillegonds asked if a contingency plan had been established in the event that permanent funding was not secured in November of 2016. Mr. Ford responded that there are LBO opportunities that could sustain the RTA until 2018, but we will continue to seek opportunities to reduce costs and eliminate the projected deficit in FY2017.

## **6. FTA Triennial Certification Review – Update**

Michael Ford reported that the RTA would be having a triennial audit on September 28<sup>th</sup>. He reported that staff is currently updating the DBE program and has been in contact with the FTA regarding the process. He reported that he believes the RTA is in good standing to have a favorable audit.

## **7. Directors and Officers Liability Insurance – Update**

Michael Ford reported that the Directors and Officers Liability Insurance is up for annual renewal. Tiffany Gunter reported that there is an approximate \$1,000 increase in premium due to an increase in activity.

## **8. Major Project Updates**

### **a. Regional Master Transit Plan**

Michael Ford reported that the RTA staff and contractors are currently working on scenarios for the Regional Master Transit Plan. Mr. Ford also reported that dates had been set for upcoming community meetings for all of the corridor studies as well as the master plan. Tiffany Gunter stated that the RTA has also been in contact with the providers and has been holding workshops to get their input that would inform scenario development. Mr. Ford added that this also makes sure everyone is in unison when communicating with the public on the issues, how the services will work together and the efficiencies gained by coordinating services.

Paul Hillegonds asked if the goal is to have the providers fully on board when the master plan is made public. Mr. Hillegonds also stated that the plan is certainly more than what can be accomplished in a couple of years and asked if there is a timeframe. Mr. Ford stated that the timeframe is for twenty years but the plan also lays out short term goals that can be accomplished in the first year and each subsequent five years as well as longer term goals.

Mr. Ford also reported that a Financial Task Force of individuals from throughout the region had been assembled. The task force will assist in developing a methodology and financial calculations to help decide the appropriate funding mechanism and rate necessary to support the final plan.

Mr. Hillegonds asked what the plan is for including political leadership from the region to review drafts of both the financial and master plan. Mr. Ford stated that more workshops will be held in the near future. Roy Rose added that the Financial Task Force is actively asking good questions and engaging in honest discussion regarding what a reasonable ask of the community should be. Mr. Rose also complimented the consultants for doing a good job bringing information forward to the Financial Task Force that is understandable and bringing forward criteria that garners input.

Cornelius Henry added that because the process has been inclusive of the providers and there has been exchange and questions regarding conclusions, the providers feel that everyone is moving in the same direction in terms of understanding the costs.

**b. Woodward Avenue**

Michael Ford reported that the RTA had recently received a categorical exclusion from the FTA and that should speed up the environmental process. A scope of work is currently being finalized and the Woodward Avenue Advisory Committee is being reinstated.

Roy Rose noted that having that categorical exclusion saves part of the FTA grant money to be used in other study areas. Mr. Ford stated that the FTA had come to Detroit and reviewed the entire Woodward corridor.

Paul Hillegonds asked when the issue of alternative routes on the downtown corridor come before the Board and if a final decision needs to be made before November 2016. Tiffany Gunter stated that, due to new development along the Woodward corridor since the adoption of the LPA, the RTA is required to perform a new traffic operational analysis. That will provide insight into what is feasible within the corridor. Ms. Gunter stated she believes that with the new development and the inclusion of a median, an all Woodward alternative might be difficult to move forward. At the conclusion of the environmental study, a final decision will need to be made with regard to alignment south of W Grand Blvd.

**c. Gratiot Avenue and Michigan Avenue**

Michael Ford reported that a Purpose and Need study is currently being conducted for both corridors. Mr. Ford also reported that a technical team and advisory team had been engaged for each corridor. He reported that comments on the draft Purpose and Need have been used to update the plans for the corridors. Once the document has been adopted by the board, tier analysis will begin.

Paul Hillegonds asked, if a proposal passes, how quickly will the RTA be able to apply for Federal funding for Gratiot and Michigan. Ms. Gunter stated that it is not known for sure when the projects will begin but the momentum will continue once the LPA is completed. Mr. Hillegonds asked if the Woodward, Gratiot and Michigan projects were viewed as a package and if problems could arise between beginning the Woodward project and beginning the Gratiot and Michigan projects. Ms. Gunter stated that they will be assessed as individual corridor projects, but believes that progress made on Woodward will continue to create momentum for the region and will position the RTA well for receiving further funding. Mr. Ford stated that obtaining a dedicated funding source will also bode well for the RTA.

**d. State of the System Report**

Michael Ford reported that a State of the System Report on the existing services in the region is online and is being circulated to the providers for review and comment. The report also includes a market analysis for the region. Tiffany Gunter stated that the State of the System will be incorporated into the final Region Master Transit Plan document.

Paul Hillegonds asked if the report identified coordination opportunities within the current system. Mr. Ford stated that the overall plan will address those opportunities.

**e. Fare Study**

Michael Ford reported that the study is complete and that three options have been identified. He reported that an MOU among the providers for a regional fare card is being created. Cornelius Henry reported that staff from each agency that are responsible for maintaining fare boxes and processing monthly passes have been testing magnetic strip technology at the different agencies to make sure they work and will be testing at AAATA. Mr. Ford stated that the hope is to establish a card that can work at some level for demonstration.

**9. New Business**

Roy Rose asked for confirmation that there were no responses to the Airport RFP. Michael Ford confirmed that that is true but that staff is reworking the RFP.

Paul Hillegonds reminded the committee that Michael's review will be due soon. He requested documentation of Michael's goal progress for the December Executive and Policy Committee meeting.

Tiffany Gunter reported that the Bentley Historical Library had reached out to the RTA to archive and create a historical record of the RTA's activity.

**10. Meeting adjourned at 1:08 pm**



## **Freedom of Information Act**

### **Executive Summary**

The RTA acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The RTA acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals. Please click on the link to access the full [Policy and Procedure Manual](#).

#### **Requesting a Public Record**

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by RTA must do so in writing. The request must sufficiently describe a public record so as to enable RTA personnel to identify and find the requested public record. Requests for public records may be submitted in person or by mail to the RTA office (1001 Woodward Ave, Suite 1400, Detroit, MI 48226). Requests may also be submitted electronically by facsimile (313-961-4869) and e-mail ([info@rtamichigan.org](mailto:info@rtamichigan.org)).

#### **Processing a Request**

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the RTA will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day.

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide an applicable circumstance as described in the Policy and Procedure manual.

#### **Fees**

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the RTA because of the nature of the request in the particular instance, and the RTA specifically identifies the nature of the unreasonably high costs.

#### **Appeal of a Denial of a Public Record**

When a requester believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial with the RTA Board. If the head of the public body is a board or commission, it is not considered to have received a written appeal of either a denial or a fee amount until its first regularly scheduled meeting following the submission of the appeal. It then has 10 business days to respond to the appeal. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requester is seeking a reversal of the denial.

#### **Appeal of an Excessive FOIA Processing Fee**

If a requestor believes that the fee charged by the RTA to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the RTA Board. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

# **Regional Transit Authority of Southeast Michigan**

## **Procurement Policy**

Effective Date: November 19, 2014

## **Procurement Policy**

### **Background**

The Regional Transit Authority of Southeast Michigan (“RTA”) Procurement Policy (“Policy”), approved by the RTA Board (“Board”), establishes the broad procurement framework for the RTA. A prescriptive procedural manual will be developed consistent with the Policy that will guide RTA’s day-to-day procurement operations.

If the RTA applies for and receives State of Michigan or federal funds that require the RTA to comply with procurement or contracting requirements that are in conflict with the RTA Act, or the RTA’s Procurement Policy or Procedures, the state or federal requirements shall take precedence.

This Policy replaces RTA’s existing “Procurement and Contracting Ordinance” adopted in April, 2013 and will only apply to contracts solicited after November 19, 2014 (the “Effective Date”).

### **Procurement Standards**

The Procurement Standards will be designed to set forth the standards for processing all contracts unless specifically designated otherwise. The standards will ensure that goods and services are obtained or disposed utilizing timely, efficient, and economical methods that adhere to the principles of good administrative practices and sound business judgment.

- A. RTA will maintain a contract administration system that ensures that Vendors (i.e., those providing goods and services) perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- B. RTA will comply with all applicable Federal and State of Michigan laws, rules and regulations, including, but not limited to, Federal Transit laws contained in 49 U.S.C. Chapter 53, Federal Transit Administration (“FTA”) regulations including FTA Circular 4220.1F, Participation in Disadvantaged Enterprise in Department of Transportation Programs (49 CFR Part 26), other Federal laws, rules and regulations that contain requirements applicable to FTA recipients and the FTA assisted procurements, the Michigan Regional Transit Authority Act (“RTA Act”) (Act 387, Michigan Public Acts, 2012, MCL 124.541 et seq.), and other State of Michigan laws, rules and regulations applicable to RTA procurements.
- C. Members of the Board and all RTA employees will comply with the RTA Conflict of Interest Policy as amended from time to time, and all statutory and regulatory requirements, including without limitation, the applicable U.S. Department of Transportation regulations, and FTA Circulars. Violators are subject to the penalties prescribed in the RTA Code of Conduct and Conflict of Interest Policy.

## **Competitively Bid Procurements**

RTA will conduct all procurement transactions consistent with the above-stated procurement standards through the use of those competitive procurement procedures best suited to the particular procurement, except as otherwise specifically justified.

Except as otherwise authorized or specifically justified, or required by federal or State of Michigan laws, rules or regulations, all Purchase Orders or contracts for the purchase of goods and services over \$25,000 by or on behalf of the RTA will be let by free and open Competitive Bidding.

The RTA may enter into a competitive purchasing agreement with the federal government, the State of Michigan, or other public entities for the purchase of necessary goods or services.

**A. Sealed Bids (Invitation for Bids – “IFB”) will be used if:**

1. A complete, adequate, precise, and realistic specification or purchase description is available;
2. The award will be made on the basis of price and price-related factors;
3. It will not be necessary to conduct discussions with the responding Vendors about their Bids.
4. There is a reasonable expectation of receiving more than one sealed Bid; and
5. The procurement generally lends itself to a firm fixed price contract.

RTA will ensure fair and unbiased evaluation of Bids. RTA’s procedures will guarantee that only the lowest, responsive (including DBE compliant) and responsible Bidders are recommended for award of contracts.

RTA is a public body as defined by Michigan’s Freedom of Information Act (FOIA). Upon public opening, all IFB responses become public records subject to disclosure under FOIA. The time and place for public opening shall be set forth in the IFB.

**B. Negotiated procurements (Requests for Proposals – “RFP”) will be used if the nature of the procurement does not lend itself to sealed Bidding and RTA expects that more than one source will be willing and able to submit a proposal.**

RTA will ensure fair and unbiased evaluation of competing Proposals.

1. RFP’s will incorporate a clear and accurate description of the technical requirements and a comprehensive scope of work for the goods or services to be procured.

2. RFP's will clearly state the evaluation factors, including: Cost or price, cost or price-related factors and non-cost or non-price related technical and business management factors that will be considered in making a Contractor selection/recommendation.

For all negotiated procurements, the following process will apply to ensure fair and consistent evaluation of all proposals.

1. RFP released with a date selected for a Pre-Bid meeting open to the public. The purpose of the Pre-Bid meeting is to clarify any concerns bidders may have with the solicitation documents, scope of work and other details of the requirement.
2. The list of vendors that were solicited for bid and/or that attended the Pre-Bid meeting will be posted to the RTA web site along with question and answers resulting from the meeting.
3. All non-cost information included in an RFP response shall be separated in the response from cost information.
4. All RFPs will be reviewed and ranked by a Selection Committee consisting of RTA staff, members of the board, a DBE compliance officer, and technical advisors as necessary. The selection committee will sign the RTA Code of Conduct and Conflict of Interest Policy to ensure no conflict of interest exists.
  - a. The selection committee will make an appropriate recommendation to the appropriate RTA committee, for consideration. The RTA committee will make a recommendation to the RTA Board.
  - b. The Board will take action to approve or reject the recommendation.
5. RTA is a public body as defined by Michigan's Freedom of Information Act (FOIA), where applicable. All non-cost information will be subject to disclosure under FOIA as of the RFP return deadline date. All cost information included in the RFP response will be subject to disclosure under FOIA at the time and place of public opening, if a public opening notice is included in the RFP. Until the deadline or public opening, proposals will be held in confidence and will not be revealed to or discussed with competitors or the public.

## **Acceptable Non-Competitively Bid Procurements**

The RTA is not required to use competitive bidding when acquiring proprietary services, equipment, or information available from a single source, such as a software license agreement.

Competitive bids are not required if any of the following apply:

- A. An emergency directly and immediately affecting service or public health, safety, or welfare requires the immediate procurement of supplies, materials, equipment, or services to mitigate an imminent threat to public health, safety, or welfare, as determined by the RTA.
- B. Procurement of goods or services is for emergency repair or construction caused by unforeseen circumstances when the repair or construction is necessary to protect life or property.
- C. Procurement of goods or services is in response to a declared state of emergency or state of disaster under the Michigan Emergency Management Act, 1976 PA 390, MCL 30.401 to 30.421.
- D. Procurement of goods or services is in response to a declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.
- E. Procurement of goods or services is in response to a declared state of energy emergency under 1982 PA 191, MCL 10.81 to 10.89.
- F. Procurement of goods or services is under a cooperative purchasing agreement with the federal government, the State of Michigan, or another public entity for the purchase of necessary goods and services at fair and reasonable prices using a competitive procurement method for RTA operations.
- G. The value of the procurement is less than \$25,000.00, and the Board has established policies or procedures to ensure that goods or services with a value of less than \$25,000.00 are purchased by the Board at fair and reasonable prices, including a requirement that for purchases and sales of \$25,000.00 or less, but over \$5,000.00, written price quotations from at least three (3) qualified and responsible vendors shall be obtained or a memorandum shall be kept on file showing that fewer than three (3) qualified and responsible vendors exist in the market area within which it is practicable to obtain quotations. Procurement of goods or services with a value of less than \$5,000.00 may be negotiated with or without using competitive bidding as authorized in a procurement policy adopted by the board.

### **RTA ACT PROVISIONS (MCL 124.546(15))**

A. The RTA may enter into lease purchases or installment purchases for periods not exceeding the useful life of the items purchased unless otherwise prohibited by law.

B. In all purchases made by the RTA, if consistent with applicable federal and state law, preference shall be given first to products manufactured or services offered by firms based

in the authority’s public transit region, including, but not limited to, the cities and counties in a public transit region, and second to firms based in this state.

C. The RTA shall actively solicit lists of potential bidders for authority contracts from each city and each county in a public transit region.

**Contracting with Disadvantaged Business Enterprise**

- A. RTA will take all reasonable steps to ensure nondiscrimination in the award and administration of contracts.
- B. RTA will create a level playing field on which DBE’s can compete fairly for contracts.
- C. RTA will ensure that the DBE program is narrowly tailored in accordance with applicable law and will ensure only firms that fully meet eligibility standards are permitted to participate as DBEs.
- D. RTA will help remove barriers so DBEs can fully participate in contracts.

**Procurement Authority**

Authority and responsibility to enter into contracts for RTA is vested in the Chief Executive Officer, the Chairman of the Board, or their designees as appropriately determined. The responsibilities described herein remain with the enumerated RTA job functions regardless of department.

Any procurement authority delegated to persons or departments will also vest in the Chief Executive Officer, the Chairman of the Board, and the Board.

**Contract Approval Requirements**

The following matrix specifies who may authorize and execute contracts:

<b>Board Action Not Required for Items (A) – (F)</b>		<b>Summary of Amount/Type of Contract</b>
A.	The COO may authorize and execute contracts up to a maximum of \$10,000.	Up to \$10,000
B.	Except as provided for in D below, the CEO or designee may authorize and execute contracts up to a maximum of \$50,000.	Up to \$50,000
C.	The CEO or designee, with the approval of the Chairman or designee, may authorize and execute contracts in response to an Emergency or Public Exigency	Contracts in response to an emergency or Public Exigency

D.	The CEO or designee, or the Chairman or designee, may authorize and execute sole source contracts up to \$100,000; contracts for professional services up to \$200,000; and contracts competed by RFP up to \$250,000.	Sole Source Contracts up to \$100,000
		Professional Services contracts up to \$250,000
		Contracts Competed by RFP up to \$250,000
E.	The CEO or designee, or the Chairman or designee, following consultation with General Counsel, may authorize all non-disclosure agreements.	Non-Disclosure Agreements
F.	The CEO or designee, or the Chairman or designee, following consultation with General Counsel, may authorize and execute all contracts for professional consultant services donated to the RTA.	Donated Professional Services

Board Action Required for (G)		Summary of Amount/Type of Contract
G.	Following Board Approval, the Chairman or designee may execute all disadvantageous contracts; sole source contracts over \$100,000; professional services contracts over \$250,000; contracts competed by RFP over \$250,000; and contracts competed and not otherwise addressed in (D) or (G) over \$250,000.	Disadvantageous Contracts
		Sole Source Contracts over a \$100,000
		Professional Services contracts over \$250,000
		Contracts competed by RFP over \$250,000
		Contracts competed and not addressed in (D) or (G) over \$250,000

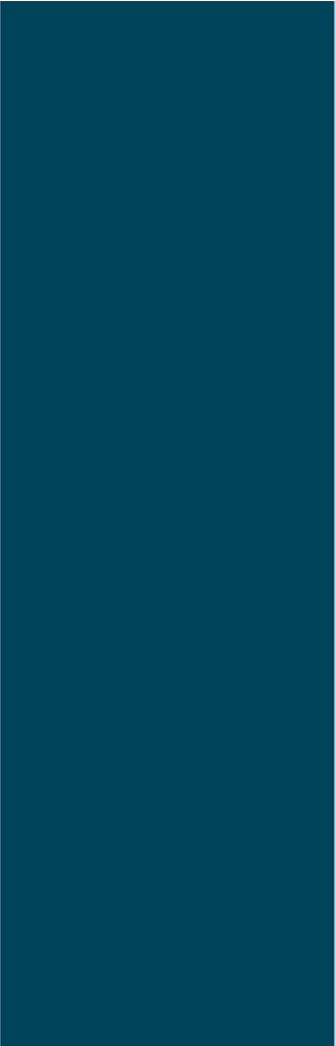
### Reporting

Reports of procurements not requiring Board consideration will be reported to the Board monthly.

### Severability

If any provision of the Policy is held unconstitutional or otherwise invalid, the remaining parts thereof will remain in full force and effect. If any provision of the Policy or subsequent Procedures or application thereof conflicts with any State or Federal law, rule or regulation, said law, rule or regulation will control.

AA01\398621.5



**FREEDOM OF INFORMATION  
ACT PROCEDURES &  
GUIDELINES**

July 16, 2015



**RTA**

**REGIONAL  
TRANSIT AUTHORITY**  
OF SOUTHEAST MICHIGAN

# REGIONAL TRANSIT AUTHORITY FOR SOUTHEAST MICHIGAN (RTA)

## FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES

### Introduction

The RTA's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner.

The RTA acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The RTA acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The RTA will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The RTA's policy is to disclose public records consistent with and in compliance with State law.

### Section 1: General Policies

The RTA, acting pursuant to MCL 15.236 designates its Chief Operating Officer as the FOIA Coordinator. He or she is authorized designate other RTA staff to act on his or her behalf to accept and process written requests for the RTA's public records and approve denials.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a RTA spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request. The FOIA Coordinator shall review RTA spam and junk-mail folders on a regular basis, which shall be no less than once a month.

The RTA is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other RTA staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the RTA on file for a period of at least one year.

### Section 2: Calculation of Fees

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would

result in unreasonably high costs to the RTA because of the nature of the request in the particular instance, and the RTA specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to the RTA:

- The particular request incurs costs greater than incurred from the typical or usual request received by the RTA. *See Bloch v Davison Community Schools, 2011 Mich App Lexis 771, 2011 WL 1564645*
- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether public records from more than one RTA department or various RTA offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The RTA may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The actual cost of mailing or sending a public record.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down. The cost of labor directly associated with duplication, publication or transferring records to nonpaper physical media can be charged in time increments of the RTA's choosing with all partial increments rounded down.

- Labor costs will be charged at the hourly wage of the lowest-paid RTA employee capable of doing the work in the specific fee category, regardless of who actually performs work. If the RTA uses contract or outside labor to separate and delete exempt material from non-exempt material, it will clearly note the name of person or firm who does the work and the total labor cost may not exceed an amount 6 times the state minimum hourly wage, which is currently \$8.15.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The RTA may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
  - Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the RTA has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the RTA's technological infrastructure, the RTA will procure any requested non-paper media and will not accept non-paper media from the requestor

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The RTA may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requester will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The RTA may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the RTA exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
  - The late response was willful and intentional.
  - The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information.
  - The written request included the words, characters, or abbreviations for “freedom of information”, “information”, “and FOIA”, “copy” or a recognizable misspelling of such, or legal code reference to MCL 15. 231 et seq or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.

Fully note the charge reduction in the Detailed Itemization of Costs Form

### **Section 3: Requesting a Public Record**

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by RTA must do so in writing. The request must sufficiently describe a public record so as to enable RTA personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Written requests for public records may be submitted in person or by mail to the RTA office. Requests may also be submitted electronically by facsimile and e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, electronically mailed or other otherwise provided to him or her in lieu of paper copies. The RTA will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the RTA on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on the RTA’s website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

#### **Section 4: Processing a Request**

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the RTA will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day. The RTA will respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the RTA needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the RTA's website.

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of these Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the RTA's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the RTA, the cost of processing a FOIA request is expected to exceed \$50, or if the requester has not fully paid for a previously granted request, the RTA will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requester with a detailed itemization of the allowable costs estimated to be incurred by the RTA to process the request and also provide a best efforts estimate of a time frame it will take the RTA to provide the records to the requester. The best efforts estimate shall be nonbinding on the RTA, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to

provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the RTA; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the RTA Board or seek judicial review in the Wayne County Circuit Court, or in the circuit court in the county in which the public record or RTA office is located,
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

The RTA shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect RTA records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal RTA operations.

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

## **Section 5: Fee Deposits**

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the RTA, the requestor will be asked to provide a deposit not exceeding on-half of the total estimated fee.

If a request for public records is from a person who has not fully paid the RTA for copies of public records made in fulfillment of a previously granted written request, the FOIA

Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- the final fee for the prior written request is not more than 105% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain in the RTA's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the RTA to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- the individual is unable to show proof of prior payment to the RTA; and
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- the person making the request is able to show proof of prior payment in full to the RTA;
- the RTA is subsequently paid in full for the applicable prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to the RTA.

## **Section 6: Waiver of Fees**

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public.

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- indigent and receiving specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requester has previously received discounted copies of public records from the RTA twice during the calendar year; or
- the requester requests information in connection with other parties who are offering or providing payment or other remuneration to the individual to make the request.

An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record is a nonprofit organization designated by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 200 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:

- is made directly on behalf of the organization or its clients;
- is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931;
- is accompanied by documentation of its designation by the State.

## **Section 7: Appeal of a Denial of a Public Record**

When a requester believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial with the RTA Board. The RTA Board will not be considered to have received a written appeal of a denial until its first regularly scheduled meeting following the submission of the appeal. It then has 10 business days to respond to the appeal. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requester is seeking a reversal of the denial.

Within 10 business days of receiving the appeal the RTA Board will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reverse the disclosure denial in part and uphold the disclosure denial in part.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or

processing the request, the Board may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal

Whether or not a requestor submitted an appeal of a denial to the RTA Board, he or she may file a civil action in Wayne County Circuit Court or in the circuit court in the county in which the public record or RTA office is located, within 180 days after the RTA's final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the RTA arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the \$1,000 and shall also order that the public body pay a civil fine of \$1000 to the general fund of the State treasury.

### **Section 8: Appeal of an Excessive FOIA Processing Fee**

If a requestor believes that the fee charged by the RTA to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the RTA Board. The RTA Board will not be considered to have received a written appeal of a fee amount until its first regularly scheduled meeting following the submission of the appeal. It then has 10 business days to respond to the appeal. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the RTA Board will respond in writing by:

- waiving the fee;
- reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Board that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- upholding the fee and issuing a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the RTA Board that the statements in the determination are accurate and the fee amount

complies with these Procedures and Guidelines and Section 4 of the FOIA; or

- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the RTA Board will respond to the written appeal.

Within 45 days after receiving notice of the RTA's determination of a fee appeal, a requestor may commence a civil action in Wayne County Circuit Court or in the circuit court in the county in which the public record or RTA office is located, for a fee reduction. If a civil action is filed appealing the fee, the RTA is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the RTA required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements.

If the court determines that RTA has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500, and shall also the payment of a civil fine in the amount of \$500.

### **Section 9: Penalty for Violation of the Act**

If the court determines in either an appeal of a denial of a public record, or the appeal of an excessive fee, that the public body willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith, then in addition to any another award or sanction, the court shall impose a civil fine of not less than \$2500 or more than \$7500 for each occurrence.

The court is required to consider the budget of the public body and whether the public body has been previously been assessed penalties for violations of the FOIA.

The civil fine is to be deposited to the general fund of the State treasury.

### **Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by RTA these Procedures and Guidelines are controlling.

To the extent that any provision of these Procedures and Guidelines, or any administrative rules, practices or forms promulgated by the FOIA Coordinator, pertaining to the release of public records is found to be in conflict with any State statute,

the applicable statute shall control. Further, the FOIA Coordinator shall process all FOIA requests consistent with State law, notwithstanding any provision contained herein.

These FOIA Policies and Guidelines become effective July 1, 2015.

### **Section 11: Appendix of RTA Forms**

- FOIA Request Form
- FOIA Fee Itemization Form
- Affidavit of Indigency