



ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS
REGIONAL TRANSPORTATION AUTHORITY (RTA)
OF CENTRAL OKLAHOMA BOARD OF DIRECTORS MEETING

WEDNESDAY, OCTOBER 16, 2019 | 2:30 P.M.

ACOG BOARD ROOM

4205 North Lincoln Blvd, Oklahoma City, Oklahoma

AGENDA

1. Welcome and Introductions ([Attachment 1](#)) - Brad Henry, RTA Board Chair
2. Review and Approval of the September 30, 2019 Minutes ([Attachment 2](#)) - Brad Henry, RTA Board Chair
3. RTA Monthly Financial Report ([Attachment 3](#)) - Mark W. Sweeney, Interim RTA Executive Director
4. Report on establishment of RTA bank accounts and transfer of local funds from ACOG to RTA and discuss and consider approval of Resolution adopting banking procedures ([Attachment 4](#)) - Mark W. Sweeney, Interim RTA Executive Director
5. Discuss and consider approval of [Assignment and Assumption Agreement](#) relating to the RTA Consultant's Agreement for Professional Services - Brad Henry, RTA Board Chair
6. Discuss and consider approval of [Resolution](#) adopting [RTA Procurement Policy](#) and [Procurement Procedures Manual](#) - Brad Henry, RTA Board Chair
7. Discuss and consider approval of and process for finalizing RFP for Consulting Services, including establishment of RFP Evaluation Committee - Brad Henry, RTA Board Chair
8. Discuss and consider approval of [Subrecipient Funding Agreement](#) - Brad Henry, RTA Board Chair
9. Public Comments - Brad Henry, RTA Board Chair
10. New Business - Brad Henry, RTA Board Chair
11. Adjourn

Next Meeting: Wednesday, November 13 at 2:30 p.m.

Please notify ACOG at 405.234.2264 (TDD/TTY Call 7-1-1 Statewide) if you require accommodations pursuant to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act.

Chair
Matt Dukes
Midwest City Mayor

Vice-Chair
Steven J. Gentling
Guthrie Mayor

Secretary/Treasurer
David Bennett
The Village Vice-Mayor

Executive Director
Mark W. Sweeney, AICP

ATTACHMENT 1

WELCOME AND INTRODUCTION

REGIONAL TRANSPORTATION AUTHORITY
OF CENTRAL OKLAHOMA BOARD OF DIRECTORS

MEMBERSHIP LIST

CITY	NAME
CITY OF DEL CITY	Ken Bartlett
CITY OF EDMOND	James Boggs, <i>Treasurer</i>
CITY OF MIDWEST CITY	Aaron Budd
CITY OF MOORE	Steve Eddy
CITY OF NORMAN	Marion Hutchison, <i>Vice-Chair</i>
CITY OF OKLAHOMA CITY	Brad Henry, <i>Chair</i>
	Mary Mélon, <i>Secretary</i>

ATTACHMENT 2

SEPTEMBER 30, 2019 MINUTES

A regular meeting of the Regional Transportation Authority (RTA) was convened at 2:30 p.m. on Wednesday September 30, 2019 in the Board Room of the Association of Central Oklahoma Governments (ACOG), 4205 N. Lincoln Blvd., Oklahoma City, Oklahoma. This meeting was held as indicated by advanced notice filed with the Oklahoma County Clerk and by notice posted at the ACOG office at least twenty-four (24) hours prior to the meeting.

RTA Board of Directors Present

Ken Bartlett	Del City
James Boggs	Edmond
Aaron Budd	Midwest City
Steve Eddy	Moore
Marion Hutchison	Norman
Mary Melon	Oklahoma City
Brad Henry	Oklahoma City

RTA Board of Directors Absent

None

Municipal Staff Support Present

Randy Entz, Planning Director	Edmond
Mark Edwards, City Manager	Del City
Shawn O'Leary, Dir. of Public Works	Norman
Billy Harless, ADA Project Director	Midwest City
Brooks Mitchell, City Manager	Moore
Jason Ferbrache, COTPA Admin.	Oklahoma City

Guests Present

Jason Huff, Project Manager	ODOT, Office of Mobility and Rail line Transit
Jim Hatt, Asst. Division Manager	ODOT, Rail Division
Derek Sparks, Government Relations	Greater OKC Chamber of Commerce
Kathryn Holmes	RTA Consultant
Pete White, Attorney	ACOG Legal Counsel
Mike Patterson	HNTB

ACOG Staff

Mark W. Sweeney	Executive Director (Interim RTA Executive Director)
John Sharp	Deputy Director
Debbie Cook	Director of Finance
Jennifer Sebesta	Manager, TPS
Hayden Harrison	Project Coordinator, II, TPS
Hannah Nolen	Associate Planner, TPS
Jordan Evans	Assistant Planner, TPS
Gwendolyn Gordon	Administrative Assistant

1. Welcome and Introductions

Director Brad Henry called the meeting to order. He welcomed everyone and entertained introductions. There was a quorum.

2. Review and Approval of the July 17, 2019 Minutes

Director Brad Henry asked to amend the July 17, 2019 minutes to show the motion carried (7-0) to adjourn.

Director James Boggs moved to amend the July 17, 2019 minutes. Director Steve Eddy seconded the motion. The motion carried. (7-0)

Director Brad Henry moved to approve the amended July 17, 2019 minutes. Director Ken Bartlett seconded the motion. The motion carried. (7-0)

3. RTA Monthly Financial Report

Debbie Cook presented the Board with handouts of the monthly RTA Statements of Revenue and Expenditures for the period of June 30, 2019 through August 31, 2019. Ms. Cook told the Board that as of this morning the month of September has not closed, so you do not have all the direct labor costs to the RTA funds.

Debbie Cook said ACOG is in the process of switching banking arrangements from Bank of America to Chase Bank. She said ACOG is moving the RTA account into a separate account because you can move the funds faster, and this will happen sometime in early October.

Director Brad Henry asked if there were any questions, and Director James Boggs said he would like to have the financial report before the agenda meeting. Mark Sweeney said "yes," ACOG could provide the report before the meeting for the Board members to review.

Director Brad Henry told Ms. Cook that he would like the new RTA account to not have ACOG's name on it. Ms. Cook said she could do that, but she would need a Federal Tax ID number and the account would need at least two signers. Ms. Cook said she would start the process of separation of the RTA from ACOG.

Director Brad Henry asked the Board if there were any other questions regarding the Financial Report. There were no questions.

4. Subcommittee Report

Director Marion Hutchison said they have had two meetings and the discussion with BNSF is still ongoing.

5. Update and Discussion Concerning Procurement Policy Research and Next Steps

Mark Sweeney presented the Board with handouts on the Procurement research for the RTA which highlighted the requirement policies from the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA). Research included: conference call coordination with multiple agencies, discussions with FTA Region VI Procurement Officer, and conversations with the Mid-regional Council of Governments (MRCOG) in Albuquerque.

ACOG was mindful of the fact that any RTA procurement policy would have to satisfy both the FTA and FHWA requirements. Staff also researched the possibility of using state administered cooperative purchasing agreements for both the RTA's use and other ACOG related federal uses.

In discussions with MRCOG, it was discovered that the COG has two procurement policies, one for the COG and one for the Rio Metro Regional Transit District. The procurement policy for Rio Metro has additional documents included to ensure that it meets all federal requirements. Rio Metro procures all items for the Transit District.

Mark Sweeney stated that the ACOG Procurement Policy includes all possible purchasing options. It would allow the RTA Board to make all the decisions on acquisitions and the selection of future consultants.

Based on the information ACOG has gathered from FTA and FHWA officials. The RTA can access FHWA PL and FTA funds. There is flexibility in contracting for consulting services (RFP, cooperative purchases and interlocal government agreements). Based on RTD/RTA Task Force past history and other MPOs/COGs providing services for regional transit agencies, staff believes that ACOG will be able to effectively support the RTA decisions pertaining to the procurement process.

ACOG's research is directly from FTA/FHWA the agencies and people the RTA will be working with going forward. This is based on adhering to the advice from the RTA Consultant that we verify that each step that the RTA makes must conform with FTA/FHWA guidelines. Based on the last 10 years, ACOG has progressively coordinated the evolutionary process that created the RTA by providing the financial match for many of the past studies and initiatives. ACOG's objective is to raise the profile of the RTA by establishing their own Procurement Policy and timing a change in status that allows maximum access to FTA/FHWA funding.

Kathryn Holmes said she agrees with ACOG, there are two (2) ways legally that the RTA can go forward and procure services for the transit and other services that support the RTA interest. Ms. Holmes said ACOG can do the procurement for RTA, or RTA can do procurement for itself after adopting the RTA procurement manual. She said in either event ACOG would have to update its policy to include the federal requirements.

Ms. Holmes said the RTA would have to adopt a procurement policy. She said the suggestion that the RTA policy would not include all forms of procurement is not accurate. She said it would include all available procurement methods authorized by law and not just the third-party contracting method; it would be a full procurement manual. Ms. Holmes said the RTA today will not need a procurement manual, but eventually it will.

Ms. Holmes said if the RTA goes forward with an RTA Procurement Manual, she would adopt a manual that is fully flushed out, to include all forms of Office Management and Enterprise Services (OMES) schedule.

Ms. Holmes said when the RTA Task Force was started in November of 2017, only two of the Board Members were here. She said in her second meeting, she presented the Task Force with her proposal. Ms. Holmes said her short version is to follow the money and get the RTA qualified to receive federal money.

Ms. Holmes said the objective is to have the RTA recognized in the state of Oklahoma as a separate entity and to start building what the federal government refers to as Institutional Capacity. She said Institutional Capacity is a technical term that is necessary to demonstrate as you start to qualify for discretionary federal grants to support capital investments. It refers to your legal, technical, and operational capacity before the federal government will grant you money.

Ms. Holmes said the more the RTA can demonstrate they are operating on their own, like their own bank account and Bylaws, the higher they will rate with the federal government.

Ms. Holmes said she does not foresee a roadblock concerning federal money, but to be sure, she suggests talking with Cardinal Consultant Group, getting their recommendations, and giving the Board an answer by the next agenda meeting, October 16.

Director Steve Eddy asked if, under the separate subrecipient, eventually RTA would have their own staff separating it from ACOG, sooner than later. Ms. Holmes answered that she could not tell him when that would happen, but eventually it must happen.

Director James Boggs said that it seems to him that every city's RTA system is different. Kathryn Holmes said yes and that she and ACOG spent eighteen months looking at various governing models. She said she feels the MRCOG model is going backwards because of the work she already did. She asked Jennifer Sebesta if she could send a link of the document to the Board members. Jennifer Sebesta said yes, she will give each board member a link to the document, but it is also available on ACOG's website.

Director Brad Henry mentioned that he sent out a two-page memo to the Board last Friday discussing what Kathryn will be talking about regarding the Procurement Policy. He also gave the Board an American Public Transit Association (APTA) guide on procurement policies. Director Henry said the type of procurement policy the RTA needs will be lengthy, and therefore, he decided to take a vote on the Procurement Policy at the next RTA meeting.

Director Mary Melon asked Kathryn Holmes how long it would take to get the procurement guideline. Kathryn Holmes said she has already drafted a Procurement Policy Manual (PPM), and she can deliver it at the next RTA meeting. Ms. Holmes said this document has a link in it to the federal requirements, so the manual itself never goes out of date. She said it is written as a manual for someone who works in Procurement, with check lists, forms, etc.

Director Brad Henry asked if there were any other questions about Procurement. There were no further questions.

6. Discuss and Consider Authorizing RTA Consultant to Develop RFP for Transit Planning Services

Director Brad Henry turned the RFP discussion over to Kathryn Holmes. Ms. Holmes said the last study was published in 2015 and it was the Commuter Corridor Study

(CCS). She said this study looked at transit alternative in the region, but there was no transit mode. There was a bus only mode, bus rapid mode, light rail transit mode, and commuter rail mode.

Kathryn Holmes said the study had color charts that showed how each mode ranked in different scenarios. She said the commuter rail line scored the most favorable to the region and was recommended as the locally preferred alternative. However, she said when you go back and look at the data, it does not rank well; it gets a lot of red marks and the federal government will look at that and not want to fund a rail line that doesn't score well. Ms. Holmes said the study assumed there was access to the BNSF railway, which was not true, and should have been corrected. She said the rail access costs to build out the passenger system. was not fully flushed out,

Ms. Holmes suggested to the Board that they get really focused on exactly what the operating scenario would be. She said we require real numbers based on what BNSF is providing us today and then you will want to update the RPF assumptions.

Director Henry asked Kathryn Holmes to talk about how long it would take her to prepare the Request for Proposal (RFP). Ms. Holmes said she can have something completed by the end of October and out for bidding in November and get the proposals back by the end of the year.

Director Brad Henry asked for a motion to have Kathryn Holmes, RTA Consultant, to develop the RFP for Transit Planning. Director Mary Melon moved to approve. Director Marion Hutchison seconded the motion. The motion carried. (7-0)

Director Aaron Budd exited the meeting as he had a 3:30 appointment.

Director Henry asked for a motion to move into the Executive Session. Director Steve Eddy made the motion to move into Executive Session. Director James Boggs seconded the motion. The motion carried. (6-0)

7. Proposed Executive Session

Meeting closed to the public; session was recorded for the record.

8. Open Public Meeting

Director Brad Henry moved to approve reconvening the regular meeting. Director Mary Mélon seconded the motion. The motion carried. (6-0)

9. Public Comments

None

10. New Business

None

11.. Adjourn

Director Brad Henry asked for a motion to adjourn. Director Ken Bartlett made a motion to adjourn. Director Steve Eddy seconded the motion. The motion carried. (6-0) The meeting adjourned at 4:00 p.m.

ATTACHMENT 3

RTA LOCAL FUNDING

Local split	Population	% Pop	Local Share Contributed	Spent Through 9/30/2019	Funds Remaining 8/31/2019
Del City	21,332	2.3621%	\$ 49,579.47	\$ 17,371.61	\$ 32,207.86
Edmond	81,405	9.0138%	189,200.13	66,291.77	122,908.36
Midwest City	54,371	6.0204%	126,368.16	44,276.76	82,091.40
Moore	55,081	6.0990%	128,018.33	44,854.95	83,163.38
Norman	110,925	12.2825%	257,810.01	90,331.24	167,478.77
OKC	579,999	64.2222%	1,348,023.89	472,319.41	875,704.48
	903,113		\$ 2,099,000.00	\$ 735,445.75	\$ 1,363,554.25

ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS
Statement of Revenues and Expenditures by Period
RTA
From 7/1/2019 Through 09/30/2019

		FY 16	FY 17	FY 18	FY 19	FY 20 To Date	
		7/1/2015 -	7/1/2016 -	7/1/2017 -	07/01/18-	07/01/19-	
		6/30/2016	6/30/2017	06/30/18	06/30/19	09/30/19	Total
Expenditures							
Salaries	5000	\$ 3,571.36	\$ 9,878.16	\$ 27,296.42	\$ 43,099.31	\$ 10,327.24	\$ 94,172.49
Fringe Benefits	5020	1,378.16	3,631.64	10,353.04	15,539.85	4,349.84	35,252.53
Mileage	6000	0.00	0.00	0.00	89.32	-	89.32
Travel	6020	0.00	25.33	173.96	39.22	-	238.51
Insurance	6100	0.00	0.00	0.00	342.24	2,496.76	2,839.00
Postage	6220	0.00	0.00	0.00	49.00	-	49.00
Printing	6240	0.00	0.00	0.00	135.00	-	135.00
Printing - local	6240	0.00	0.00	0.00	323.07	-	323.07
Supplies	6300	0.00	0.00	0.00	578.06	-	578.06
Telephone	6320	0.00	0.00	0.00	0.00	27.69	27.69
Internet Service	6340	0.00	40.34	0.00	0.00	-	40.34
Special Projects	6370	0.00	0.00	0.00	2,687.73	-	2,687.73
Legal	6400	0.00	0.00	1,071.00	7,075.00	2,125.00	10,271.00
Consultants - Massie	6420	0.00	760.07	4,468.75	0.00	-	5,228.82
Consultants - Holmes	6420	0.00	0.00	304,115.55	347,208.53	23,630.53	674,954.61
Indirect Costs	6900	2,633.22	7,767.74	23,067.17	38,687.92	9,992.16	82,148.21
Total Expenditures		\$ 7,582.74	\$ 22,103.28	\$ 370,545.89	\$ 455,854.25	\$ 52,949.22	\$ 909,035.38
Federal Revenue (PL/FTA)		\$ 5,960.04	\$ 17,682.62	\$ 52,148.30	\$ 78,041.12	\$ 19,757.54	\$ 173,589.63
Local Match from RTA Participants		1,622.70	4,420.66	318,397.59	377,813.13	33,191.68	735,445.75
Total Revenues		\$ 7,582.74	\$ 22,103.28	\$ 370,545.89	\$ 455,854.25	\$ 52,949.22	\$ 909,035.38

These are 100% RTA local not 80% fed/20% local

ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS
Statement of Revenues and Expenditures by Period
RTA
From 7/1/2019 Through 09/30/2019

		07/01/19- 07/31/19	08/01/19- 08/31/19	09/01/19- 09/30/19	Total
Expenditures					
Salaries	5000	\$ 3,237.35	\$ 631.34	\$ 6,458.55	\$ 10,327.24
Fringe Benefits	5020	1,363.57	265.92	2,720.35	4,349.84
Mileage	6000	-	-	-	-
Travel	6020	-	-	-	-
Insurance	6100	2,496.76	-	-	2,496.76
Postage	6220	-	-	-	-
Printing	6240	-	-	-	-
Printing - local	6240	-	-	-	-
Supplies	6300	-	-	-	-
Telephone	6320	-	27.69	27.69	55.38
Internet Service	6340	-	-	-	-
Special Projects	6370	-	-	-	-
Legal	6400	-	-	2,125.00	2,125.00
Consultants - Massie	6420	-	-	-	-
Consultants - Holmes	6420	-	18,495.53	5,135.00	23,630.53
Indirect Costs	6900	3,132.31	610.85	6,249.00	9,992.16
Total Expenditures		\$ 10,229.99	\$ 20,031.33	\$ 22,715.59	\$ 52,976.91
Federal Revenue (PL/FTA)		\$ 6,186.58	\$ 1,228.64	\$ 12,364.47	\$ 19,779.70
Local Match from RTA Participants		4,043.41	18,802.69	10,351.12	33,197.21
Total Revenues		10,229.99	20,031.33	22,715.59	52,976.91

These are 100% RTA local not 80% fed/20% local

ATTACHMENT 4

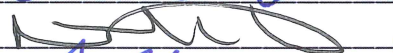
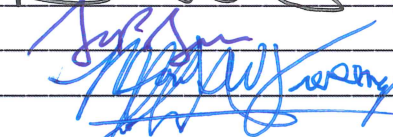

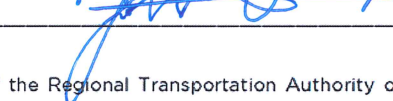
BANKING PROCEDURES RESOLUTION



RESOLUTION

THE BOARD OF DIRECTORS OF THE
REGIONAL TRANSPORTATION AUTHORITY OF CENTRAL OKLAHOMA
4705 N. LINCOLN BLVD.
OKLAHOMA CITY, OKLAHOMA 73105

Be it resolved that

C. Brad Henry, Chair

Marion F. Hutchison II, Vice-Chair

James P. Boggs, Treasurer

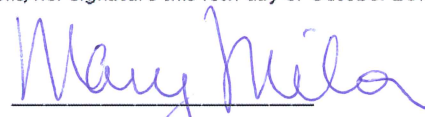
Mark W. Sweeney, Interim RTA Executive Director

John M. Sharp, ACOG Deputy Director

of the Regional Transportation Authority of Central Oklahoma whose signatures(s) appear(s) above are appointed as official custodians of the Authority's funds. They have plenary authority, including control, over funds owned by the Authority. Control includes possession, as well as the authority to establish accounts for the funds in insured depository institutions and to make deposits, withdrawals and disbursements of such funds. Two (2) signatures shall be required on checks against the accounts. This resolution is effective October 16, 2019 and supersedes all prior authorizations, which are hereby cancelled.

I hereby certify that the foregoing is a full, true and correct copy of a resolution regularly adopted on October 16, 2019 by the Board of Directors of the Regional Transportation Authority of Central Oklahoma and is in full force. That the signatures above hereof are genuine and of the respective officers of said Authority as designated thereon.

IN WITNESS WHEREOF, the undersigned affixed his/her signature this 16th day of October 2019.


SECRETARY

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (Assignment Agreement) made this 1st day of November, 2019, by and between the Association of Central Oklahoma Governments (ACOG or Assignor), having its principal office at 4205 N. Lincoln Blvd., Oklahoma City, OK, 73105, and the Regional Transportation Authority of Central Oklahoma (RTA or Assignee), having its principal office at 4205 N. Lincoln Blvd., Oklahoma City, OK, 73105, in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged:

RECITALS

WHEREAS, ACOG is an Oklahoma public agency designated as a Metropolitan Planning Organization for the Central Oklahoma region and governed by its Regional Council, which is made up of officials from various local governments in the region; and

WHEREAS, on September 22, 2015, ACOG created a Regional Transit Authority Task Force (Task Force) comprised of interested Central Oklahoma municipalities for the purpose of developing a Regional Transportation Authority pursuant to the authority found in Title 68, Oklahoma Statutes §68 -1370 .7 (2014); and

WHEREAS, on April 18, 2017, ACOG, on behalf of the Task Force, did publicly issue a Request for Proposal (RFP) Defining and Creating a Regional Transit Authority in Central Oklahoma, seeking interested parties to submit statements of qualifications to provide legal and technical assistance and planning support (the Work) as described in the RFP; and

WHEREAS, upon ACOG's evaluation of the proposers' project understanding, approach to work, statement of qualifications, and experience working with metropolitan planning organizations and state departments of transportation, ACOG did select Holmes & Associates LLC (Consultant) as the preferred entity and entered into a contract with Consultant to perform the Work (Contract), which Contract is included as an attachment to this Agreement and incorporated herein by reference; and

WHEREAS, the Contract has an expiration date of September 19, 2020, which may be extended as permitted therein; and

WHEREAS, Consultant satisfactorily performed the initial scope of the Work as described in the RFP and led the Task Force to create the RTA as a public trust pursuant to the authority of Title 60 OS §176, as authorized by Title 68 OS §1370.7, for the purposes of planning, financing, constructing, maintaining, and operating transportation projects located within the boundaries of a regional transportation district; and

WHEREAS, the RTA is governed by its Board of Directors (the RTA Board) comprised of appointed representatives of beneficiaries of the trust; and

WHEREAS, subsequent to its creation, Consultant is continuing to perform additional tasks in the scope of the Work under the supervision and direction of the RTA Board; and

WHEREAS, ACOG and RTA acknowledge and agree that the ongoing work under the Contract is

for the benefit of the RTA and, therefore, appropriately supervised and directed by the RTA Board rather than the ACOG Regional Council; and

WHEREAS, ACOG wishes to assign all its rights and obligations under the Contract to RTA.

NOW THEREFORE, ACOG and RTA agree as follows:

1. ACOG and RTA hereby agree that ACOG shall assign all its right, title, and interest, and delegate all its obligations, responsibilities, and duties, in and to the Contract, to RTA.
2. RTA hereby accepts the assignment of the Contract and agrees to assume all of ACOG's obligations, responsibilities, and duties under the Contract and all of ACOG's rights, title, and interest in and to the Contract.
3. From and after the effective date of this Assignment Agreement, "ACOG" shall be replaced with "RTA" in all places ACOG appears in the original Contract as if the RTA were a party to the original Contract.
4. Notwithstanding the foregoing, ACOG agrees to defend and indemnify RTA from any and all claims, actions, judgments, liabilities, proceedings, and costs, including reasonable attorneys' fees and other costs of defense and damages, resulting from ACOG's performance prior to the assignment of the Contract.
5. RTA agrees to defend and indemnify ACOG from any and all claims, actions, judgments, liabilities, proceedings, and costs, including reasonable attorneys' fees and other costs of defense and damages, resulting from RTA's performance after the assignment of the Contract.
6. This agreement may be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

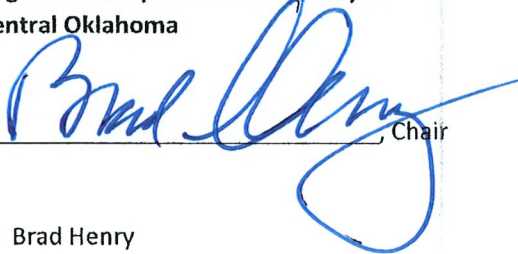
IN WITNESS WHEREOF, this Assignment Agreement is entered into the date and year first above written:

Association of Central Oklahoma Governments

_____, Chair

By: Matt Dukes

**Regional Transportation Authority of
Central Oklahoma**


_____, Chair

By: Brad Henry

AGREEMENT FOR PROFESSIONAL SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made effective the 19th day of September 2018 (the "Effective Date"), by and between Holmes & Associates LLC (Consultant), and Association of Central Oklahoma Governments (ACOG). Consultant and ACOG may be referred to individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, on April 18, 2017, ACOG did publicly issue a Request for Proposal (RFP) Defining and Creating a Regional Transit Authority in Central Oklahoma seeking interested parties to submit statements of qualifications to provide legal and technical assistance and planning support (the "Work") as described in the RFP;

WHEREAS, upon ACOG's evaluation of the proposers' project understanding, approach to work, statement of qualifications, and experience working with metropolitan planning organizations and state departments of transportation, ACOG did select Consultant as the preferred entity to negotiate a contract to perform the Work;

WHEREAS, Consultant has satisfactorily completed the initial Term of the Agreement;

WHEREAS, ACOG desires to extend the Agreement with Consultant for an additional Term to perform the Work set forth in the Scope of Services; and

WHEREAS, Consultant and ACOG have agreed on all terms and conditions set forth below and both Parties agree to abide by this Agreement;

NOW, THEREFORE, based on the foregoing, the Parties agree as follows:

AGREEMENT

1. Scope of Services.

- a. Consultant agrees to provide services to ACOG as set forth in Exhibit A during the Term of this Agreement. New services may be added to this Agreement by the attachment of new Exhibits signed by both Parties. For purposes hereof, the "Term" of this Agreement shall commence on the Effective Date and continue for a period of two (2) years thereafter. Upon the expiration of the Term, this Agreement may be extended by written agreement of the Parties for an additional Term for a period as agreed upon by the parties.

- b. Consultant agrees to serve as Owner's Representative to assist ACOG in the development, review, and assessment of requests for proposals that may be issued by ACOG, and to supervise and manage the development, construction, and implementation of a public transportation system and related improvements.

2. Payment.

- a. In exchange for the services to be provided by Consultant during the Term, ACOG agrees to pay Consultant for wages, costs, and expenses incurred by Consultant in the performance of the Work; provided that, in no event shall such wages, costs, and expenses compensated hereunder during the Term exceed an aggregate amount of \$1,070,000.00.
- b. ACOG will reimburse Consultant for work performed at the rate of \$395 per hour.
- c. ACOG will reimburse Consultant for costs and expenses incurred in connection with subcontracts and consulting agreements entered into with third parties for performance of any of the Work which Consultant agrees to render pursuant to this Agreement. If Consultant subcontracts a portion of the Work, a project management fee equal to 15% of the subconsultants total cost for this work will be paid to the Consultant for administration and management of the project.
- d. ACOG will reimburse Consultant for actual costs of travel and subsistence according to the established policies of ACOG, as may be updated from time to time in ACOG's sole discretion.
- e. ACOG will reimburse Consultant for other direct nonwage costs and expenses incurred by Consultant in connection with its performance of the work which may include, but not be limited to, photocopies, printing, and computerized legal research.
- f. At the end of each month the Consultant shall submit invoices to ACOG for payment in the form specified by ACOG and following the accounting protocols directed by ACOG. Such invoices must be received by ACOG by no later than the fifth (5th) calendar day of that succeeding month to ensure Consultant will be paid within thirty (30) calendar days of receipt. Any invoices received after the fifth (5th) calendar day of that succeeding month, may not be considered for payment until the month following and Consultant may not be paid until thirty (30) calendar days following that later date. The amount invoiced shall cover wages, costs, and expenses incurred by Consultant to perform the Work during the preceding accounting period. Supporting

documentation for all costs contained in the invoice will be submitted with each invoice and in such detail as ACOG may require. ACOG shall have the right to disapprove specific elements of each invoice. ACOG shall provide, in writing, such disapproval to the Consultant within twenty-five (25) working days of invoice submittal. Approval by ACOG shall not be unreasonably withheld. Payment for all invoice amounts not specifically disapproved in writing shall be paid in accordance with the terms above. Invoices that have been timely received and have not been disapproved by ACOG, but which have not been paid within 60 days after the invoice submittal will be assessed a late fee of 5 percent, per annum, calculated on the unpaid balance.

- g. The Consultant shall submit with each Invoice a time sheet showing cost documentation related to the performance of labor services under this Agreement, as well as receipts or other adequate documentation for non-labor expenses. Upon the request of ACOG, written or electronic data supporting the labor services shall be made available within a reasonable time during the Term and for a period of three (3) years thereafter. Consultant agrees that it shall require (as a matter of written contract) that similar records be maintained by all sub-Consultants at any tier utilized in the performance of this Work.

3. Independent Consultant. Consultant acknowledges and agrees that it is an independent Consultant and neither it nor its employees are employees, partners or part of a joint venture with ACOG.

4. Licensing. Consultant agrees that it has all of the necessary and appropriate experience and licensing required by law or that is standard in the industry for the nature of the services being rendered. Consultant further agrees to maintain such licensure throughout the term of this Agreement.

5. Insurance. Consultant agrees to maintain: a) occurrence type Commercial General Liability Insurance in the minimum amount of \$ 1 Million at all times during the Term; b) automobile insurance covering owned, non-owned, and hired automobile with limits not less than \$1,000,000 combined single limit of coverage; and c) Workers' Compensation in the minimum amount of \$1 Million at all times during the Term, insurance or a waiver conforming to the appropriate states' statutory requirements covering all employees of Consultant, and any employees of its sub-Consultants, representatives, or agents as long as they are engaged in the work covered by this Agreement or such sub-Consultants, representatives, or agents shall provide evidence of their own Worker's Compensation insurance.

6. Ownership of Materials. All data, including but not limited to, maps, drawings, sketches, renderings, software, hardware, and specifications, including the original thereof, hereinafter referred to as data and materials developed by the Consultant as a part

of its Work under this Agreement are the property of ACOG and upon completion of this Agreement, or upon the termination or cancellation of this Agreement shall be delivered to ACOG prior to final payment. All other materials provided to Consultant by ACOG to perform this Agreement shall be retained by ACOG at completion, termination, or cancellation.

7. Applicable Laws.

- a. Consultant shall obey all laws, ordinances, regulations, and rules of the federal, state, county, and municipal governments that may be applicable to Consultant's operations.
- b. This Agreement shall be construed under and in accordance with the laws of the State of Oklahoma.

8. Representatives. ACOG hereby appoints Mark W. Sweeney or if he so designates, John M. Sharp, Deputy Director, as the representative to assist in the administrative management of this Agreement, to ensure that the work to be performed is timely and adequately performed, and to provide for any approvals as may be required by this Agreement. ACOG's representative shall assist in monitoring, and evaluating this Agreement to completion. Consultant's representative is Kathryn A. Holmes. Consultant shall be responsible to complete the work as described in its response to the RFP and Exhibit A.

9. Notices. Any notice required by this Agreement may be served by mailing or delivering such notice to the following addresses:

If to the Consultant: Holmes & Associates LLC
ATTN: Kathryn A. Holmes
P.O. Box 526057
Salt Lake City, Utah 84152
Email: kathryn@holmesassociatesllc.com

If to ACOG: Association of Central Oklahoma Governments
ATTN: Mark W. Sweeney
4205 N. Lincoln Boulevard
Oklahoma City, OK 73105
Email: msweeney@acogok.org

Either Party may change their address upon written notice to the other Party.

10. Event of Default. The material breach or failure of either party to pay any amount required hereunder or perform any other covenant, condition, agreement or

provision contained herein within ten (10) days after receipt by that party of written notice of such breach or failure shall each constitute an "Event of Default" hereunder. Upon the occurrence and continuance of an Event of Default, the non-defaulting party may, at its option and without any obligation to do so, terminate this Agreement and/or pursue any remedy now or hereafter available under the laws or judicial decisions of the State of Oklahoma.

11. Attorney's Fees. In the event of any arbitration or litigation arising out of this Agreement or an Event of Default, the non-prevailing party shall reimburse the prevailing party for out of pocket costs through arbitration, trials and appeals, including without limitation, its reasonable attorney fees, court costs, bonds, and witness fees.

12. Termination.

- a. Without Cause. ACOG may terminate this Agreement for any reason or for no reason upon at least sixty (60) days' prior written notice to Consultant.
- b. For Cause. ACOG shall have the right to immediately terminate this Agreement upon notice to Consultant in the event that Consultant: (i) triggers an Event of Default by failing to comply with any of the covenants, representations or warranties set forth in this Agreement or as set forth in the RFP and to cure same within a reasonable period of time; (ii) is convicted of or pleads guilty or no contest to any crime (other than a minor traffic violation) or commits or participates in an injurious act of any person, any act of fraud or dishonesty, or a willful or grossly negligent act that causes or may cause harm to ACOG or its business.
- c. If the Agreement is terminated for any reason other than as described in Section 7(b), then ACOG shall pay to Consultant in accordance with the final terms and conditions of this Agreement all sums actually due and owing from ACOG for all Work performed and expenses incurred up to the day written notice of termination is given, plus costs reasonably and necessarily incurred by Consultant to affect such suspension or termination.

13. Taxes and Assessments. Consultant shall pay all lawful taxes, assessments, or charges which at any time may be levied any tax or assessment levying body upon its interest in this Agreement.

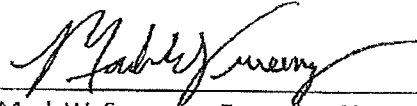
14. Entire Agreement. This Agreement contains the entire agreement between the Parties, and no statement, promise, or inducements made by either Party or agents for either Party, which are not contained in this written Agreement, shall be binding or valid; and this Agreement may not be enlarged, modified, or altered, except in writing signed by both Parties.

15. Assignment. This Agreement may not be transferred or assigned by Consultant without the written permission of the ACOG, which may be withheld at its sole discretion.
16. Agreement Binding. Consultant covenants that the provisions of this Agreement shall be binding upon its heirs, successors, representatives, and agents.
17. Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the Parties. One or more waiver of any term, condition, or other provision of this Agreement by either Party shall not be construed as a waiver of a subsequent breach of the same or any other provision.
18. Confidentiality. Consultant acknowledges that during the term of the Agreement and thereafter, it will have access to and become acquainted with confidential information that is valuable, special or a unique asset of ACOG or that is a protected record as defined by Oklahoma law ("Confidential Information") which shall be protected from improper disclosure. Consultant agrees that it will not at any time or in any manner either directly or indirectly, use any Confidential Information for his own benefit, or divulge, disclose, or communicate in any manner any Confidential Information to any third party without the prior written consent of ACOG. Consultant agrees to protect the Confidential Information and treat it as strictly confidential. A violation of this clause shall be material breach of this Agreement. If it appears that Consultant has disclosed (or has threatened to disclose) Confidential Information in breach of this Agreement, then ACOG shall be entitled to an injunction to restrain it from disclosing, in whole or in part, such Confidential Information, or from providing any services to any party to whom such Confidential Information has been disclosed or may be disclosed.
19. Waivers. The failure or delay of any party at any time to enforce this Agreement shall not affect such party's right to enforce this Agreement at any other time. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any case shall entitle such party to any other or further notice or demand in any other circumstance.
20. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which will be deemed to be a single agreement. This Agreement will be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart. A facsimile signature on this Agreement shall be considered as an original signature.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized representatives as the day, month, and year first written above.

Association of Central Oklahoma Governments

A handwritten signature in black ink, appearing to read 'Mark W. Sweeney', written over a horizontal line.

Mark W. Sweeney, Executive Director






Holmes & Associates LLC


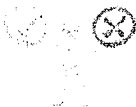


A handwritten signature in black ink, appearing to read 'Kathryn A. Holmes', written over a horizontal line.






Kathryn A. Holmes, Owner



EXHIBIT A

Scope of Services

Month 1-2: Finalize Governing Documents		
Project Phase	Key Tasks	Deliverables
	Revise RTA trust indenture	Final RTA trust indenture
	Revise documents necessary to formalize relationship with municipalities (MOU for Interim Administrative Services, resolutions)	Final documents necessary to formalize relationship with municipalities (MOU for Interim Administrative Services, resolutions)
	RTA facilitated meeting to discuss final documents <ul style="list-style-type: none"> • RTA trust indenture • Establishing relationship with municipalities • Operating agreements with existing transit systems 	Agenda Meeting materials Presentation
	Decision <ul style="list-style-type: none"> • Approve RTA trust indenture • Approve documents formalizing relationship with municipalities (MOU, resolutions) 	Meeting summary Documentation of decision process Update timeline/critical path
Months 3-10: BNSF Railroad		
Project Phase	Key Tasks	Deliverables
	Develop conceptual plans of commuter rail alignment in BNSF corridor	Concept level plans at a high level with a goal of defining how allowing commuter rail access will not negatively interfere with BNSF service
	Identify areas to begin discussions on resolutions	
	Identify future industrial expansion areas that may be limited due to proposed project	
	Identify possible improvements for BNSF	
	Begin preliminary discussions with BNSF <ul style="list-style-type: none"> • Review concept plans • Gain understanding of BNSF operations and needs • Identify what type of mitigation may be required 	Summary of discussions and recommended next steps

	<ul style="list-style-type: none"> Determine if BNSF is interested and, if so, next steps 	
	RTA facilitated meeting to report on BNSF discussions <ul style="list-style-type: none"> Review BNSF level of interest Review issues identified by BNSF Discuss possible mitigation and associated estimated costs. 	Agenda Meeting materials Presentation
	Decision <ul style="list-style-type: none"> Based on interest of BNSF and issues identified, determine RTA course of action 	Meeting summary Documentation of decision process
Months 13-14 Transit Operations Update		
Project Phase	Key Tasks	Deliverables
	Develop, review and assess RFP for transit operations update	RFP for consulting services
	Review regional travel model with emphasis on mode choice element.	Technical memorandum documenting observations
	Review future land use assumption inputs into the travel model to understand proposed corridors and compatibility with transit-supportive land uses.	GIS maps showing land use densities by type
	Update assumptions regarding transit operations with likely actual trackage rights and operating scenarios informed by BNSF discussions.	Document results: <ul style="list-style-type: none"> Service headways Modal recommendation for LPAs Operating costs Ridership evaluation using FTA STOPS method
	RTA facilitated meeting to report on transit operations update <ul style="list-style-type: none"> Service headways Modal recommendation for LPAs Operating costs Ridership evaluation using FTA STOPS method 	Agenda Meeting materials Presentation
	Decision	Meeting summary

	<ul style="list-style-type: none"> Determine whether adjustments to operations assumptions are appropriate based on outcomes. 	Documentation of decision process
Months 1-2: RTA Strategic First Steps		
Project Phase	Key Tasks	Deliverables
	Prepare subrecipient agreement to sub allocate grant funds	Agreement
	Develop RTA budget leading up to referendum	Budget plan
	Develop contingency budget should referendum fail or be delayed	Contingency budget plan
	Develop initial staffing plan	RTA staffing plan
	Develop information to support public opinion surveys	Polling information
	RTA facilitated meeting to discuss RTA budget <ul style="list-style-type: none"> RTA contingency budget RTA staffing plan Polling information 	Agenda Meeting materials Presentation
	Decision <ul style="list-style-type: none"> Approve RTA contingency budget Approve RTA staffing plan Approve Polling information 	Meeting summary Documentation of decision process Update timeline/critical path
Months 3-18: FTA Compliance		
Project Phase	Key Tasks	Deliverables
	Develop successful relationship with FTA <ul style="list-style-type: none"> Prepare materials to train RTA regarding FTA program requirements 	PowerPoint presentation regarding FTA program requirements <ul style="list-style-type: none"> RTA recipient status FTA master agreement FTA certs and assurances
	Examine options for managing FTA 5307 formula funding on regional basis	Whitepaper with options and implementation strategies on regional sub-allocation of FTA formula funds
	Maintain successful relationship with stakeholder groups by managing risk and building culture of compliance	Draft key policies and procedures to ensure transparency, accountability, and compliance <ul style="list-style-type: none"> Procurement Grants management Spending/Contracting

		<ul style="list-style-type: none"> • Conflicts of interest • Ethics • Record retention • Civil rights
	RTA facilitated meeting <ul style="list-style-type: none"> • Training on FTA program requirements • Discussion on sub-allocation of FTA 5307 formula funds • Discuss key policies and procedures 	Agenda Meeting materials Presentation
	Decision <ul style="list-style-type: none"> • Approve approach on sub-allocation • Approve key policies and procedures 	Meeting summary Documentation of decision process Update timeline/critical path



RESOLUTION

Adopting Procurement Policy and Procurement Procedures Manual of the Regional Transportation Authority of Central Oklahoma

WHEREAS, the Regional Transportation Authority of Central Oklahoma was created by Trust Agreement and Indenture by the governing city councils of Oklahoma City, Edmond, Norman, Moore, Midwest City, and Del City pursuant to the under the provisions of Title 68, Oklahoma Statutes 2014, Section §1370.7; Title 60, Oklahoma Statutes §176, et seq., as amended by Title 60, Chapter 4, Oklahoma Session Laws 1953; and the Oklahoma Trust Act and other applicable statutes of the State of Oklahoma for the purpose of planning, financing, constructing, maintaining, and operating transportation projects located within the boundaries of the regional transportation district; and

WHEREAS, certain rules prescribing the conduct of the board of directors of the Authority are set forth in the trust agreement and other laws of the State of Oklahoma; and

WHEREAS, the board of directors desires to set forth a policy and adopt procedures for procurement to guide the board in conducting the business of the Authority.

NOW THEREFORE, be it resolved:

RESOLVED, the board of directors approves the Procurement Policy and Procurement Procedures Manual of the Regional Transportation Authority of Central Oklahoma and directs the administration to post the policy on the Authority's webpage.

IN WITNESS WHEREOF, the undersigned affixed his/her signature this _____ day of October 2019.

Secretary, Regional Transportation Authority of Central Oklahoma

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

On the ____ day of October 2019, personally appeared before me, _____, who being duly sworn did say that s/he is the secretary of the Regional Transportation Authority of Central Oklahoma, a public trust, and that s/he executed the resolution as secretary of said trust, and that said resolution was adopted by the board of directors of the Regional Transportation Authority of Central Oklahoma at a meeting of the board on October 16, 2019.

NOTARY PUBLIC
Residing in: Oklahoma City, OK

My Commission Expires:



**REGIONAL TRANSPORTATION AUTHORITY
OF CENTRAL OKLAHOMA**

PROCUREMENT POLICY

**ADOPTED BY THE
RTA BOARD OF DIRECTORS**

October 16, 2019

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Regional Transportation Authority of Central Oklahoma Procurement Policy

STATEMENT OF POLICY

It is the policy of RTA to conduct all procurement transactions in a manner providing full and open competition. RTA will avoid the following situations considered to be restrictive of competition:

- (1) Unreasonable requirements placed on firms for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (6) The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- (7) Any arbitrary action in the procurement process.

RTA shall conduct procurements in a manner that does **not** give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

Procurement activities are to be conducted in an ethical manner in accordance with RTA's Code of Ethics and Conflict of Interest Policy. No employee, officer, agent, immediate family member or Board member shall participate in the selection, award or administration of a contract supported by public funds if a conflict of interest, real or perceived, would be involved.

GENERAL

RTA will abide by applicable federal, state, and local guidelines that govern procurement processes. For contracts and procurements in which federal funds are used, the applicable federal regulations, as may be amended from time to time, will apply. RTA hereby incorporates the following documents into the policy:

- Oklahoma Public Trust Act (60 O.S. Section 176 et seq.)
- RTA Trust Agreement and Indenture (February 20, 2019)
- RTA By-Laws (March 13, 2019)
- FTA Circular 4220.1F, "Third Party Contracting Guidance," can be found at http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html.
- FTA *Best Practices Procurement Manual* http://www.fta.dot.gov/documents/BPPM_fulltext.pdf
- FTA *Master Agreement* <http://www.fta.dot.gov/library/legal/agreements/2001/ma.html>.
- Code of Federal Regulations (CFR) <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.
- Federal Acquisition Regulation <http://www.arnet.gov/far/>.
- United States Code <http://www4.law.cornell.edu/uscode/>.

CHANGE, REVIEW AND UPDATES

Any updates to the referenced regulations, statutes or policies will be automatically incorporated. This policy may be reviewed at the end of each fiscal year or when changes in regulations and circumstances require.

VIOLATION

Violation of these procurement policies by any RTA Board Member, RTA employee, or agent of RTA shall subject the individual to disciplinary actions by the management of RTA and/or the Board. Violation or attempt to circumvent these procurement policies by contractors, potential contractors, or their agents shall be considered a breach of RTA's contract, and shall be considered a willful breach if such violation is deemed to be in knowing or careless disregard of these procurement policies, and shall subject the contractors and bids or their agents to disciplinary action up to and including suspension or debarment from contracting with RTA.

It shall be the responsibility of every Board member, employee, agent, and contractor of RTA to familiarize themselves with the provisions of these procurement policies. All inquiries concerning same should be directed to the Executive Director. The Board Chair or Executive Director must be notified of any violation or questionable action immediately.

ADMINISTRATION

The Executive Director will administer the RTA Procurement Procedures Manual.



REGIONAL TRANSPORTATION AUTHORITY OF CENTRAL OKLAHOMA

PROCUREMENT PROCEDURES MANUAL

**ADOPTED BY THE
BOARD OF DIRECTORS
October 16, 2019**

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APPENDIX A: STANDARDIZED PROCUREMENT FORMS

CHAPTER 1

INTRODUCTION

This Procurement Procedures Manual is intended to serve the Regional Transportation Authority of Central Oklahoma (RTA) as a user-friendly, step-by-step, how-to guide for successful procurement practices in securing bids and proposals to make:

- ◆ *Micro-Purchases,*
- ◆ *Small Purchases,*
- ◆ *Large Purchases,*
- ◆ *Sole Source Purchases, and*
- ◆ *Single-Bid Purchases.*

1.1 COMPLIANCE

This *Procurement Procedures Manual* establishes guidelines and minimum standards that RTA will use to process third party contracts. This manual is intended to help RTA comply with the Federal Transit Administration's standards to ensure competitive bidding through full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the federal, state, and local governments. Competitive proposals and sealed bid transactions will be conducted in a manner to provide maximum open and free competition consistent with FTA Circular 4220.1F "Third Party Contracting Guidance," and Department of Transportation 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments."

The policies and procedures contained herein establish standard business practices to ensure the timely, efficient, and economical delivery of services and materials. The following contracts are outside the scope of third party contracting and will not be governed by these policies and procedures:

- ◆ Employment Contracts,
- ◆ Real Estate Contracts, and
- ◆ Intergovernmental Agreements.

The goal of procurement practices is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. RTA will avoid the following situations considered to be restrictive of competition:

- (1) Unreasonable requirements placed on firms for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;

- (6) The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- (7) Any arbitrary action in the procurement process.

RTA shall conduct procurements in a manner that does *not* give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not pre-empt State licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

1.2 DOCUMENTATION

In order to meet standards established by the Federal Transit Administration, and to be prepared for Triennial Reviews and Procurement Reviews, it is critical to accurately document procurement procedures. This manual outlines the steps to take and provides the standardized forms to complete for each type of procurement. Appendix A contains the standardized forms to be used to document practices.

To ensure full compliance, the RTA Procurement Officer will maintain the procurement master files for capital and planning projects. It is important to work closely with the Procurement Officer to make sure the forms and documentation are completed on schedule and placed in the master file. The steps to perform each type of procurement are intended to serve as a checklist. Additional information is located on the following websites:

- FTA Circular 4220.1F, "Third Party Contracting Guidance," can be found at <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>
- FTA *Best Practices Procurement Manual* http://www.fta.dot.gov/documents/BPPM_fulltext.pdf
- FTA Procurement Frequently Asked Questions <https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-procurement-faqs>
- FTA *Master Agreement* <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-master-agreement-fiscal-year-2019>
- *Code of Federal Regulations* (CFR) <https://www.govinfo.gov/help/cfr>
- *Federal Acquisition Regulation* <https://www.acquisition.gov/browse/index/far>
- *United States Code* <http://www4.law.cornell.edu/uscode/>

CHAPTER 2

CODE OF ETHICS AND

CONFLICT OF INTEREST POLICY

2.1 WRITTEN STANDARDS OF CONDUCT

In order to conduct procurement activities in an ethical manner, a Code of Ethics and Conflict of Interest Policy is established for RTA, stated as follows.

2.1.1 Personal Conflict of Interest

No RTA employee, officer, agent, Board member, or immediate family member shall participate in the selection of, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved. Such a *personal conflict of interest* would arise when any of the following has a financial interest or other interest in the firm selected for the award:

- 1) The employee, officer, agent, or Board member,
- 2) Any member of his/her immediate family,
- 3) His/her partner, or
- 4) An organization that employs, or is about to employ, any of the above.

RTA employees, officers, agents, and Board members shall neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from actual contractors, potential contractors, or parties to sub-agreements, including but not limited to monies, credits, discounts, seasonal or special occasion presents, edibles, drinks, household appliances and furnishings, clothing, vacations, travel or hotel expenses, various forms of entertainment if:

- 1) It tends to influence the employee, officer, agent, or Board member in the discharge of employee's official duties; or
- 2) The employee, officer, agent, or Board member recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender; or
- 3) The employee, officer, agent, or Board member has or appears to have influence over RTA actions affecting the donor or lender in the employee's official capacity.

Notwithstanding the above, this section shall not apply to the following scenarios:

- 1) An occasional unsolicited non-pecuniary gift of insignificant value (\$20.00 per occasion or the aggregate market value of \$50.00 during any calendar year) such as accepting food or refreshment of nominal value on infrequent occasions in the ordinary course of a business luncheon or business dinner meeting or other meeting, or unsolicited thank you cards or gifts of insignificant value such as coupons, balloons, floral arrangements, or small gift baskets; or
- 2) Unsolicited advertising and promotional material such as pens, pencils, note pads, calendars, or other business-related items of nominal intrinsic value; or

- 3) An unsolicited gift, gratuity, favor, entertainment, loan, or other thing of value when circumstances make it clear that an obvious long-standing social or family relationship rather than the business of the persons concerned is the motivating factor.

Purchasing employees must recognize that their purchasing activities are of public interest and a matter of public record, therefore, their actions must be conducted in a manner to be fully substantiated and legally defended in accordance with the authority of the RTA. At all times, RTA employees must endeavor to keep from involvements that could result in a possible position of "conflict of interest."

When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter. If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

2.1.2 Organizational Conflicts of Interest

The Procurement Officer and technical personnel are encouraged to work closely with counsel for the RTA to review all situations that appear to have the potential for an organizational conflict of interest. Counsel can help in the preparation of restrictive contracting clauses suitable for the particular situation. Counsel can also recognize when involvement by FTA regional counsel would be appropriate.

Organizational conflicts of interest can cause two distinct problems. One concerns the issue of *bias*; the other involves the issue of *unfair competitive advantage*. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- ◆ A contractor is unable, or potentially unable, to render impartial assistance or advice to RTA;
- ◆ A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- ◆ A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. In fact, RTA should always consider using a "Conflict of Interest Disclosure Statement," such as follows, in its solicitation when contracting for services of this nature.

- 1) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) affected by any RTA employee, officer, agent, or Board member; any member of these entities' immediate family, partner, or organization that employs, or is about to employ, any of the above, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors, and key personnel of any of the

above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract, where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

- 2) The offeror shall describe in detail why it believes, considering the interest(s) identified above, that performance of the proposed contract can be accomplished in an impartial and objective manner.
- 3) In the absence of any relevant interest identified in above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.
- 4) Counsel for the RTA will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to RTA, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the RTA counsel may (a) disqualify the offeror, or (b) determine that it is otherwise in the best interest of RTA to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.
- 5) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the RTA counsel. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The RTA counsel may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of RTA by sending the contractor a Notice of Termination specifying the nature of default

The problem of *unfair competitive advantage* occurs most often when a contractor is developing specifications or statements of work that will be used in a future competitive solicitation. The problem most often causing unfair advantage occurs when the contractor writes specifications or statements of work around its own corporate competitive strengths or products, and then bids on those specifications or statements of work. RTA can overcome the unfair advantage by placing reasonable restrictions on the contractor's involvement in the procurement that will utilize the specifications. Some form of advance restriction (limitation on future contracting) must be agreed to with the contractor as a provision within its consulting contract. Another typical problem

scenario is that a contractor developing specifications or work statements may have access to information that RTA has paid the contractor to develop, or which RTA has furnished to the contractor for its work and which has not been made public. When this information enhances the contractor's competitive position in the bidding, it represents an unfair competitive advantage. The potential solution to this problem is to fully disclose all information to the bidders for a reasonable time prior to receipt of proposals.

The situation of "unfair competitive advantage" is to be distinguished from a "fairly won competitive advantage" which naturally accrues to any contractor that can do work more efficiently because it has more experience (i.e., won more contracts) for its products or services. It is a fact that competitors are frequently discouraged from bidding on a particular procurement because they perceive an incumbent contractor to have an insurmountable competitive advantage by virtue of its previous work.

Environmental Impact Statements – There is a special regulatory requirement imposed by 40 CFR 1506.5 on contractors who develop *environmental impact statements*. These contractors are required to sign a *disclosure statement* certifying that the firm has no financial or other interests in the execution or outcome of the proposed project. This certification is intended to avoid situations where contractors are hired to study alternatives and potential environmental impacts of proposed projects when they have some corporate interest in the outcome of their findings. The RTA will include such a certification in their Requests for Proposals for the consultant services so that such conflicts can be identified early in the contracting process, thus avoiding unnecessary expense to offerors and delays to the project.

Obtaining Access to Proprietary Information – When a consulting contractor requires proprietary information from others to perform an RTA contract, the contractor may gain an unfair competitive advantage. Imposed restrictions protect the information and encourage companies to provide it when necessary for contract performance. A contractor doing work for RTA and requiring such information is required to enter into agreements with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and also to refrain from using it for any purpose other than that for which it was furnished. The RTA Procurement Officer will obtain copies of these agreements.

2.2 COMPLIANCE WITH THE CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

RTA requires that all employees involved in procurement functions sign a Conflict of Interest Statement in October of each year; that members of the Board of Directors sign the Statement at the beginning of each term; and that these signatures be kept on file by the Procurement Officer.

CONFLICT OF INTEREST POLICY

As a general policy, RTA seeks to prevent and avoid any conflicts of interest in the conduct of its business operations and to avoid any appearance of such conflicts to the public it services. Each board member or committee member has the duty to place the interests of RTA foremost in any dealings on behalf of the organization and has a continuing responsibility to comply with this Policy.

In order to comply with this Policy, it is expected that:

If a board or committee member has an interest in a proposed transaction with RTA in the form of a significant personal or organizational financial interest in the transaction or holds a position as trustee, director, officer or staff member in such organization or business, he or she must make full disclosure of such interest before any discussion or negotiation of such transaction. The disclosure shall be recorded in the minutes of the meeting.

Any board or committee member who has a potential conflict of interest with respect to any matter coming before the board or a committee shall not participate in any discussion of or vote in connection with the matter. The disclosure shall be recorded in the minutes of the meeting.

Any board or committee member who gains privileged information by virtue of his or her role as a board, committee or staff member shall not use that privileged information for personal or professional gain.

This Policy shall be distributed annually to board and committee members. A signature in the designated space at the bottom of this Policy will indicate that board or committee members' agreement to abide by this Policy to the best of his or her ability. Noncompliance with the intent and spirit of this Conflict of Interest Policy may result in action deemed appropriate by the Board of Directors of RTA.

This Policy may be revised or amended as determined appropriate by the Board of Directors.

I have read the above statement of policy regarding conflict of interest and agree to abide by the policy to the best of my ability in my role as a board or committee member.

Signature: _____ Date: _____

Printed Name: _____

cc: Personnel File
File: Compliance with the *Procurement Procedures Manual*

CHAPTER 3

PROCUREMENT PROCESS, PLANNING

AND ORGANIZATION

The following sections are written as a step-by-step guide for the procurement process to assist purchasers in making Micro-Purchases, Small Purchases, Large Purchases, Sole Source Purchases, and procuring through Invitation for Bid and Request for Proposals. Follow these steps for purchases funded by the Federal, State, and Local governments.

3.1 MICRO-PURCHASES

- ◆ Micro-Purchases are purchases that cost \$0.01 to \$3,000, including delivery charges.
- ◆ Micro-Purchases may be made without obtaining competitive quotations if the price is determined to be "fair and reasonable" and is documented as such. (For more information, see *Best Practices Procurement Manual*).
- ◆ Micro-Purchases are exempt from Buy America requirements.
- ◆ Micro-Purchase procedures may not be used for Construction Contracts with a value of \$2,000 or greater. (See 3.6 for Construction Contracts procedures.)
- ◆ One method to equitably distribute the micro-purchases among qualified suppliers is to rotate through an approved supplier list. If possible, place Disadvantaged Business Enterprises (DBEs) on the list. If this method is used, indicate the name of the company to be used, as well as the previous company used on the rotating list on the "*Fair and Reasonable*" *Price Documentation* (Form A-2).
- ◆ Splitting procurements to avoid the \$3,000 competition requirement is not allowed. (For more information, see *Best Practices Procurement Manual*)
- ◆ Contract clauses are not required for Micro-Purchases.
- ◆ Purchase cards may be used if the *Price Determination Form* (Form A-1) is up to date (signed at the beginning of each fiscal year.) Talk to the Procurement Officer for information regarding this procurement method. (For more information about the use of Purchase Cards, see *Best Practices Procurement Manual*)
- ◆ Make sure the project complies with Configuration Management. For more information, see Form A-6. Form A-6 does not need to be signed for Micro-Purchases.
- ◆ To justify Sole Source Procurements, complete Form A-15 and attach it to the Purchase Order documentation.

3.1.1 Steps Involved in Making Micro-Purchases

When making a micro-purchase, complete each of the following steps.

- _____ Step 1: Obtain budget approval on all purchases up to \$500.00. If the purchase is over \$500.00, a Purchase Order must be issued and signed by the Executive Director.
- _____ Step 2: Determine "fair and reasonable" price for the product or service to be purchased. Complete the "*Fair and Reasonable*" *Price Documentation* (Form A-2)
- (a) On the form, indicate the method used to determine that the price is "fair and reasonable."
 - (b) If telephone quotes are used, write the name of the company and the dollar amount of the quotes in the spaces provided.
 - (c) If catalogues or newspaper advertisements are used, photocopy the catalogue page or advertisement and attach it to the form.
 - (d) If found reasonable based upon a recent purchase, explain in the space provided.
 - (e) If found reasonable based upon personal knowledge, explain in the space provided.
 - (f) If any other method is used, place the name of the vendor and dollar amount of quote and comments in the space provided.
 - (g) Sign and date the form.
- _____ Step 3: Select the source that provides the product or service for the lowest price and meets the required specifications, as opposed to desired specifications. Make the purchase.
- _____ Step 4: Complete the "*Fair and Reasonable*" *Price Documentation* (Form A-2) and staple this to the Purchase Order along with any other attachments (photocopies of catalogue pages, advertisements, etc.) to be filed. When received, the invoice will also be attached.

3.1.2 Petty Cash Policy

RTA has a petty cash account to make immediate small dollar purchases not to exceed \$50.00. The Executive Director and the Administrative Assistant have the authority to sign out petty cash. The petty cash recipient signs a receipt for the petty cash amount, and that amount is charged to the appropriate department's financial account. The petty cash account is audited at least once monthly and as needed. The usual procedure for the Maintenance Division is to use the procurement card or issue purchase orders for supplies and parts rather than using petty cash.

3.2 SMALL PURCHASES

- ◆ Small Purchases are purchases that cost \$3,000.01 to \$10,000 and do not require the Invitation for Bid or Request for Proposals process. Use this procurement method for:
 - 1) Goods and services that are clearly defined,
 - 2) Construction projects, and
 - 3) When the award can be made primarily based upon the price of the bid.
- ◆ This method of procurement allows for free and open competition.
- ◆ Complete the *Price Quotes Documentation for Small Purchases* (Form A-3) prior to requesting bids or proposals.
- ◆ Price or rate quotations shall be obtained from at least three (3) qualified sources.
- ◆ Advertise Invitation for Bid if the independent cost estimate exceeds \$10,000.
- ◆ The RTA Board of Directors is required to approve all contracts and procurements exceeding \$20,000 through an agenda item.
- ◆ Splitting procurements to avoid the \$10,000 competition requirement is not allowed. (For more information, see *Best Practices Procurement Manual*)
- ◆ Small Purchases are exempt from the Buy America requirements.
- ◆ To justify Sole Source Procurements, complete Form A-15 and attach it to the Purchase Order documentation.
- ◆ RTA may not restrict competition by:
 - 1) Placing unreasonable requirements on firms for them to qualify to do business,
 - 2) Having an organizational conflict of interest,
 - 3) Requiring vendors to have unnecessary experience or unnecessary bonding,
 - 4) Giving preference in the evaluation of bids to in-state or local businesses, except in those cases where Federal statutes expressly mandate or encourage geographic preference. (This does not preempt State licensing law.)
- ◆ If the procurement good or service is listed with the Oklahoma state administrated cooperative purchasing agency (OMES), going out to bid is not required.

3.2.1 **Small Purchases (Not Exceeding \$10,000)**

Plan for five (5) workdays to place an order.

When making a small purchase that exceeds \$3,000 but does not exceed \$10,000, complete each of the following steps. Place the date of completion for each step on the line provided.

_____ Step 1: Obtain budget approval and the Executive Director's signature on the Purchase Order.

- _____ Step 2: Obtain at least three verbal or written price quotations (faxed quotes are acceptable) and complete the *Price Quotes Documentation for Small Purchases* (Form A-3). For products and services that cost \$5,000 or more, request quotes via fax or in writing. If telephone quotes are used, write the name of the company and the dollar amount of the quotes in the spaces provided. Sign and date the form. If possible, a DBE (Disadvantaged Business Enterprise) shall provide one of these price quotes.
- _____ Step 3: Select the source that provides the product or service for the lowest price and meets the required specifications (as opposed to desired specifications). Make sure the project complies with Configuration Management. For more information, see Form A-6. Form A-6 does not need to be signed for Small Purchases that do not exceed \$10,000. Make the purchase.
- _____ Step 4: Staple the *Price Quotes Documentation for Small Purchases* (Form A-3) and any other attachments (photocopies of catalogue pages, advertisements, etc.) to the Purchase Order to be filed. When received, the invoice will also be attached.

3.2.2 Small Purchases (Exceeding \$10,000)

- ◆ Plan for twenty (20) to thirty (30) workdays to place the order.
- ◆ An independent cost estimate is required for purchases of at least \$10,000.01.
- ◆ Advertise Invitation for Bid or Request for Proposals if the independent cost estimate exceeds \$10,000.
- ◆ RTA Board of Directors approval is required if the independent cost estimate exceeds \$20,000.

When making a small purchase that exceeds \$10,000, complete each of the following steps.

- _____ Step 1: Obtain budget approval and the Executive Director's signature on the Purchase Order.
- _____ Step 2: Via e-mail, notify the Procurement Officer about the project and include a project description. Work closely with the Procurement Officer to complete and file forms in the Master Project File throughout the project.
- _____ Step 3: Determine whether the purchase, service, or construction project exceeds \$10,000 by completing the *Independent Cost Estimate* (Form A-4.)
- _____ **Step 4: If the independent cost estimate exceeds \$20,000, the purchase must be approved by the RTA Board of Directors. Prepare an**

agenda item for the Board Meeting.

_____ Step 5: Determine the Contract Type by completing the *Justification for Contract Type* (Form A-5.)

_____ Step 6: Request that the DBE Officer assign a DBE goal to the project and place the DBE Goal on Purchase Order. Print the appropriate DBEs from the DBE Source List and attach the list to the requisition. (The DBEs listed on the DBE Source List shall be certified by RTA.)

_____ Step 8: Prepare the Specifications and Bid Package. (See Chapter 4 for specific information.) Coordinate basic safety and user requirements with all RTA departments including the Safety Department. Include these safety and user requirements that interface with the procured facility, hardware, or system in the procurement specifications. Make sure the project complies with Configuration Management, and complete and sign Form A-6 for the Contract File. If the procurement involves technology, the Specifications must include a clause whereby the contractor submits a letter of self-certification certifying compliance with National Architecture Standards (also Form A-6). When it is impractical or uneconomical to provide a clear and accurate description of the product, a "brand name or approved equal" description may be used. However, the buyer must still identify the minimum needs and clearly describe the essential physical and functional characteristics of the brand name product. If you must use a brand name in your specification, you may allow bidders to substitute an equal product with a different brand name. You may reserve the right to determine whether a particular brand or model is equal to the one you specified. If you use a brand name and allow equal brands, you must also specify the salient characteristics of the specified brand that will be among the criteria used in determining whether a suggested substitute is equal to the specified brand or not. (For more discussion, see *Best Practices Procurement Manual*)

The buyer may directly contact manufacturers to get assistance with identifying specifications. Document these transactions via a memorandum for the file.

_____ Step 9: The advertisement for the small purchase competitive sealed bid must be published in newspapers published in a local newspaper of general circulation in the central Oklahoma region at least twice, (once a week for two consecutive weeks) indicating the deadline date, time, and place by which bids will be received, and the date, time, and place where bids will be opened. Publish the first notification a minimum of fourteen (14) days before the Bid Opening Date. The second publication of a bid for a public works

project (the construction, repair, or renovation of a structure, road, or other improvement or addition to real property) must be on or before the tenth (10th) day before the date the bid is to be opened and read aloud.

- (a) Fax Request for Bid Notice to the “Legal Notices” Section of in a local newspaper of general circulation in the central Oklahoma region with the dates to be published. It is a good idea to also call to make sure the fax was received.
- (b) E-mail the notice to each Secretary of RTA beneficiaries on the day when the notice is sent to the newspapers.
- (c) Place the legal notice(s) in the file.
- (d) The advertisement must contain the following:
 - 1) The description of the work, goods, or services to be procured;
 - 2) The location at which the bidding documents, plans, specifications, or other documents may be examined by all bidders, and time and place of the pre-bid conference (set the pre-bid conference a minimum of seven [7] days after the publication of the first notice);
 - 3) Approved Equal Deadline (set the deadline 10 days after the publication of the first notice);
 - 4) The date, time, and place for submitting bids and the date, time (include the time zone), and place for the opening of competitive sealed bids;
 - 5) DBE program requirements or goals;
 - 6) Late bids will be returned unopened to the sender.

_____ Step 10: Send the advertisement to third parties on the RTA Source List (list of businesses interested in competing for various types of contracts) and the vendors on the DBE Source List. Make the Source List and DBE Source List available to the public upon written request. Document the Vendors to whom the advertisement for bid was sent on the *Vendor Solicitation List* (Form A-7.)

_____ Step 11: Send bid packages to third parties requesting bid packages. List the vendors requesting bid packages on the *Bid Package/RFP Request List* (Form A-8). RTA can charge vendors for the bid packages to cover postage. The bid package shall contain the items listed in Chapter 4, Section 4.1.

_____ Step 12: To amend the bid package, see Chapter 4.

- _____ Step 13: Hold a Pre-Bid Conference. The parties present must sign the *Sign in Sheet for Pre-Bid Conferences, Pre-Proposal Conferences, Bid Openings* (Form A-9). The purpose of the Pre-Bid Conference is to go over the technical specifications and answer any questions about the product, service, or project that the vendors may have. Vendors are not normally required to attend the Pre-Bid Conference. In the event the project is unusually complex, and attendance is critical and required, make this requirement clear in the advertisement and the Bid Package, and thoroughly document the reasons for the mandatory attendance requirement to satisfy FTA reviews. (For more information on the Pre-Bid Conference, see the *Best Practices Procurement Manual*) Record minutes of the conference and send the minutes to the prospective offerors on the final solicitation mailing list.
- _____ Step 14: Date and time stamp the sealed bids as received.
- _____ Step 15: Keep a list of the responding vendors on the *Responding Vendors List* (Form A-10). Keep sealed bids sealed in a secure place until the bid opening.
- _____ Step 16: At the designated time and place, formally open and read aloud the sealed bids.
- _____ Step 17: Record the bids on the *Bid Tabulation* (Form A-11).
- _____ Step 18: Any sealed bids that reach RTA after the bid opening time and date must be mailed back to the source without opening. Complete the *Late Bids/Proposals List* (Form A-12). You may have a policy in your bid package that states, "late bids mailed via Fed-Ex or UPS that were guaranteed for delivery but were not delivered will be accepted upon receiving proof of guaranteed delivery date." If bids arrive late, send the vendor a letter and give them three days to respond and prove that they met the deadline requirements. If the vendor does not prove to have met the deadline requirements, send the bid package back to them unopened via certified mail.
- _____ Step 19: Complete the *Price Analysis Documentation for Small and Large Purchases* (Form A-13). This form certifies that adequate price competition was obtained by comparison of quotations and the low price is fair and reasonable.
- _____ Step 20: Select the lowest, most responsive bid that meets the specifications as stated in the Invitation for Bid. Complete *Determination of Best Value* (Form A-16). In determining which products or services are

in the best interest of RTA, the agency may consider the following factors (if stated in the Invitation for Bids):

- a) installation costs and hardware costs;
- b) the overall life cycle cost of the requested equipment;
- c) the estimated cost of employee training and estimated increase in employee productivity;
- d) estimated software and maintenance costs; and
- e) criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

These factors are not the only ones you may use. Attach information to the agency file for future clarification of the award. (For more information on "responsive and nonresponsive bids" see *Best Practices Procurement Manual*)

_____ Step 21: If the lowest bid is not selected, document the reasons for the selection on the *Determination of Best Value* (Form A-16). If none of the bids are selected, document the reasons and start the bidding process over. The specifications may need to be amended. If a single bid or single responsive bid is received, refer to the *Best Practices Procurement Manual* in order to help determine fair and reasonableness of the bid and whether to accept the bid or reject the bid and begin the process again or abandon the project. If a single bid is received, an option is to return the bid unopened to the vendor and reject all bids and begin again. Do not negotiate bids as in a sole source procurement.

_____ Step 22: Allow for corrections to bids if there is a bid mistake such as minor informalities or irregularities discovered in bids prior to award -- such as a decimal in the wrong place, or obvious or apparent clerical mistakes discovered prior to award. If mistakes occur other than those listed above such as a subcontractor's quote left out of the bid, allow the contractor to withdraw the bid. If mistakes are discovered after the award is made, you may allow the contractor to withdraw the bid if caught early enough or handle it as a change order if the vendor will remain the responsible low bidder. In this case, tell the vendor that you will review the change and let them know by a date and time you set.

_____ Step 23: Check to see if the selected bidder has not been debarred from working on Federal Contracts. Check the Federal Government's System for Award Management website at <https://www.sam.gov/SAM/> and search for entity exclusion records.. Complete the *Contractor Verification* (Form A-17.)

- _____ **Step 24: If the contract exceeds \$20,000, the RTA Board of Directors must award the contract.** Prepare an agenda item for the Board meeting.
- _____ Step 25: Following Board approval, send a *Notice of Contract Award for Bids and RFPs* (Form A-21) to the selected vendor to inform the company of the contract award. Set a time to discuss the details of the contract.
- _____ Step 26: The vendor must respond indicating receipt of the *Notice of Contract Award for Bids and RFPs* by submitting the completed and signed *Notice of Contract Award Acceptance for Bids and RFPs* (Form A-22).
- _____ Step 27: Send letters to the other vendors not selected to explain why their bid was rejected and to inform them that a vendor has been selected. Mail these letters on the same day as the *Notice of Contract Award*.
- _____ Step 28: The contract must be approved and signed by the Executive Director. The contract is the *Bid and Award Contract Form located* in the Invitation for Bid Package that was signed by the Contractor when the bid was originally submitted.
- _____ Step 29: Send the Contractor the *Notice to Proceed* (Form A-23).
- _____ Step 30: Maintain a correspondence file for correspondence with the Contractor and Sub-Contractors. When the project is completed, give correspondence and all other outstanding information and forms to the Procurement Officer to file in the Procurement Master Project File.
- _____ Step 31: Send two (2) copies of a letter to the vendor to sign in order to certify that all issues have been resolved. Use the *Closeout Letter Release from Liabilities, Obligations and Claims* (Form A-24) as a template. Specifically address any and all issues that were in dispute or not resolved. If you make changes to the letter provided and have questions regarding the letter's legality, ask the RTA counsel to review it before mailing it to the vendor. When the letter is returned, have the Executive Director sign the copies, retain one copy for the contract file and mail the second signed copy back to the vendor.
- _____ Step 32: Complete all Contract Closeout Procedures (refer to Chapter 7) and fill out the *Inspection and Acceptance Closeout Form* (Form A-25). The Procurement Officer will ensure that the contract file is

complete by finalizing the Master Contract File and completing the *Master Contract File Check List* (Form A-26).

3.3 LARGE PURCHASES (Exceeding \$100,000) – SEALED BIDS

Plan for thirty (30) to sixty (60) workdays to place the order.

- ◆ Large Purchases are purchases that cost \$100,000.01 or more.
- ◆ Primary Goal: To obtain the best quality products and service at minimum cost.
- ◆ Secondary Goal: To guard against favoritism and profiteering at public expense.
- ◆ Tertiary Goal: To provide equal opportunities for potential parties to participate in public business.
- ◆ This method of procurement allows for free and open competition.
- ◆ Use this procurement method for:
 - 1) Goods and Services that are clearly defined;
 - 2) Construction Projects; and
 - 3) Awards that can be made primarily based upon the price of the bid.
- ◆ Contracts that exceed \$100,000 shall be awarded by sealed bid or competitive negotiation unless there is an explicit exception.
- ◆ Advertise Invitation for Bid if the independent cost estimate exceeds \$100,000.
- ◆ The RTA Board of Directors is required to approve all contracts and procurements exceeding \$20,000 through an agenda item.
- ◆ For sealed bidding to be feasible, the following conditions must be present:
 - 1) A complete, adequate, and realistic specification or purchase description is available;
 - 2) Two or more responsible bidders are willing and able to compete effectively for the business;
 - 3) The procurement lends itself to a firm fixed price contract, and the successful bidder can be selected principally based on price;
 - 4) No discussion with the bidders is needed.
- ◆ Large Purchases require the following:
 - 1) Publicly advertise the Invitation for Bids, and solicit bids from an adequate number of known suppliers, and provide them enough time to prepare bids prior to the date set for opening the bids;
 - 2) The Invitation for Bids shall include specifications and pertinent attachments, and shall define the items or services sought so the bidder can properly respond;
 - 3) Award a firm fixed-price contract (lump sum or unit price) in writing to the lowest responsive and responsible bidder whose bid conforms with all the material terms and conditions of the Invitation For Bids. Factors such as discounts, transportation costs, and life cycle costs shall be considered in determining the lowest bid;
 - 4) Any or all bids may be rejected based upon a sound documented business decision.
- ◆ Large Purchases must comply with Buy America requirements and other Federal Clauses. (See Chapter 4.)
- ◆ RTA may not restrict competition by:
 - 1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - 2) Having an organizational conflict of interest;
 - 3) Requiring vendors to have unnecessary experience or unnecessary bonding; or

- 4) Giving preference in the evaluation of bids to in-state or local businesses, except in those cases where Federal statutes expressly mandate or encourage geographic preference. (This does not preempt State licensing law.)

3.3.1 Steps Involved in Making Large Purchases

When making a large purchase that exceeds \$100,000, complete each of the following steps. Place the date of completion for each step on the line provided.

_____ Step 1: Obtain budget approval and the Executive Director's signature on the Purchase Order.

_____ Step 2: Via e-mail, notify the Procurement Officer about the project and include a project description. Work closely with the Procurement Officer to complete and file forms in the Master Project File throughout the project.

_____ Step 3: Determine whether the purchase, service, or construction project exceeds \$100,000 by completing the *Independent Cost Estimate* (Form A-4.)

_____ Step 4: Determine the contract type by completing the *Justification for Contract Type* (Form A-5.)

_____ Step 5: Request that the DBE Officer assign a DBE (Disadvantaged Business Enterprise) goal to the project and place the DBE Goal on the Purchase Order. Print the appropriate DBEs from the DBE Source List on the Share Drive and attach the list to the requisition. (The DBEs listed on the DBE Source List are certified by RTA.)

_____ **Step 6: If the independent cost estimate exceeds \$20,000, the purchase must be approved by the RTA Board of Directors.** Prepare an agenda item for the Board Meeting.

_____ Step 7: Prepare the Specifications and Bid Package. (See Chapter 4 for more information regarding bid packages and use the *Invitation for Bid Boiler Plate* template.) Coordinate basic safety and user requirements with all RTA departments including the Safety Department. Include these safety and user requirements that interface with the procured facility, hardware, or system in the procurement specifications. Make sure the project complies with Configuration Management, and complete and sign Form A-6 for the Contract File. If the procurement involves rolling stock or other iron and steel products, the Specifications must include a clause whereby the contractor submits a letter of self-certification certifying compliance with FTA's Buy America standards. If the procurement involves technology, the Specifications must include a clause whereby the contractor submits a letter of self-certification

certifying compliance with National Architecture Standards (also Form A-6). When it is impractical or uneconomical to provide a clear and accurate description of the product, a "brand name or approved equal" description may be used. However, the buyer must still identify the minimum needs and clearly describe the essential physical and functional characteristics of the brand name product. If you must use a brand name in your specification, you may allow bidders to substitute an equal product with a different brand name. You may reserve the right to determine whether a particular brand or model is equal to the one you specified. If you use a brand name and allow equal brands, you must also specify the salient characteristics of the specified brand that will be among the criteria used in determining whether a suggested substitute is equal to the specified brand or not. (For more discussion, see *Best Practices Procurement Manual*)

The buyer may directly contact manufacturers to get assistance with identifying specifications. Document these transactions via a memorandum for the file.

- _____ Step 8: The **advertisement** for the large purchase competitive sealed bid must be published in newspapers published in in a local newspaper of general circulation in the central Oklahoma region at least twice, (once a week for two consecutive weeks) indicating the deadline date, time, and place by which bids will be received, and the date, time, and place where bids will be opened. Publish the first notification a minimum of fourteen (14) days before the Bid Opening Date. The second publication of a bid for a public works project (the construction, repair, or renovation of a structure, road, or other improvement or addition to real property) must be on or before the tenth (10th) day before the date the bid is to be opened and read aloud.
- (a) Fax Request for Bid Notice to the "Legal Notices" Section of in a local newspaper of general circulation in the central Oklahoma region with the dates to be published. It is a good idea to also call to make sure the fax was received.
 - (b) E-mail the notice to each Secretary of RTA beneficiaries on the day when the notice is sent to the newspapers.
 - (c) Place the legal notice(s) in the file.
 - (d) The advertisement must contain the following:
 - 1) The description of the work, goods, or services to be procured;
 - 2) The location at which the bidding documents, plans, specifications, or other documents may be examined by all bidders and time and place of the pre-bid conference (set

the pre-bid conference a minimum of ten (10) days after the first notice publication);

- 3) Approved Equal Deadline (set the deadline fourteen (14) days after the publication of the first notice);
- 4) The date, time, and place for submitting bids and the date, time (include the time zone), and place for the opening of competitive sealed bids;
- 5) DBE program requirements or goals;
- 6) Late bids will be returned unopened to the sender.

_____ Step 9: Send the advertisement to third parties on the RTA Source List (list of businesses interested in competing for various types of contracts) and the vendors on the DBE Source List. Make the Source List and DBE Source List available to the public upon written request. Document the Vendors to whom the advertisement for bid was sent on the *Vendor Solicitation List* (Form A-7.)

_____ Step 10: Send bid packages to third parties requesting bid packages. (See Chapter 4 for more information on bid packages.) List the vendors requesting bid packages on the *Bid Package/RFP Request List* (Form A-8). RTA can charge vendors for the bid packages to cover postage. The bid package shall the items listed in Chapter 4, Section 4.1.

_____ Step 11: To amend the bid package, see Chapter 4.

_____ Step 12: Hold a Pre-Bid Conference. The parties present must sign a sign-in sheet, *Sign in Sheet for Pre-Bid Conferences, Pre-Proposal Conferences, Bid Openings* (Form A-9). The purpose of the Pre-Bid Conference is to go over the technical specifications and answer any questions about the product, service, or project that the vendors may have. Hold the Pre-Bid Conference two or three days after the second public notice is published. Prepare an agenda prior to the Pre-Bid Conference. (For more information on the Pre- Bid Conference, see the *Best Practices Procurement Manual*.) Vendors are not normally required to attend the Pre- Bid Conference. In the event the project is unusually complex, and attendance is absolutely critical and required, make this requirement clear in the advertisement and the Bid Package, and thoroughly document the reasons for the mandatory attendance requirement to satisfy FTA reviews. Record minutes of the conference and send the minutes to the prospective offerors on the final solicitation mailing list.

_____ Step 13: Date and time stamp the sealed bids as received. Keep sealed bids in a safe and secure place until the bid opening.

- _____ Step 14: Keep a list of the responding vendors on the *Responding Vendors List* (Form A-10). Keep sealed bids sealed in a secure place until the bid opening.
- _____ Step 15: At the designated time and place, formally open and read aloud the sealed bids.
- _____ Step 16: Record the bids on the *Bid Tabulation* (Form A-11).
- _____ Step 17: Any sealed bids that reach RTA after the bid opening time and date must be mailed back to the source without opening. Complete the *Late Bids/Proposals List* (Form A-12). You may have a policy in your bid package that states, "late bids mailed via Fed-Ex or UPS that were guaranteed for delivery but were not delivered will be accepted upon receiving proof of guaranteed delivery date." If bids arrive late, send the vendor a letter and give them three days to respond and prove that they met the deadline requirements. If the vendor does not prove to have met the deadline requirements, send the bid package back to them unopened via certified mail.
- _____ Step 18: Complete the *Price Analysis Documentation for Small and Large Purchases* (Form A-13). This form certifies that adequate price competition was obtained by comparison of quotations and the low price is fair and reasonable.
- _____ Step 19: Determine the "Best Value" by selecting the lowest, most responsive bid that meets the specifications as stated in the Invitation for Bid. Complete *Determination of Best Value* (Form A-16). In determining which products or services are in RTA's best interest, the agency shall consider the following factors:
- a) installation costs and hardware costs;
 - b) the overall life cycle cost of the requested equipment;
 - c) the estimated cost of employee training and estimated increase in employee productivity;
 - d) estimated software and maintenance costs; and
 - e) criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.
- These factors are not the only ones you may use. Attach information to the agency file for future clarification of the award. (For more information on "responsive and nonresponsive bids" see *Best Practices Procurement Manual*.)
- _____ Step 20: If the lowest bid is not selected, document the reasons for the selection on the *Determination of Best Value* (Form A-16). If none of the bids are selected, document the reasons and begin the

bidding process over. Specifications may need to be amended. If a single bid or single responsive bid is received, refer to the *Best Practices Procurement Manual* in order to help determine fair and reasonableness of the bid and whether or not to accept the bid or reject the bid and begin the process again or abandon the project. If a single bid is received, an option is to return the bid unopened to the vendor and reject all bids and begin again. Do not negotiate bids as in a sole source procurement.

_____ Step 21: Allow for corrections to bids if there is a bid mistake such as minor informalities or irregularities discovered in bids prior to award -- such as a decimal in the wrong place, or obvious or apparent clerical mistakes discovered prior to award. If mistakes occur other than those listed above such as a subcontractor's quote left out of the bid, allow the contractor to withdraw the bid. If mistakes are discovered after the award is made, you may allow the contractor to withdraw the bid if caught early enough or handle it as a change order if the vendor will remain the responsible low bidder. In this case, tell the vendor that you will review the change and let them know by a date and time you set. You may want to ask legal counsel for advice.

_____ Step 22: Check to see if the selected bidder has not been debarred from working on Federal Contracts. Check the Federal Government's System for Award Management website at <https://www.sam.gov/SAM/> and search for entity exclusion records. Complete the *Contractor Verification* (Form A-17.)

_____ **Step 23: All contracts and procurements exceeding \$20,000 must be awarded by the RTA Board of Directors.** Prepare an agenda item for the Board meeting.

_____ Step 24: Following Board approval, send a *Notice of Contract Award for Bids and RFPs* (Form A-21) to the selected vendor to inform the company of the contract award. Set a time to discuss the details of the contract.

_____ Step 25: The vendor must respond indicating receipt of the *Notice of Contract Award for Bids and RFPs* by submitting the completed and signed *Notice of Contract Award Acceptance Bids and RFPs* (Form A-22).

_____ Step 26: Send letters to the other vendors not selected to explain the reasons their bids were rejected and to inform them that a vendor has been selected. Mail these letters on the same day as the *Notice of Award*.

- _____ Step 27: The contract must be approved and signed by the Executive Director. The contract is the *Bid and Award Contract Form* located in the Invitation for Bid Package that was signed by the Contractor when the bid was originally submitted.
- _____ Step 28: Send the vendor the *Notice to Proceed* (Form A-23).
- _____ Step 29: Maintain a correspondence file for correspondence with the Contractor and Sub-Contractors. When the project is completed, give correspondence and all other outstanding information and forms to the Procurement Officer to file in the Procurement Master Project File.
- _____ Step 30: Send two (2) copies of a letter to the vendor to sign in order to certify that all issues have been resolved. Use the Closeout *Letter Release from Liabilities, Obligations and Claims* (Form A-24) as a template. Specifically address any and all issues that were in dispute or not resolved. When the letter is returned, have the Executive Director sign the copies, retain one copy for the contract file and mail the second signed copy back to the vendor.
- _____ Step 31: Complete all Contract Closeout Procedures (refer to Chapter 7) and fill out the *Inspection and Acceptance Closeout Form* (Form A-25). The Procurement Officer will ensure that the contract file is complete by finalizing the Master Contract File and completing the *Master Contract File Check List* (Form A-26).

3.4 COMPETITIVE PROPOSALS (REQUEST FOR PROPOSALS)

- ◆ Plan for thirty (30) to sixty (60) workdays to place the order.
- ◆ Requests for Proposals are used to procure architectural and engineering services, technology, legal services, accounting services, insurance and in cases where the quality of the service outweighs price. (For more information, see *Best Practices Procurement Manual*.)
- ◆ The competitive proposal method is normally conducted with more than one source submitting an offer (proposal).
- ◆ Either a fixed price or cost reimbursement type contract is awarded.
- ◆ Request for Proposals must meet the following requirements according to FTA Circular 4220.1F, Chapter VI, Sec.3.d(2):
 - (a) Publicity. The request for proposals is publicly advertised.
 - (b) Evaluation Factors. All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
 - (c) Adequate Sources. Proposals are solicited from an adequate number of qualified sources.

- (d) Evaluation Method. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
 - (e) Price and Other Factors. An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.
 - (f) Best Value. If permitted under its State or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should base its determination of which proposal represents the "best value" on an analysis of the tradeoff of qualitative technical factors and price or cost factors. Apart from the statutory requirement that the contract must support the recipient's public transportation project consistent with applicable Federal laws and regulations, FTA does not require any specific factors or analytic process.
- ◆ An independent cost estimate is required for all purchases.
 - ◆ A cost analysis is required.
 - ◆ Proposers are required to submit corporate financial data and labor rates which proposers usually regard as privileged information. Therefore, treat all documentation received in response to Requests for Proposals as confidential. Should the need arise to share the contents of the proposal with another company or firm, first acquire permission in writing from a responsible official of the proposing firm. The RTA Procurement Officer will control the dissemination of proposals within RTA so that only staff with a demonstrable "need to know" have access to the proposals.
 - ◆ The RTA Board of Directors is required to approve all contracts and procurements exceeding \$20,000 through an agenda item.
 - ◆ For additional information on Request for Proposals, see the *Best Practices Procurement Manual*.

3.4.1 Steps Involved in Procuring Through Request for Proposals

Complete each of the following steps when soliciting proposals. Place the date of completion for each step on the line provided.

_____ Step 1: Obtain budget approval and the Executive Director's signature on the Purchase Order. The Executive Director's signature is also required for projects that exceed \$100,000.

_____ Step 2: Via e-mail, notify the Procurement Officer about the project and include a project description. Work closely with the Procurement Officer to complete and file forms in the Master Project File throughout the project.

- _____ Step 3: Determine the approximate project cost by completing the *Independent Cost Estimate* (Form A-4.)
- _____ Step 4: Determine the Contract Type by completing the *Justification for Contract Type* (Form A-5.)
- _____ Step 5: Request that the DBE Officer assign a DBE (Disadvantaged Business Enterprise) goal to the project and place the DBE Goal on the Purchase Order. Print the appropriate DBEs from the DBE Source List and attach the list to the requisition. (The DBEs listed on the DBE Source List are certified by RTA.)
- _____ **Step 6: If the independent cost estimate exceeds \$20,000, the purchase must be approved by the RTA Board of Directors.** Prepare an agenda item for the Board Meeting.
- _____ Step 7: For purchases exceeding \$20,000, inform the Procurement Officer via e-mail.
- _____ Step 8: Prepare the Request for Proposal (RFP) and specify the required and desired elements. Specify the weights that will be used to evaluate the proposals, (e.g., technical 40%, cost 20%, customer service 15%, training 15%, experience 10%). If the project has a limited budget, you may include a budget range in the RFP. Include the evaluation process in detail, the scoring methodology, and procedures to weigh price into selection. (For more information, see the *Best Practices Procurement Manual* Sec. 4. and Chapter 4 of this manual.) Include information about the Price Proposal in the Request for Proposals and include the *Contract Award Offer and Acceptance Form* (Form A-20) on which proposer's will submit their original price proposal in a separate sealed envelope. The RFP may also contain the statement, "The award of this contract may be made on the basis of initial proposals submitted without any negotiations or discussions." If necessary, in order to obtain firm commitments from proposers, you may wish to require that the offerors provide a proposal guaranty in the form of a letter of credit, cashier's check, or approved performance bond. Coordinate basic safety and user requirements with all RTA departments including the Safety Department. Include these safety and user requirements that interface with the procured facility, hardware, or system in the procurement specifications. Make sure the project complies with Configuration Management, and complete and sign Form A-6 for the Contract File. If the procurement involves technology, the Specifications must include

a clause whereby the contractor submits a letter of self-certification certifying compliance with National Architecture Standards (also Form A-6).

_____ Step 9: The advertisement for competitive proposals must be published in newspapers published in a local newspaper of general circulation in the central Oklahoma region at least twice, (once a week for two consecutive weeks) indicating the deadline date, time, and place by which bids will be received, and the date, time, and place where bids will be opened. Publish the first notification a minimum of fourteen (14) days before the Bid Opening Date. The second publication of a bid for a public works project (the construction, repair, or renovation of a structure, road, or other improvement or addition to real property) must be on or before the tenth (10th) day before the date the bid is to be opened and read aloud.

- (a) Fax Request for Bid Notice to the “Legal Notices” Section of a local newspaper of general circulation in the central Oklahoma region with the dates to be published. It is a good idea to also call to make sure the fax was received.
- (b) E-mail the notice to each Secretary of RTA beneficiaries on the day when the notice is sent to the newspapers.
- (c) Place the legal notice(s) in the file.
- (d) The advertisement must contain the following:
 - 1) The description of the work, goods, or services to be procured;
 - 2) The location at which the plans, specifications or other documents may be examined by all proposers and time and place of the pre-proposal conference (if a conference is needed) (include the time zone); (set the pre-proposal conference a minimum of ten (10) days after the first notice publication);
 - 3) Approved Equal Deadline (set the deadline fourteen (14) days after the publication of the first notice);
 - 4) State the evaluation criteria or categories in order of weight in the advertisement (see Step 7 above);
 - 5) The date, time (include the time zone), and place of the submission deadline and the timeframe for selection;
 - 6) DBE program requirements or goals;
 - 7) If you want the cost proposal separate from the technical proposal, state that you require a separate sealed cost proposal to accompany the technical proposal;
 - 8) Late proposals will be returned unopened to the sender.

- _____ Step 10: Send either the Request for Proposals or the advertisement to third parties on the RTA Source List (list of businesses interested in competing for various types of contracts) and the vendors on the DBE Source List. Make the Source List and DBE Source List available to the public upon written request. Document the Vendors to whom the advertisement for bid was sent on the *Vendor Solicitation List* (Form A-7.)
- _____ Step 11: Send the Request for Proposals (RFP) to third parties requesting the RFP. List the vendors requesting the RFP on the *Bid Package/RFP Request List* (Form A-8). The RFP shall contain the items listed in Chapter 4.
- _____ Step 12: Hold the Pre-Proposal Conference -- if needed. The parties present must sign a sign-in sheet *Sign in Sheet for Pre-Bid Conferences, Pre-Proposal Conferences, Bid Openings* (Form A-9). The purpose of the Pre-Proposal Conference is to go over the technical specifications and answer any questions about the product, service, or project that the vendors may have. Hold the Pre-Proposal Conference two or three days after the second public notice is published. Proposers are not normally required to attend the Pre-Proposal Conference. In the event the project is unusually complex, and attendance is absolutely critical and required, make this requirement clear in the advertisement and the Request for Proposal Package, and thoroughly document the reasons for the mandatory attendance requirement to satisfy FTA reviews. (For more information on the Pre-Proposal Conference, see the *Best Practices Procurement Manual*.) Record minutes of the conference and send the minutes to the prospective proposers on the final solicitation mailing list.
- _____ Step 13: Date and time stamp the proposals as received and keep them in a safe, secure location.
- _____ Step 14: Keep a list of the responding vendors on the *Responding Vendors List* (Form A-10).
- _____ Step 15: After the RFP submission deadline has passed, convene the proposal evaluation committee. Committee members must sign the *Compliance with the Conflict of Interest Policy* located in Chapter 2. Place signed copies in the Master File. The committee will select the proposer who is "most advantageous" with "price and other factors considered." (Price is not a consideration factor when procuring Architectural and Engineering Services under the Brooks Act -- see Section 3.5.) The selection committee must use the *Proposal Evaluation Criteria Form* (Form A-18), or your own variation of this form to score the proposals submitted. *The*

members of the committee shall remain confidential; therefore the committee members should not place their names on their evaluation forms. Committee members must use appropriate language on the forms. You may use weighted scores and pass-fail criteria on the evaluation form. Criteria generally include the following categories:

- a) Responsibility of the Firm -- financial, personnel, and physical capabilities to perform the contract (See *Best Practices Procurement Manual* for more detailed information),
- b) Technical Capability -- technical experience, suitability of the products or methods proposed, objective performance criteria such as fuel efficiency, percent savings guaranteed, etc.)
- c) Price -- except for Architectural and Engineering Services where the Brooks Act applies,
- d) Compliance with Federal and State Regulations, and
- e) Management -- qualifications of project managers, budget and schedule performance.

_____ Step 16: Any proposal that reaches RTA after the submission deadline must be mailed back to the source without opening. Complete the *Late Bids/Proposals List* (Form A-12). You may have a policy in your bid package that states, "late proposals mailed via Fed-Ex or UPS that were guaranteed for delivery but were not delivered will be accepted upon receiving proof of guaranteed delivery date." If proposals arrive late, send the vendor a letter and give them three days to respond and prove that they met the deadline requirements. If the vendor does not prove to have met the deadline requirements, send the bid package back to them unopened via certified mail.

_____ Step 17: Complete the *Cost Analysis Documentation* for Construction Contracts, RFPs, and Sole Source (Form A-14). This form certifies that adequate price competition was obtained by comparison of quotations and the low price is fair and reasonable. A cost analysis is performed when the offeror is required to submit the following elements: Labor Hours, Overhead, Materials, etc., of the estimated cost under professional consulting and architectural and engineering services contracts. Otherwise, complete the *Price Analysis Documentation* (Form A-13.) (see FTA Circular 4220.1F, Chapter VI, Sec. 6)

_____ Step 18: Select the responsible firm whose proposal is most advantageous to the program with price (unless the Brooks Act applies for A&E Services) and other factors considered. Make awards only to responsible contractors that have the ability to perform successfully under the terms and conditions of the proposed agreement. Consider the following in making the award: integrity,

compliance with public policy, record of past performance, financial and technical resources.

- _____ Step 19: If you must negotiate with the vendor, ask the Procurement Officer for help. If you enter discussions with one vendor that submitted a proposal, you must enter discussions with all the vendors that submitted proposals and are within the pre-identified competitive price range. Document your discussions thoroughly and complete the *Memorandum of Negotiations* (Form A-19). This memorandum will ensure that both parties agree upon the negotiated terms and conditions. Provide the questions to the proposers prior to the discussion. The members of the selection committee normally conduct the negotiations. Request best and final offers on the *Contract Award Offer and Acceptance Form* (Form A-20). Evaluate the final proposals. (See Chapter 6 on Contract Negotiations.) If there were no negotiations and the vendor fully meets the terms and conditions in the Request for Proposals, complete the information and signatures on the *Contract Award Offer and Acceptance Form* (Form A-20). The contract must be approved and signed by the Executive Director.
- _____ Step 20: If none of the proposals are selected, document the reasons and start the competitive proposal process over. The specifications in the RFP may need to be amended.
- _____ Step 21: If a critical error is found in the RFP during discussions, you may need to re-issue a revised statement of work and ask the proposers to resubmit proposals.
- _____ Step 22: Check to see if the selected offeror has not been debarred from working on Federal Contracts. Check the Federal Government's System for Award Management website at <https://www.sam.gov/SAM/> and search for entity exclusion records. Complete the *Contractor Verification* (Form A-17.)
- _____ Step 23: Award the contract when you and the vendor are in full agreement with the terms and conditions of the offer (See the next step.)
- _____ **Step 24: All contracts and procurements exceeding \$20,000 must be awarded by the RTA Board of Directors.** Prepare an agenda item for the Board meeting.
- _____ Step 25: Within five (5) working days following Board approval, send a *Notice of Contract Award for Bids and RFPs* (Form A-21) to the selected offeror to inform the company of the contract award. Set a time to discuss the details of the contract.

- _____ Step 26: The offeror must respond indicating receipt of the *Notice of Award for Bids and RFPs* by submitting the completed and signed *Notice of Contract Award Acceptance for Bids and RFPs* (Form A-22) within five (5) working days of receipt of same.
- _____ Step 27: Send letters to the other vendors not selected to thank them for their proposal, to explain the reasons their proposals were not selected, and to inform them that a vendor has been selected. Mail these letters on the same day as the *Notice of Award*. Use this opportunity to debrief the vendors not selected. By communicating a sense and fairness and appreciation to offerors who have spent time and resources in preparing a proposal, this action may preclude a protest by convincing a disappointed offeror that the decision of RTA was made carefully, is factually supported, and is in the best interest of RTA. It can also help offerors improve future proposals. If debriefing is conducted in person and a vendor's legal counsel is present, RTA should also have legal counsel present. If debriefing is over the telephone, assume that the conversation is being taped and ask if it is being taped (which is legal) and also ask who else is in the room. (See *Best Practices Procurement Manual* for more information regarding Method of Debriefing and information that can be disclosed.)
- _____ Step 28: Send the vendor the *Notice to Proceed* (Form A-23).
- _____ Step 29: Maintain a correspondence file for correspondence with the vendor. When the project is completed, give correspondence and all other outstanding information and forms to the Procurement Officer to file in the Procurement Master Project File.
- _____ Step 30: Send two (2) copies of a letter to the vendor to sign in order to certify that all issues have been resolved. Use the Closeout *Letter Release from Liabilities, Obligations and Claims* (Form A-24) as a template. Specifically address any and all issues that were in dispute or not resolved. If you make changes to the letter provided and have questions regarding the letter's legality, ask the RTA counsel to review it before mailing it to the vendor. When the letter is returned, have the Executive Director sign the copies, retain one copy for the contract file and mail the second signed copy back to the vendor.
- _____ Step 31: Complete all Contract Closeout Procedures (refer to Chapter 7) and fill out the *Inspection and Acceptance Closeout Form* (Form A-25). The Procurement Officer will ensure that the contract file is complete by finalizing the Master Contract File and completing the *Master Contract File Check List* (Form A-26).

3.4.2 Procurement of Architectural and Engineering Services (A&E)

- ◆ When architectural or engineering services costing less than \$10,000 are needed for a specific project, a qualified firm or individual will be selected on a rotation basis from a list of architects and engineers who have expressed an interest in doing business with RTA and who have completed and submitted an Architect-Engineer and Related Services Questionnaire (Industry Standard Form 254).
- ◆ Initial selection shall be based only on the demonstrated competence and qualifications of the person, including any firm, who is to provide the services. Price and/or number of man-hours must not be asked for or discussed during the initial selection phase. After the firm or individual is selected, a contract shall be negotiated (section 6.2.5) at a fair and reasonable price using *Memorandum of Negotiations* (Form A-19).
- ◆ When Contracting for Architectural, Professional Engineering Services, and Land Surveying, use the competitive proposal procedures based on the Brooks Act as defined in 40 U.S.C. §541 - 544. (For the Brooks Act, see <https://www.law.cornell.edu/uscode/text/40/subtitle-I/chapter-11>.) The Brooks Act requires that:
 - (1) An offeror's qualifications be evaluated, and selection is based upon qualifications not price;
 - (2) Price be excluded as an evaluation factor although the price must be fair and reasonable;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.
- ◆ This "qualifications-based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services. These requirements apply except to the extent any state adopts or has adopted by statute a formal procedure for the procurement of architectural and engineering services.
- ◆ Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer.
- ◆ Develop Scope of Work.
- ◆ Choose the contract type most appropriate for the project such as fixed price, cost reimbursement, time and materials, and labor hour contracts. (See *Best Practices Procurement Manual* for more information on contract types.)
- ◆ Requests for *Project Specific Qualification Statements* must be publicized. Include all evaluation factors in the published notification. (See the *Best Practices Procurement Manual* for more information on Qualification Statements and the Federal Standard Form 255 used to solicit and score project-specific qualifications.)
- ◆ Conduct discussions with no fewer than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required

services. Invite the short-listed firms to give oral presentations. Advise firms in advance of questions the committee will ask regarding the firm and its capabilities. The selection committee should have members with experience in architecture, engineering, construction, procurement, EEO program, related matters, and members from the operational departments that will ultimately use the project. Select the most qualified firm from this pool of firms based upon criteria established and published. If a reasonable price cannot be negotiated with the first firm, *formally terminate negotiations with that firm*, and proceed down the list in order of rank based upon qualifications until a price is negotiated.

To procure Architectural and Engineering Services, follow the procurement steps outlined above for Competitive Proposals (Request for Proposals) in Section 3.4.

3.5 NONCOMPETITIVE OR SOLE SOURCE PROCUREMENTS

- ◆ Noncompetitive or Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source or, after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with FTA Circular 4220.1F (see Chapter VI, Sec. 3.i(1)(b)).
- (1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - (a) Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
 - (b) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
 - (c) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - (d) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
- (2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.
- ◆ Avoid Sole Source procurements except in circumstances where it is both necessary and in the best interest of RTA.
- ◆ Make sure the item or service is needed to meet a requirement and is not merely desired as something "nice to have."

3.5.1 Steps Involved in Sole Source Procurements

Complete the following steps when making a Sole Source Procurement. Place the date of completion for each step on the line provided. You may have already performed Steps 1 through 6 if (d) above "After solicitation of a number of sources, competition is determined inadequate," is the reason for the sole source method of procurement.

_____ Step 1: Obtain budget approval and the Executive Director's signature on the Purchase Order. The Executive Director's signature is also required for projects that exceed \$100,000.

_____ Step 2: Via e-mail, notify the Procurement Officer about the project and include a project description. Work closely with the Procurement Officer to complete and file forms in the Master Project File throughout the project.

_____ Step 3: Determine the approximate project cost by completing the *Independent Cost Estimate* (Form A-4.)

_____ Step 4: Determine the Contract Type by completing the *Justification for Contract Type* (Form A-5.)

_____ **Step 5: If the independent cost estimate exceeds \$20,000, the purchase must be approved by the RTA Board of Directors.** Prepare an agenda item for the Board Meeting.

_____ Step 6: For purchases exceeding \$20,000, inform the Procurement Officer via e-mail.

_____ Step 7: Prepare the Invitation for Bid or the Request for Proposal (RFP) and specify the required and desired elements. (See Chapter 4 for more information regarding bid packages and use the *Invitation for Bid Boiler Plate* template or the *Request for Proposal Boiler Plate*.) Coordinate basic safety and user requirements with all RTA departments including the Safety Department. Include these safety and user requirements that interface with the procured facility, hardware, or system in the procurement specifications. Make sure the project complies with Configuration Management, and complete and sign Form A-6 for the Contract File. If the procurement involves technology, the Specifications must include a clause whereby the contractor submits a letter of self-certification certifying compliance with National Architecture Standards (also Form A-6). In Sole Source procurements, include the *Contract Award Offer and Acceptance Form* (Form A-20) in the ITB or the RFP.

_____ Step 8: Complete *Sole Source Procurement Justification* (Form A-15).

- _____ Step 9: Complete *Cost Analysis Documentation* (Form A-14). If price reasonableness can be established on the basis of a catalog or market price of a commercial product sold to the general public in substantial quantities or on the basis of prices set by law or regulation, complete the *Price Analysis Documentation* (Form A-13). (see FTA Circular 4220.1F, Chapter VI, Sec. 6)
- _____ Step 10: Check to see if the selected vendor has not been debarred from working on Federal Contracts. Check the Federal Government's System for Award Management website at <https://www.sam.gov/SAM/> and search for entity exclusion records. Complete the *Contractor Verification* (Form A-17.)
- _____ Step 11: Complete negotiations and come to full agreement with the terms and conditions in the Invitation for Bid or Request for Proposal and the offer. If RTA must first negotiate with the vendor to arrive at an agreement, complete the *Memorandum of Negotiations* (Form A-19), and have it signed by the vendor and RTA officers. This memorandum will ensure that both parties agree upon the negotiated terms and conditions. See Chapter 6, "Contract Negotiations," for more information.
- _____ **Step 12: All contracts and procurements exceeding \$20,000 must be awarded by the RTA Board of Directors.** Prepare an agenda item for the Board meeting.
- _____ Step 13: Within five (5) working days of Board approval, if needed, or signing the *Memorandum of Negotiations* (Form A-19), if the contract is \$20,000 or less, send a *Notice of Contract Award for Bids and RFPs* (Form A-21) to the selected vendor to inform the company of the contract award. Set a time to discuss the details of the contract.
- _____ Step 14: The vendor must respond indicating receipt of the *Notice of Contract Award for Bids and RFPs* by submitting the completed and signed *Notice of Contract Award Acceptance for Bids and RFPs* (Form A-22).
- _____ Step 15: If there were negotiations, complete the information and signatures on the *Contract Award Offer and Acceptance Form* (Form A-20). The contract must be approved and signed by the Executive Director. (A form included in the Bid Package or Request for Proposals Package acts as the solicitation, and when signed by both parties, becomes the contract. When this form becomes the formal contract, it must be signed by the Executive Director.)

- _____ Step 16: Send the vendor the *Notice to Proceed* (Form A-23).
- _____ Step 17: Maintain a correspondence file for correspondence with the vendor. When the project is completed, give correspondence and all other outstanding information and forms to the Procurement Officer to file in the Procurement Master Project File.
- _____ Step 18: Send two (2) copies of a letter to the vendor to sign in order to certify that all issues have been resolved. Use the Closeout *Letter Release from Liabilities, Obligations and Claims* (Form A-24) as a template. Specifically address any and all issues that were in dispute or not resolved. If you make changes to the letter provided and have questions regarding the letter's legality, ask the RTA counsel to review it before mailing it to the vendor. When the letter is returned, have the Executive Director sign the copies, retain one copy for the contract file and mail the second signed copy back to the vendor.
- _____ Step 19: Complete all Contract Closeout Procedures (refer to Chapter 7) and fill out the *Inspection and Acceptance Closeout Form* (Form A-25). The Procurement Officer will ensure that the contract file is complete by finalizing the Master Contract File and completing the *Master Contract File Check List* (Form A-26).

3.6 CONSTRUCTION PROJECTS

- ◆ For construction projects worth \$2,000 or more in which Federal funds are used, RTA must comply with the Davis-Bacon Act, which mandates that minimum prevailing wages must be paid to the various classes of laborers and mechanics for work performed as determined by the Secretary of Labor. The Davis Bacon Act (40 U.S.C. 276a to 276a-7) can be found on the internet at <http://www4.law.cornell.edu/uscode/40/276a.html>. The sections that apply are:
 - Sec. 276a. Rate of wages for laborers and mechanics
 - Sec. 276a-1. Termination of work on failure to pay agreed wages; completion of work by Government
 - Sec. 276a-2. Payment of wages by Comptroller General from withheld payments; listing contractors violating contracts
 - Sec. 276a-3. Effect on other Federal laws
 - Sec. 276c. Regulations governing contractors and subcontractors
- ◆ The Davis-Bacon Act is supplemented by the Code of Federal Regulations (29 CFR part 5), <http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=0048629461+12+0+0&WASAction=retrieve>.
- ◆ All contractors and subcontractors on construction projects are required to pay prevailing wages. In the Invitation for Bid, include the most current Prevailing Wage Scale for the labor classes required to complete the project. (For a hypothetical example, carpenters must be paid a minimum of \$12.27 per hour, sprinkler fitters must be paid a minimum of \$23.73 per hour, backhoe operators must be paid a minimum of \$9.50 per hour.) Over forty hours per week, time-and-a-half must be paid. To obtain the most current Prevailing Wages from the Department of Labor, contact the Wage & Hour Public Contract Division at (866) 487-9243.

- ◆ Work with the Department of Labor to ensure that contractors and subcontractors are paying each employee the prevailing minimum wage and the appropriate overtime pay. Interviews of the employees must be conducted to ensure compliance. Employees must be paid weekly through check or money order so there is a record of the pay. Good record keeping is critical in the event the Department of Labor audits RTA. Owners of companies who work on site are not required to pay themselves the prevailing wage.
- ◆ Determine insurance requirements (such as workers comp) if work is to be performed on RTA property. Complete the insurance page (page 2) of the "Request to Solicit Competitive Bids or Proposals" form. Also, contact the RTA Risk Management Coordinator for assistance with determining insurance needs.
- ◆ Follow the steps outlined for Small Purchases (Exceeding \$10,000) Section 3.2.2 or Large Purchases (Exceeding \$100,000), Sections 3.3 and 3.3.1, to procure a construction contractor.
- ◆ For information on bonding requirements, see FTA Circular 4220.1F, Chapter IV, Sec. 2.h(1).
- ◆ Include the Bidder's Questionnaire: Determination of Responsibility/Non-responsibility in the Bid Package (located in VII of the Bid Package.)

CHAPTER 4

BID PACKAGE AND

REQUEST FOR PROPOSAL

PROCEDURES

This chapter identifies recommended elements to be included in Invitation for Bid (IFB) Packages and Requests for Proposals (RFP).

4.1 INVITATION FOR BID COVER PAGE

Bid Packages will contain the following sections.

I ____ Cover Page including the following items:

- ____ Invitation for Bid Number (assigned by the RTA Procurement Officer) and the item to be procured,
- ____ RTA mailing address and physical address,
- ____ Date that the Invitation for Bid is issued,
- ____ Number of pages in the Invitation for Bid Package,
- ____ Bid Closing Date,
- ____ Bid Closing Time (indicate the prevailing local time),
- ____ Pre-Bid Meeting Date,
- ____ Pre-Bid Meeting Time (indicate the prevailing local time),
- ____ RTA Procurement Officer name and telephone number,
- ____ A space for the bidder's name and address,
- ____ Description of Invitation for Bid,
- ____ Place for bidder to acknowledge receipt of addenda, and
- ____ Section for the bidder's signature.

II ____ Bid and Award Contract Form. This form acts as the solicitation, and when signed by both parties, becomes the contract. This form must be signed by the Executive Director. Include the Type of Contract (See Appendix A, the second page of *Justification for Contract Type* (Form A-5)).

III ____ Affidavit and Penalty of Non-Collusion

IV ____ Solicitation, Offer and Award Boiler Plate containing the following sections:

Section A ____ Introduction and General Information -- Purpose and the history or background of the service. A general statement of the minimum experience and qualifications required of the contractor are also usually included in the introduction. For commodities, state the intended use of the item and the name of the using department.

1 ____ Scope -- Explain what RTA expects to accomplish from the contract. Give a brief overview of the work required and

define the extent of the service to be provided and the contract term.

- 2 ____ Contract Documents
- 3 ____ Notice, Waiver and Applicable Law
- 4 ____ Definition of Terms
- 5 ____ Compliance with Federal Requirements
 - 5.1 ____ General Compliance
 - 5.2 ____ Wage-Price Regulations
- 6 ____ Historically Underutilized Business Enterprise
- 7 ____ Ineligible Bidders

Section B ____ Instructions to Bidders

- 1 ____ Pre-Bid Conference
 - 1.1 ____ Pre-Bid Conference Date, Time, and Location
 - 1.2 ____ Attendance: Bidder's Responsibility, Not Mandatory
 - 1.3 ____ Accommodations for Persons with Disabilities
 - 1.4 ____ Pre-Bid Conference Agenda
- 2 ____ Bid Submittal
 - 2.1 ____ Delivery Procedures, Time and Date
 - 2.2 ____ Bid Requirements and Format (number of copies, sealed, etc.)
 - 2.3 ____ Pre-Award Investigation
 - 2.4 ____ Bid Preparation Costs
 - 2.5 ____ Bid Acceptance Period
 - 2.6 ____ Trade Secrets, Confidential Information, and the Public Information Act
 - 2.7 ____ Modification of Bid
 - 2.8 ____ Withdrawal of Bid
 - 2.9 ____ Unauthorized Conditions
 - 2.10 ____ Samples
- 3 ____ Bid Opening
 - 3.1 ____ Bid Opening Date, Time, and Location
 - 3.2 ____ Bid Opening Postponement, Amendment and Addenda
 - 3.3 ____ Public Opening of Bids
 - 3.4 ____ Rejection of Bids
 - 3.5 ____ Single Bid
- 4 ____ Examination of Documents and Requirements
 - 4.1 ____ Examination of ITB Documents
 - 4.2 ____ Bidder Responsibility to Examine Conditions and Requirements
 - 4.3 ____ Evidence of Responsibility
- 5 ____ Clarification of Requirements
- 6 ____ Addenda, and Modifications
- 7 ____ Protest Procedures
 - 7.1-7.5 ____ General Protest Procedures
 - 7.6 ____ Pre-Bid or Solicitation Phase Protest
 - 7.7 ____ Pre-Award Protest
 - 7.8 ____ Post-Award Protest

- 7.9 ___ Appeals
- 8 ___ Options (if applicable)
 - 8.1 ___ Evaluation of Options
 - 8.2 ___ Exercise of Options
- 9 ___ Award Procedure
- 10 ___ Execution of Contract and Bonds
 - 10.1 ___ Time Period for Execution of Contract and Filing Bonds
 - 10.2 ___ Performance Bond (for contracts exceeding \$100,000), and Payment Bond (for contracts utilizing subcontractors and exceeding \$10,000) Requirements, if any.
 - 10.3 ___ Bond Issued by Corporate Surety
 - 10.4 ___ Contract Commencement Date
 - 10.5 ___ Acceptance
 - 10.6 ___ Contract Termination for Convenience
 - 10.7 ___ Contract Termination for Default
 - 10.8 ___ Effect of Extensions of Time
 - 10.9 ___ Waiver
- 11 ___ Delivery of Goods or Service
 - 11.1 ___ Delivery Procedure
 - 11.2 ___ Delivery Schedule
- 12 ___ Service and Parts
 - 12.1 ___ Location of Nearest Technical Service Representative to RTA
 - 12.2 ___ Location of Nearest Parts Distribution Center to RTA
 - 12.3 ___ Policy for Delivery of Parts and Components to be Purchased for Service and Maintenance:
- 13 ___ Payment -- Note: The ITB may not include a ceiling budget or price; however, it may specify options that effectively limit the amount of funds RTA will spend.
 - 13.1. Payment Schedule
 - 13.2 Sales Tax Exemption
- 14 ___ Contractor Qualifications Including Description of Experience.
- 15 ___ Licenses, Permits, Taxes
- 16 ___ Information and Reports
- 17 ___ Motor Vehicle Clauses for In-Plant Quality Assurance Requirements -- Include the following elements as needed:
 - 17.1 ___ Quality Assurance Organization
 - 17.2 ___ Quality Assurance Functions
 - 17.3 ___ Standards and Facilities
 - 17.4 ___ Control of Purchases
 - 17.5 ___ Manufacturing Control
 - 17.6 ___ Inspection System
 - 17.7 ___ Resident Inspector
 - 17.8 ___ Remedies and Penalties

- 18 ____ Alternative Bid (Permission, if any, to submit alternative bids, including alternative material or design. The alternative bid must be in addition to the basic bid.)
- 19 ____ Equal Employment Opportunity
- 20 ____ Standard Department of Transportation Title VI Assurance
 - 20.1 ____ Compliance with Regulations
 - 20.2 ____ Nondiscrimination
 - 20.3 ____ Solicitations for Subcontracts
 - 20.4 ____ Sanctions for Noncompliance
 - 20.5 ____ Incorporation of Provisions in Subcontracts
- 21 ____ Disadvantaged Business Enterprise (DBE) Requirements
 - 21.1 ____ Equal Opportunity to Submit Bid
 - 21.2 ____ DBE Definition
 - 21.3 ____ DBE Requirements for Transit Vehicle Manufacturers
- 22 ____ Conflict of Interest
 - 22.1 ____ Prohibited Interest
 - 22.2 ____ Disclosure of Conflicts of Interest
 - 22.3 ____ Interest of Members of or Delegates to Congress
 - 22.4 ____ Covenant Against Contingent Fees
 - 22.5 ____ Covenant Against Gratuities
- 23 ____ Authorization to Bind Submitter of Bid
 - 23.1 ____ Bidder Name, Address, Officer Signature
 - 23.2 ____ Integral Part of the Contract
- 24 ____ Factors and Requirements to be Considered in the Evaluation of Bids (include shipping costs and how each factor will be evaluated)
- 25 ____ Prevailing Wage Rates Schedule for construction projects over \$2,000. (See Section 3.6 of this manual for more specific information.) Include a reference to the Davis-Bacon Act.
- 26 ____ Notice of Award
- 27 ____ Notice of Acceptance of Award
- 28 ____ Changes by Contractor
- 29 ____ Time Extensions
- 30 ____ Liquidated Damages
 - 30.1 ____ Liquidated Damages Compensation
 - 30.2 ____ Delays Beyond the Contractor's Control
- 31 ____ Contractor's Liability
- 32 ____ Approval by the Procurement Officer
- 33 ____ Defective or Damaged Work
- 34 ____ Damages
- 35 ____ Penalty for Failure to Complete Contract
- 36 ____ Infringement of Patents
- 37 ____ Assignment
- 38 ____ Warranty of Title
- 39 ____ Compliance with Laws and Regulations
- 40 ____ Miscellaneous Clauses for Motor Vehicles
 - 40.1 ____ Motor Vehicle Safety Standards
 - 40.2 ____ Motor Vehicle Pollution Standards

- 40.3 ___ Specifications (Omission and Priority)
- 40.4 ___ Modifications to Contract: Price Adjustment for Regulatory Changes
- 40.5 ___ Interchangeability
- 40.6 ___ Materials/Accessories Responsibility
- 40.7 ___ Service and Parts (Instructors, Engineers, Documents, and Spare Parts)
- 40.8 ___ Deliveries (Assumption of Risk of Loss, Acceptance)
- 40.9 ___ Repairs After Nonacceptance
- 40.10 ___ Title
- 40.11 ___ Patents
- 40.12 ___ Brand Names
- 40.13 ___ Past Performance
- 40.14 ___ Financial Stability
- 40.15 ___ Safety Certification
- 40.16 ___ Performance Data
- 40.17 ___ Price for a Complete Coach
- 40.18 ___ Specified Parts
- 41 ___ Motor Vehicle Clauses for Acceptance Tests
 - 41.1 ___ Acceptance Test, General
 - 41.2 ___ Predelivery Tests and Inspections
 - 41.3 ___ Post-Delivery Operation
- 42 ___ Motor Vehicle Clauses for Warranty Basic Provisions
 - 42.1 ___ Warranty Requirements
 - 42.2 ___ Voiding of Warranty
 - 42.3 ___ Exceptions to Warranty
 - 42.4 ___ Detection of Defects
 - 42.5 ___ Scope of Warranty Repairs
 - 42.6 ___ Fleet Defects
 - 42.7 ___ Guarantee and Inspections
- 43 ___ MBE Requirements for Transit Vehicle Manufacturers
- 44 ___ Specifications and Brand Names
 - 44.1 ___ Descriptive Not Restrictive
 - 44.2 ___ Certify Equivalency
 - 44.3 ___ Minor Deviations
 - 44.4 ___ Approved Brand List
 - 44.5 ___ Samples
- 45 ___ Federal Transit Administration Master Agreement Clauses. The complete FTA Master Agreement is located at: <http://www.fta.dot.gov/library/legal/agreements/2001/ma.html>. (For a copy of the Representations and Certifications: Mandatory Federal Clauses, see the *Best Practices Procurement Manual* Sec. 8) **Use the clauses for the specific type contracts as indicated.**
 - 1) Fly America Requirements (**All persons and property above and below \$100,000**)
 - 2) Buy America Requirements (Construction Contracts, Acquisition of Goods or Rolling Stock valued at more than \$150,000)

- 3) Charter Bus Requirements and School Bus Requirements (Operational Service Contracts only)
- 4) Cargo Preference Requirements (**All equipment, materials, or commodities**)
- 5) Seismic Safety Requirements (Construction of new buildings and additions to existing buildings)
- 6) Energy Conservation Requirements (**All contracts above and below \$100,000**)
- 7) Clean Water Requirements (All contracts over \$100,000)
- 8) Bus Testing (Acquisition of rolling stock/turnkey only)
- 9) Pre-Award and Post Delivery Audit Requirements (Rolling stock/turnkey only)
- 10) Lobbying (Contracts over \$100,000 for Construction, Architecture/Engineering, Acquisition of Rolling Stock, Professional Service, Operational Service, Turnkey)
- 11) Access to Records and Reports (**All contracts above and below \$100,000**)
- 12) Federal Changes (**All contracts above and below \$100,000**)
- 13) Bonding Requirements (Construction or facility improvement over \$100,000)
- 14) Clean Air (All contracts over \$100,000)
- 15) Recycled Products (All contracts for items designated by EPA worth **\$10,000** or more)
- 16) Davis-Bacon Act (All construction contracts over \$2,000)
- 17) Contract Work Hours and Safety Standards Act (Construction Contracts over **\$2,000**, Rolling Stock, Turnkey, and Operational Services over **\$3,000**)
- 18) Copeland Anti-Kickback Act (All **construction** contracts over **\$2,000**)
- 19) No Government Obligation to Third Parties (**All contracts above and below \$100,000**)
- 20) Program Fraud and False or Fraudulent Statements and Related Acts (**All contracts above and below \$100,000**)
- 21) Termination (All contracts exceeding **\$10,000**, except nonprofits and Institutions of Higher Education must exceed \$100,000)
- 22) Government-wide Debarment and Suspension (Nonprocurement) (All contracts over \$100,000)
- 23) Privacy Act (**All contracts above and below \$100,000**)
- 24) Civil Rights Requirements (**All contracts above and below \$100,000**)
- 25) Breaches and Dispute Resolution (All contracts over \$100,000)
- 26) Patent and Rights in Data (Research projects to develop a product or information that is not capital or operating)
- 27) Transit Employee Protective Agreements (Each contract for transit operations performed by employees of a contractor recognized by FTA as a transit operator. The use of this clause must be determined by FTA: 817/978-0560)
- 28) Disadvantaged Business Enterprises (DBE) (**All DOT**)

- assisted contracts)
- 29) State and Local Law Disclaimer (All contracts above and below \$100,000)
- 30) Incorporation of Federal Transit Administration (FTA) Terms (All contracts above and below \$100,000)
- 31) Drug and Alcohol Testing (All Operational Service contracts)

Section C ____ General Conditions (Paragraphs 1 through 26)

Section D ____ Bidder Unable to Respond Form

V Specification: a description of the supplies or services to be furnished in sufficient detail to permit open, full and free competition and should include methods and timing of testing and inspecting. (See Section 4.4 for more detail).

Section A ____ Technical Specification -- Include the following requirements as needed:

- 1 ____ Design Features and Requirements: List all design requirements, including materials, manufacturing standards and directions, dimensions, physical characteristics of all kinds, and workmanship standards.
- 2 ____ Performance Requirements and Characteristics: List all functional needs and performance requirements and include work-related needs which the item must achieve.
- 3 ____ Other Requirements: List any requirements not covered in the first two sections.

Section B ____ Applicable Documents: List all documents, plans, drawings, specifications, etc., that have been referenced in the specification, including title, edition or issue number, year of publication and publisher or originating organization. If necessary, state where the document(s) are located.

Section C ____ Definitions that define technical and critical terms where necessary.

VI ____ Addenda as issued.

VII ____ Legal Documents and Other Documents:

- ☐ Insurance Requirement Affidavit
- ☐ Statutory Payment Bond
- ☐ Statutory Performance Bond
- ☐ Certificate of Insurance
- ☐ Contractor Checklist
- ☐ Required Workers' Compensation Coverage
- ☐ Contract
- ☐ Bidder's Questionnaire: Determination of Responsibility/Non-responsibility

4.2 REQUEST FOR PROPOSALS PACKAGE

Request for Proposals will contain the following sections.

- I. ____ Cover Page including the following items:
- ____ RFP Number (assigned by the RTA Procurement Officer) and the item or service to be procured;
 - ____ RTA mailing address and physical address;
 - ____ Date that the Request for Proposal is issued;
 - ____ Number of pages in the Request for Proposal;
 - ____ RFP Closing Date;
 - ____ RFP Closing Time (indicate the prevailing local time);
 - ____ Pre-Proposal Meeting Date;
 - ____ Pre-Proposal Meeting Time (indicate the prevailing local time);
 - ____ RTA Procurement Officer name and telephone number;
 - ____ A space for the proposer's name and address;
 - ____ Description of Request for Proposal {Project Title};
 - ____ Place for proposer to acknowledge receipt of addenda; and
 - ____ Section for the proposer's authorized signature.

- II. ____ Solicitation, Offer and Award Boiler Plate containing the following sections:

Section A. ____ Instructions to Offerors

1. ____ Proposal Delivery, Time & Date
2. ____ Pre-Proposal Conference
3. ____ Clarification of Requirements
4. ____ Addenda & Modifications
5. ____ Examination of Documents and Requirements
6. ____ Proposal Copies
7. ____ Proposal Preparation Costs
8. ____ Trade Secrets, Confidential Information, and the NM Public Information Act
9. ____ Disadvantaged Business Enterprise (DBE) Requirements
10. ____ Year 2000 Compliance and National Architecture Compliance
11. ____ Conflict of Interest
12. ____ Anti-Lobbying Provision
13. ____ Authorization to Bind Submitter of Proposal
14. ____ Evaluation Process
15. ____ Selection
16. ____ Award Procedure and Contract
17. ____ Equal Employment Opportunity
18. ____ Competitive RFP Procedures for Architectural and Professional Engineering Services Contracts Exceeding \$10,000 **{use only if needed}**
19. ____ Architecture and Professional Engineering Services Contracts for Services Costing less than \$10,000 **{use only if needed}**

Section B. ___ General Requirements:

1. ___ Intent
2. ___ Project Description: history or background of the item or service to be procured. Describe the project in detail, using department, etc.
3. ___ Purpose of the Project: Describe how RTA will use the product or service
4. ___ Scope of Work: Provide a brief overview of the work required and define the extent of the service to be provided. Describe the functions of the project management team.
5. ___ Duration of Contract
6. ___ Options
7. ___ Project Methodology
8. ___ Evaluation Criteria; Proposal Evaluation Criteria Form
9. ___ Proposal Format

III. ___ Price Proposal and *Contract Award Offer and Acceptance Form*

IV. ___ Federal Transit Administration Master Agreement Clauses (The complete FTA Master Agreement located at <http://www.fta.dot.gov/library/legal/agreements/2001/ma.html>. For a copy of the Representations and Certifications: Mandatory Federal Clauses, see the *Best Practices Procurement Manual*) **Use the clauses for the specific type contracts as indicated.**

- 1) Fly America Requirements (**All persons and property above and below \$100,000**)
- 2) Buy America Requirements (Construction Contracts, Acquisition of Goods or Rolling Stock valued at more than \$150,000)
- 3) Charter Bus Requirements and School Bus Requirements (Operational Service Contracts only)
- 4) Cargo Preference Requirements (**All equipment, materials, or commodities**)
- 5) Seismic Safety Requirements (Construction of new buildings and additions to existing buildings)
- 6) Energy Conservation Requirements (**All contracts above and below \$100,000**)
- 7) Clean Water Requirements (All contracts over \$100,000)
- 8) Bus Testing (Acquisition of rolling stock/turnkey only)
- 9) Pre-Award and Post Delivery Audit Requirements (Rolling stock/turnkey only)
- 10) Lobbying (Contracts over \$100,000 for Construction, Architecture/Engineering, Acquisition of Rolling Stock, Professional Service, Operational Service, Turnkey)
- 11) Access to Records and Reports (**All contracts above and below \$100,000**)
- 12) Federal Changes (**All contracts above and below \$100,000**)
- 13) Bonding Requirements (Construction or facility improvement over \$100,000)
- 14) Clean Air (All contracts over \$100,000)
- 15) Recycled Products (All contracts for items designated by EPA worth **\$10,000** or more)
- 16) Davis-Bacon Act (All construction contracts over \$2,000)
- 17) Contract Work Hours and Safety Standards Act (Construction Contracts over **\$2,000**, Rolling Stock, Turnkey, and Operational Services over **\$3,000**)
- 18) Copeland Anti-Kickback Act (All **construction** contracts over **\$2,000**)
- 19) No Government Obligation to Third Parties (**All contracts above and below**

\$100,000)

- 20) Program Fraud and False or Fraudulent Statements and Related Acts (**All contracts above and below \$100,000**)
- 21) Termination (All contracts exceeding \$10,000, except nonprofits and Institutions of Higher Education must exceed \$100,000)
- 22) Government-wide Debarment and Suspension (Nonprocurement) (All contracts over \$100,000)
- 23) Privacy Act (**All contracts above and below \$100,000**)
- 24) Civil Rights Requirements (**All contracts above and below \$100,000**)
- 25) Breaches and Dispute Resolution (All contracts over \$100,000)
- 26) Patent and Rights in Data (Research projects to develop a product or information that is not capital or operating)
- 27) Transit Employee Protective Agreements (Each contract for transit operations performed by employees of a contractor recognized by FTA as a transit operator. The use of this clause must be determined by FTA: 817/978-0560)
- 28) Disadvantaged Business Enterprises (DBE) (**All DOT assisted contracts**)
- 29) State and Local Law Disclaimer (**All contracts above and below \$100,000**)
- 30) Incorporation of Federal Transit Administration (FTA) Terms (**All contracts above and below \$100,000**)
- 31) Drug and Alcohol Testing (All Operational Service contracts)

V. ____ Proposer Unable to Respond Form

VI. ____ Addenda

VII. ____ Legal Documents and Other Documents

4.3 AMENDING THE IFB OR RFP

Any bidder in doubt of the true meaning of any part of the specifications or other documents may request an interpretation from the RTA Procurement Officer. If the Procurement Officer finds that the interpretation is substantive or that a mistake has been made, the Procurement Officer will issue a written addendum to all bidders that received the original Invitation for Bid or Request for Proposal. The addendum will become part of the Invitation for Bid Package or Request for Proposal and will have the same binding effect as provisions of the original document. No verbal explanations or interpretations will be binding. In order for a request for interpretation be considered, the request must be submitted in writing and must be received by the RTA Procurement Officer no later than five (5) days prior to the bid or proposal due date. RTA does not assume responsibility for the receipt of addendum sent to bidders or proposers. A copy of all addenda issued must be signed and returned with the bidder's bid or proposal. The bidder must also acknowledge receipt of the addenda by initialing the appropriate place on the Invitation for Bid or Request for Proposal cover sheet.

4.4 SPECIFICATIONS

Specifications provide clear guides to purchasing and provide vendors with firm criteria of minimum product or service acceptability. A specification is a concise statement of a set of requirements to be satisfied by a product, material, or a process indicating, whenever appropriate, the procedure by means of which it may be determined whether the requirements given are satisfied. As far as practicable, it is desirable that the requirements be expressed numerically in terms of appropriate units together with the

limits. Specifications are intended to serve as a means of assuring that the items purchased have the desired quality and performance characteristics.

4.4.1 Specification Criteria

A good specification has four characteristics:

- 1) **It sets the minimum acceptability of the good or service.** The term "minimum acceptability" is key, since the vendor must know the minimum standard in order to determine what to provide. Too high a standard means tax dollar will be wasted. Too low a standard means the good or service will not meet the user's expectations. Standardization is the process of establishing agreement on the characteristics and quality of the products to be purchased. The justification for any standardization program is savings. Some of the cost reduction features of a good standardization program are larger quantities of fewer goods categories, more economical buying, flexibility of inventory, reduction of purchasing time, lower departmental operating costs, and reduced inventories.
- 2) **It should promote competitive bidding.** The maximum number of responsible vendors should be able to bid to the specification. Restrictive specifications decrease competition.
- 3) **It should contain provisions for reasonable tests and inspections for acceptability of the good or service.** The methods and timing of testing and inspecting must be indicated in the specification. Whenever possible, tests should refer to nationally recognized practices and standards.
- 4) **It should provide for an equitable award to the lowest responsible and responsive bidder.** The buyer obtains goods or services that will perform to expectations, and the vendor is able to provide the goods or services at an equitable agreed price.

Use the following checklist to ensure that a specification meets the four criteria stated above.

- ☐ It is simple, consistent, and specific enough that a loophole will not allow a bidder to evade any of the provisions and thereby take advantage of competitors or RTA.
- ☐ The specification includes 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 that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- ☐ Detailed product specifications should be avoided if at all possible.
- ☐ It identifies, when possible, several brand names or a specification already on the market. When brand names are used, the bid shall clearly indicate that the intent is not to restrict competition and that other brands and models of the same general type and function will be acceptable. A "brand name or equal" description may be used only when RTA cannot provide an adequate specification or more detailed description without performing an inspection and analysis in time for the acquisition

under consideration. Further, if a "brand name or equal" is used, the specification must carefully identify the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation. Include an "or equal" or "or approved equal" clause to safeguard against restricting competition. Specifications shall not be restrictive to a single brand or vendor or be labeled "NO SUBSTITUTE." If such restriction is necessary, a sole-source purchase is involved and requires a detailed justification that describes why only one supplier or brand can fill the need. This justification shall contain specific information regarding the peculiarities of the purchase, such as a supplier's unique capability, critical time schedules, which cannot be met by other suppliers, or patent/copyright considerations. (For information on Sole Source Procurements, see Section 3.5.) (See the *Best Practices Procurement Manual* for more information on Brand Names and Approved Equals.)

- Describe the method of checking the specification, which will govern acceptance or rejection. A specification which cannot be checked is of little value, and where checking methods vary in accuracy, only confusion can result.
- Allow for reasonable tolerances. Unnecessary precision is expensive.
- The specification is as fair to the vendor as possible.
- Several bidders are capable of meeting the specification for the sake of competition.
- The specification is clear. Misunderstandings are expensive. The specification must be understandable to both the vendor and the RTA department that will use the product or service.

4.4.2 Where to Obtain Specifications

The RTA department may have to write its own specifications. However, it is recommended that departments attempt to obtain existing specifications, at least to get some ideas. Specifications may be obtained from the following sources:

- ◆ Other local governments - Contact cities, counties or other governmental entities. Your best friends are other governmental purchasing agents.

- ◆ The Federal Government:

General Services Administration
Specifications Unit (WFSIS)
Health
7th and D Streets, S.W., Room 6654
Washington, D.C. 20407
202/708-9205

Department of Health and Human Services
National Institute for Occupational Safety & Health
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226

(Note: If requesting specifications, please include a stick-on label with your return address.)

GSA Spec Activity Service
Naval Weapons Plant Avenue
Room 3197 19111
Building 301
Washington, D.C. 20407

Department of Defense
Naval Publications and Forms Center
5801 Tabor Avenue
Philadelphia, PA 19102
215/696-3321

Defense Printing
700 Robins
Philadelphia, PA
215/697-2179

- ◆ Trade associations and vendors. If using vendor's specifications, try to remove any "vendor bias", e.g. specifications which fit only one brand name.
- ◆ Other public or private standards and specifications writing associations - such as Underwriters Laboratories, American National Standards Institute.

- ◆ Professional associations for procurement managers - such as National Purchasing Institute, National Institute for Governmental Purchasing.

4.4.3 Types of Specifications

The following are the most commonly used types of specifications. A single specification may be a combination of two or more of these types, especially the first two.

- ◆ Design Specifications - detailed descriptions of a good or service, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients and all other details needed for the provider to produce an item of minimum acceptability. Design specifications are usually required for construction projects and custom produced items and for many services.
- ◆ Performance Specifications - where the goods and/or services are described in terms of required performance. They may include such details as required power, strength of material, test methods and standards of acceptability and recommended practices.
- ◆ Combination Specifications - contains elements of both design and performance specifications. Some features of each are included to allow a vendor to use ingenuity to meet performance needs and also to require certain necessary design characteristics. This is probably the most common type of specification.
- ◆ Brand-Name Specifications - list a good or service by brand name, model, and other identifying specifics, in order to limit the bidding to a single preferred product. Since this type of specification discourages competition, it should not be used unless the item is the only one which will satisfy the requirements of RTA. This type of specification is useful for purchasing replacement parts where only the brand name item will work.
- ◆ Brand-Name or Equal Specifications - similar to brand-name specifications, except that products equal to the characteristics of the named brand are specified as acceptable.
- ◆ Qualified Products List Specifications - based on a list of products, identified by manufacturers' name and model numbers, which are the only items that will be acceptable. These are used when quality is such a critical factor and testing so lengthy or expensive that RTA wants to stay with proven products. The list is prepared by testing products, either in the lab or in daily use. Items may be added to the list by the vendor demonstrating their quality in comparison to those on the list.
- ◆ Approved Product List Specifications - See Qualified Products List Specifications.
- ◆ Standard Specifications - a single specification for one or more goods/services that are ordered on a recurring basis and that have the same general purpose. The same specification is used each time an order is placed, or bids are advertised. Examples are office supplies, paper, janitorial supplies and copier service contracts. Standardized specifications will usually be complete and more detailed than one-time specifications.
- ◆ Qualified Bidder - Specifying the minimum qualifications that a bidder must meet in order to be eligible for award is used primarily for major construction projects and service contracting. Experience, references, qualifications, and evidence of financial stability required of each bidder must be completely described. Avoid using

qualification criteria that are not based on a contractor's ability to provide the service or that limit competition.

4.4.4 Specification Writing

Try to obtain an existing specification before starting to write a new one, you will almost always have to do some specification writing or rewriting. This section will help you accomplish this task as simply and efficiently as possible.

Step 1. Determine that an acceptable specification is not available and a new one must be written or an old one must be revised.

Step 2. Gather data for the specification. Sources are:

- a. using department - Determine their needs and requirements;
- b. vendors and manufacturers;
- c. trade associations for that commodity, service or product;
- d. other local government, state, federal and Canadian specifications and standards;
- e. private or public standards-writing organizations, such as:
 - (1) ASTM - American Society for Testing and Materials
1916 Race Street
Philadelphia, Pennsylvania 19103
 - (2) SAE - Society of Automotive Engineers
 - (3) ASHRAE - American Society of Heating, Refrigeration and air-conditioning Engineers
 - (4) Many, many others. Contact the vendor for the commodity or a trade association for the commodity for information.

Step 3. Analyze and evaluate the data based on the government's requirements.

Step 4. Decide on parameters for the item of service and set minimum levels of acceptance so that the items purchased will meet the needs of RTA.

Step 5. Write the proposed specification. Use a standard format for all specifications to ensure uniform preparation and to promote easier understanding by users of the specification.

- a. Specifications should always be written to encourage competition by containing as little restrictive language as possible.
- b. Use U.S. Industry and national standards and measures where appropriate to describe the items.

Step 6. Where applicable, and especially for standardized specifications, circulate the specification to:

- a. all potential users
 - b. buyers in the purchasing office
- Request their comments. Users should comment on unsatisfactory aspects of the specification to avoid protests later.

Step 7. Analyze and evaluate comments on the proposed specification:

- a. tabulate recommended changes
- b. evaluate the effect on proposed specification
- c. discuss with users and buyers

Step 8. Change proposed specification, and

- a. if necessary, re-circulate new proposed specification. Go back to Step 6, or
- b. if only minor changes, prepare final version.

Step 9. Assign specification number.

STANDARDS WRITING ORGANIZATIONS

American Bar Association (ABA)
D.C. Bar, 1800 M Street, N.W.
Suite 200 (South Lobby)
Washington, D.C. 20036
202/331-2200

American National Standards Institute
11 West 42nd Street, 13th Floor
New York, NY 10036
212/642-4900

American Society for Testing and Materials (ASTM)
1916 Race Street
Philadelphia, PA 19103
215/299-5400

American Society of Mechanical Engineers
345 East 47th Street
New York, NY 10017
212/705-7000

American Welding Society (AWS)
550 N.W. 42nd Avenue
Miami, FL 33126
305/443-9353

Electronic Industries Association (EIA)
2001 Pennsylvania Street, N.W.
Washington, D.C. 20006
202/457-4900

Engineering Societies Library (ESL)
345 East 47th Street
New York, NY 10017
212/705-7611

OTHER SOURCES OF SPECIFICATIONS INFORMATION

American Institute of Steel Construction
Rt. 1 East Wacker Drive, Suite 3100
Chicago, IL 60601-2001
312/670-2400

American Water Works Association
6666 West Quincy Ave
Denver, CO 80235
303/794-7711

Mfrs Standardization Society of the Valve
Purchasing
and Fittings Industry
127 Park Street, N.E.
Vienna, VA 22180
703/281-6613

National Fire Protection Association
Battery March Park
Quincy, MA 02269
617/770-3000

National Institute of Standards & Technology
Gaithersburg, MD 20899
301/975-2000

National Fire Protection Association (NFPA)
Battery March Park
Quincy, MA 02269
800/344-3555

National Standards Association, Inc. (NSA)
1200 Quince Orchard Blvd.
Gaithersburg, MD 20878
301/590-2300

National Technical Information Service
5285 Port Royal Road
Springfield, VA 22161
703/487-4600

Society of Automotive Engineers (SAE)
400 Commonwealth Drive
Warrendale, PA 15096
412/776-4841

Underwriters Laboratories, Inc. (UL)
Public Information Service
333 Pfingsten Road
Northbrook, IL 60062

Intl Coalition for Procurement Standards
(ICPS)
1916 Race Street
Philadelphia, PA 19103
215/299-5524

American Petroleum Institute
1220 L Street, N.W.
Washington, D.C. 20005
202/682-8000

American Society of Agricultural Engineers
2950 Niles Road
St. Joseph, MI 49085
616/429-0300

National Institute of Governmental
115 Hillwood Ave
Suite 201
Falls Church, VA 22046
703/533-7300

Public Technology, Inc.
1301 Pennsylvania Ave, N.W., Suite 704
Washington, D.C. 20004
202/626-2400

CHAPTER 5

DISPUTE AND PROTEST PROCEDURES

According to FTA Circular 4220.1F, Chapter VII (page VII-1, par. 2), "In general, FTA will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. Examples of "Federal concerns" include, but are not limited to, situations "where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste, or fraud." Nevertheless, FTA can become involved in the recipient's administrative decisions when a recipient's protest decision is appealed to FTA, or when the recipient seeks to use FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation." **In all instances, RTA shall disclose information regarding protests to FTA via memorandum.**

Potential bidders, contractors, or proposers can lodge written protests as a remedy to correct a perceived wrong that may have occurred during the procurement process. RTA will accept and review the protest with the understanding that the integrity of the procurement process may be at stake. RTA will use the following procedures to resolve disputes in the attempt to avoid FTA involvement or litigation.

All protests lodged by potential or actual bidders, contractors, or proposers must be made in writing and contain the following information:

- ◆ Name, address, and telephone number of the protester.
- ◆ Identification of the solicitation or contract number and title.
- ◆ A detailed statement of the protest's legal and factual grounds, including copies of relevant documents.
- ◆ Identification of the issue(s) to be resolved and statement of what relief is requested.
- ◆ Argument and authorities in support of the protest.
- ◆ A statement that copies of the protest have been mailed or delivered to all interested parties in the Invitation for Bid or Request for Proposal process. In the case of Requests for Proposals, the RTA Procurement Officer shall direct the protester to mail or deliver the protest to relevant parties.

Mail the protest to:
Procurement Officer
RTA

OR

Overnight or hand deliver the protest to:
Procurement Officer
RTA

Faxed or e-mailed protests will not be accepted.

The RTA Procurement Officer will respond, in written detail, with counterclaims to each substantive issue raised in the protest. The Procurement Officer will also perform the following analysis:

- ◆ Price Analysis or Cost Analysis for each claim.
- ◆ Technical Analysis to determine the validity of the claim(s) and determine the appropriate response(s).
- ◆ Legal Analysis to consider all the factors available after the price, cost and technical analyses have been conducted to determine the contractor's, RTA, and FTA's legal positions.

(For more information on developing a position and how to handle liquidated damages, refer to the *Best Practices Procurement Manual*.)

The Executive Director has the authority to render the final determination regarding the protest. Any determination rendered by RTA will be final. The Federal Transit Administration will entertain appeals only in cases stated below in Section 5.4.

51 PRE-BID OR SOLICITATION PHASE PROTEST

A Pre-Bid or Solicitation Phase Protest must be received in writing by the RTA Procurement Officer a minimum of five (5) full workdays prior to the bid opening or proposal due date. If the written protest is not received in the time specified, the award may be made following normal procedures, unless the Procurement Officer, upon investigation, determines that remedial action is required on the grounds of fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement system, and said action should be taken. Within three (3) workdays from the time the protest is received, the RTA Procurement Officer will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The Procurement Officer will respond to the protest in writing within five (5) working days from the time the protest was received. If the Procurement Officer decides to withhold the award pending the resolution of the protest, the Procurement Officer may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, in order to avoid to the need for re-advertising.

RTA will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation period, unless RTA determines that:

- ◆ The items or services to be procured are urgently required;
- ◆ Delivery or performance will be unduly delayed by failure to make the award promptly; or
- ◆ Failure to make the award will otherwise cause undue harm to RTA or the federal government.

The Procurement Officer will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties where deemed necessary.

52 PRE-AWARD PROTEST

Protests may be lodged after the Bid Opening or Close of Request for Proposal deadline and prior to Notice of Award. Within three (3) workdays from the time the protest is received, the RTA Procurement Officer will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The Procurement Officer will respond to the protest in writing within five (5) working days from the time the protest was received. If the Procurement Officer decides to withhold the award pending the resolution of the protest, the Procurement Officer may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, in order to avoid the need to re-advertise.

RTA will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation process, unless RTA determines that:

- ◆ The items or services to be procured are urgently required;
- ◆ Delivery or performance will be unduly delayed by failure to make the award promptly; or
- ◆ Failure to make the award will otherwise cause undue harm to RTA or the Federal Government.

The Procurement Officer will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties where deemed necessary.

53 POST-AWARD PROTEST

RTA Procurement Officer will receive protests in writing within three (3) working days after the Notice of Award and letters of notification should have been received by bidders or proposers. Upon receipt of a protest, the Procurement Officer shall notify the bidder or proposer awarded the contract. The Procurement Officer will render a determination to proceed with the contract or suspend the project until the protest is resolved. The Procurement Officer will respond to the protest in writing within five (5) working days after receipt of the protest.

54 APPEALS

The RTA Procurement Officer has the authority to settle any dispute and resolve the protest. The Procurement Officer may solicit written responses regarding the protest from other parties. If this course of action does not result in a satisfactory resolution, the Protester may appeal in writing to the RTA Executive Director within three (3) working days after the Procurement Officer issues a final decision. The Executive Director or Assistant Executive Director will issue a decision within five (5) working days after receipt of the appeal.

RTA may elect to involve legal counsel or arbitration and mediation consultants to resolve the issue(s).

The Protester may appeal in writing to the Federal Transit Administration (FTA) if:

- ◆ The Protester has exhausted all administrative remedies with RTA, and

- ◆ RTA has failed to follow its protest procedures or failed to review a complaint or protest.

The Protester's appeal must be received by the FTA Region VI Office within five (5) working days of the date the Protester knew or should have known of the violation.

Office of Operations and Program Management
U.S. Department of Transportation
Federal Transit Administration Region VI
819 Taylor Street, Suite 8A36
Ft. Worth, Texas 76102
Phone: (817) 978-0550

When the Protester sends an appeal to FTA, the Protester must also send copy of the appeal to the RTA Procurement Officer within the same timeframe. In the event of a protest, the Procurement Officer will contact FTA to check whether or not an appeal has been made.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of state or local authorities.

In the event that data becomes available that was not previously known, or there has been an error of law or regulation, RTA will grant an allowance for request for reconsideration.

55 NOTIFICATION OF FTA IN DISPUTE MATTERS

The FTA Master Agreement MA(6), October 1, 1999, Section 41—*Disputes, Breaches, Defaults, or Other Litigation*, states that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. Notification to FTA. The Recipient agrees to notify FTA of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform the FTA before doing so.
- b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of any proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to the Project Account in lieu of returning the Federal share to the Federal Government.
- c. Enforcement. The Recipient agrees to pursue all legal rights available under any third-party contract.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

FTA Circular 5010.1C, Chapter I, Section 7b(1)(d) requires grantees to notify FTA of any current or prospective litigation or major disputed claim in excess of \$100,000 relating to any third-party contract. This Circular also requires grantees to provide a list of all outstanding claims exceeding \$100,000 and a list of all claims settled during the reporting period as part of each quarterly progress report. A brief description and reasons for each claim should accompany this list.

For information on circumstances where RTA is required to secure FTA review and concurrence in a proposed claim settlement before using Federal funds, refer to the *Best Practices Procurement Manual*.

CHAPTER 6

CONTRACT NEGOTIATION

The Procurement Officer shall be responsible for all negotiations with proposers, and prospective contractors and shall obtain the necessary assistance from personnel involved in the procurement project and legal counsel.

6.1 COMPETITIVE NEGOTIATION

In order to procure Professional/Personal Services, Technology, and Architectural/Engineering (A&E) services, RTA will issue Request for Proposals. All proposals except for A&E shall require both technical and cost proposals. RTA shall solicit proposals from a minimum of three sources to ensure adequate competition. RTA reserves the right and sole discretion to cancel the solicitation, without penalty. RTA reserves the right to reject all proposals and resolicit or cancel the procurement if this action is in the best interest of RTA. RTA also reserves the right to award the contract based upon initial submissions or based on a best and final offer without conducting written or oral discussions if the solicitation specifically stipulates this reservation of RTA rights. Whenever RTA enters negotiations with one proposer, RTA must enter discussions with all proposers that submitted proposals within RTA predetermined price range, except in the case of A&E (see below). If RTA does enter into negotiations, RTA shall make the final selection at the conclusion of formal negotiations based upon the evaluation of best and final offers, unless RTA decides to award the contract based upon initial submissions. It is critical to thoroughly document all correspondence and negotiations.

If procuring Architectural or Engineering services, RTA will enter negotiations with the most technically qualified firm to arrive at a fair and reasonable price. If an agreement cannot be reached, RTA will enter negotiations with the next qualified firm on the list, and will proceed in this manner, until an award is made.

All proposal's cost and pricing data that RTA receives shall be treated as confidential. All technical data received in response to RFPs shall also be treated as confidential except for data contained in the awarded contract.

The RTA Proposal Evaluation Team for the specific procurement will convene to evaluate and rank the proposals. If needed, the Evaluation Team may conduct oral interviews with the finalists. The questions to be asked during the interviews shall be sent to the finalists a minimum of three (3) days prior to the interviews. The Evaluation Team shall then finalize the selection of proposers in descending order for the document file.

The Evaluation Team shall then enter detailed and carefully documented negotiations with each of the finalists. The negotiations shall consist of addressing the total proposed effort and contract terms and conditions. Avoid "auctioning" of prices (allowing vendors to lower their prices below their competitor's, and so on). Complete the *Memorandum of Negotiations* (Form A-19). After negotiating with each proposer,

establish a schedule and deadline for the submission of "Best and Final Offers" which may include Technical and/or Cost/Price Proposals.

Upon receiving the "Best and Final Offers," reconvene the Evaluation Team. Perform a Cost Analysis on the submitted contract modifications and decide which proposer should receive the contract award based either upon the final offers or the initial offers. Complete the procurement steps listed in section 3.4.1. Document the Evaluation Team's methodology to select a proposal.

If the Evaluation Team is unable to reach an agreement with the proposers, assess the reasons and either amend the Request for Proposals and send the amendments to the proposers with whom the Evaluation Team is negotiating, or formally cancel the solicitation and start over with a new Request for Proposals.

For more information on conducting contract negotiations, contact the RTA Procurement Officer. Refer to Appendix S of the National Transit Institute's *Orientation to Transit Procurement*.

6.2 NONCOMPETITIVE NEGOTIATION

- a. **Single Bid Procurement.** After receiving only a single bid, the Procurement Officer must determine if there was adequate competition. If the competition was inadequate, RTA should revise the solicitation in a new procurement to obtain better competition. If the Procurement Officer determines the competition was adequate, then the Procurement Officer may enter into negotiations with the single bidder in order to establish a fair and reasonable price, and negotiate the final terms and conditions of the contract using the negotiation procedures outlined in the competitive negotiation method above.
- b. **Sole Source Procurement.** If the procurement is a Sole Source Procurement where there was only one source for the goods, no competition is involved. The Procurement Officer may enter into negotiations with the sole source bidder in order to establish a fair and reasonable price. Negotiate the final terms and conditions of the contract using the negotiation procedures outlined in the competitive negotiation method above.

CHAPTER 7

CONTRACT CLOSEOUT PROCEDURES

In order to comply with the *Closeout* requirements of 49 CFR Part 18.50 (<http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200049>), grantees must obtain the required information, reports, final invoices, and other documentation as appropriate from their third party contractors as part of the contract closeout process. The Contract Closeout Procedures ensure that contracts are both "physically complete" and "administratively complete."

- ◆ The vendor has rendered all services and has fulfilled the contract.
- ◆ The vendor has delivered all articles or services and RTA has accepted them, including such things as reports, spare parts, warranty documents, and proof of insurance (where required by the contract terms). These deliverable items may or may not have been priced as discrete pay items in the contract, but they are required deliverables, and the contract is not physically complete until all deliverables are made.
- ◆ RTA has made all payments on the services or articles including the Final Payment.
- ◆ The Contractor has formally released RTA from all liabilities, obligations, and claims.
- ◆ All administrative actions have been completed including
 - the settlement of disputes, protests, and litigation;
 - the final overhead rates have been determined;
 - funds have been released; and
 - property has been accounted for or disposed of properly.
- ◆ All documentation has been properly filed.

More information on contract closeout procedures used by the Federal Government for its contracts may be found in FAR Part 4.804, *Closeout of Contract Files*. FAR Part 42.15, *Contractor Performance Information*, discusses the preparation of *Contractor Performance Reports*. (The Federal Acquisition Regulation (FAR) website is located at <http://www.arnet.gov/far/>.)

7.1 FINAL PAYMENT

RTA will make the Final Payment for the article or service once the contract is complete and RTA has accepted the work. The Final Payment will be made after the Contractor presents a properly executed voucher or invoice that shows the dollar amount agreed upon in the contract less any amounts previously paid. Before authorizing the final payment, the RTA Procurement Officer must receive a memorandum from the RTA Project Manager ensuring that all required inspections have been performed and certifying to the satisfactory completion of the contract. Pay careful attention to documents that are notoriously problematic, such as warranties. RTA may wish to make warranty documents a pay item in contracts when the contract pay items are being established. This action will motivate the Contractor to deliver the documents in a timely manner and preclude a dispute as to the proper amount that should be paid for these items.

If, and only if, the contract contains a clause that Final Payment could be withheld until the articles or service under the contract are completed, finalized, and accepted, RTA may withhold the final payment until both parties agree in writing that the contract has been completed. Most payment clauses require the Contractor to furnish and execute a release of claims. This is generally used if subcontractors are involved and ensures that all sub-claims have been paid and resolved. A General Release at the time of the Final Payment effectively bars all existing Contractor claims, including pending claims and known and unknown claims. The Contractor may reserve the right to Specific Claims by excepting those claims at the time that the Release is executed. The Final Payment also ends RTA's ability to file claims against the Contractor except in the event of latent defects, fraud, or gross mistakes.

7.2 POST-PERFORMANCE AUDIT

A close-out audit may be required to determine the final provisional overhead rates in cost reimbursement contracts. In addition to the overhead costs, there may also be some elements of costs that need audit examination. This audit cannot be conducted until the Contractor has completed the contract and submitted a final invoice. The final settlement of claims may create additional audit issues.

7.3 CONTRACT CLOSEOUT CHECKLIST

The RTA Procurement Officer uses a *Contract Closeout Checklist* that lists all the administrative steps required to close out a contract. Different checklists may be developed for different types of contracts given the different requirements for the various contracting situations, e.g., commodities, services, construction, cost-type contracts, etc. An example of a *Contract Closeout Checklist* used by MARTA for construction contracts is shown in *Best Practices Procurement Manual Appendix B.14*

The Federal Transit Administration requires grantees to provide the following:

- (1) Final performance or progress report.
- (2) Financial Status Report.
- (3) Final request for payment.
- (4) Invention disclosure (if applicable).
- (5) Federally owned property report (does not include property obtained with grant funds).

It is generally the responsibility of the RTA Project Manager to establish that the work under a contract has been completed and the contract is ready for closeout. Upon determining that the work is complete, the Project Manager prepares a checklist showing all the contract deliverables and submittals and indicating on the checklist that all submittals and deliverables have been reviewed, inspected and accepted. The Project Manager sends a memorandum to the Procurement Officer indicating that the contract is complete and all required deliverables have been inspected and accepted.

To closeout routine purchase orders and contracts for commodities and other commercial products, RTA's Procurement Officer ensures that the item's end user has inspected and accepted the deliverable items as being in conformance with the purchase order/contract specifications. Complete the *Inspection and Acceptance Closeout Form* (Form A-25) and place it in the file attesting to the contractor's delivery of all contract

end items, including any descriptive literature or warranty documentation. The file must also contain documentation from RTA's Finance Department as proof of final payment.

Contracts for personal services, complex equipment, rolling stock, construction, and other one-of-kind items require several steps to affect an administrative closeout. Major elements of the closeout process, and related documentation, might include:

- a) ____ Resolution of all contract changes, claims, and final quantities delivered.
- b) ____ Determination/recovery of liquidated damages.
- c) ____ Review of the insurance claim file by counsel/insurance specialist to determine if funds need to be withheld from final payment to cover unsettled claims against the contractor. For all contracts requiring the Contractor to maintain insurance for its products or services (e.g., professional liability or product liability insurance), the Procurement Officer should obtain *proof of insurance* from the Contractor as part of the closeout process. This documentation should be submitted to the RTA Finance Department for approval prior to final payment to the Contractor. The Finance Department will be required to maintain these documents as active files until such time as the insurance requirement ceases under the terms and conditions of the contract; i.e., these insurance terms will continue past (survive) the final contract payment. Settlement of all subcontracts by the prime contractor.
- d) ____ Performance of all inspections (and acceptance tests if any) by the grantee's project manager, with appropriate documentation.
Conduct a cost audit for cost-reimbursement contracts and resolve questioned costs, if any.
- e) ____ Generation of a Contractor Performance Report. A performance report may be generated if the Project Manager or Procurement Officer thinks that such a report would be helpful in conducting future procurements, especially if the product or service is exemplary or unsatisfactory. The GSC has a Contractor Performance Form located at <http://www.gsc.state.tx.us/stpurch/forms/venform.pdf>.
- f) ____ The submittal of all required documentation by the Contractor, including items such as:
 - Final reports
 - Final payroll records and wage rate certifications
 - Spare parts list
 - Manufacturer's Warranties and Guarantees. The contract specifications may require that individual warranties or guarantees be furnished for various installed equipment or building systems. For each completed contract requiring warranties, the Project Manager should develop a *Warranty and Guarantee Register*, which is a status form listing:
 - each individual item of equipment and system for which a warranty or guarantee is specified (roofing, doors, sealants, etc.);
 - the pertinent section in the contract specification;
 - the name of the company providing the warranty;

- the expiration date of the warranty; and
- the address of the providing company

An example of a *Warranty and Guarantee Register*, used by MARTA, can be found in *Best Practices Procurement Manual* Appendix B.13. RTA can use the *Warranty and Guarantee Register* to monitor upcoming warranty expirations so that the equipment or building system can be inspected before the expiration date and request the Contractor to make corrective actions.

- Final corrected shop drawings
- Operation and maintenance manuals
- Catalogues and brochures
- Invention disclosure (if applicable)
- Federally owned property report (if there was Government-furnished property)
- Resolution of final quantities (construction contracts)
- Final invoice
- Consent of Surety to release final payment to Contractor
- Contractor's Affidavit of Release of Liens
- Contractor's General Release (releasing the grantee from any further liabilities/claims under the contract). As part of the contract closeout process, the Procurement Officer or Project Manager must send the Contractor a closeout letter that includes the Contractor's *General Release*. This document must be a standard statement prepared by RTA's legal counsel for use on all contracts. The release will say that for the payment of a sum certain, which is the final contract amount agreed to by both parties, the Contractor releases the grantee from any and all claims of every kind arising directly or indirectly out of the contract. The release may also contain a certification that the contractor has paid its subcontractors and suppliers for all their labor, materials, services, etc. furnished under the contract. The release is to be signed by a corporate official authorized to bind the Contractor.

The *General Release* is important to obtain prior to final payment because it assures the grantee that there will be no further claims from the Contractor once the final payment has been made. The grantee should have the release reviewed by its legal counsel if the Contractor makes any changes to the grantee's standard release language that was sent to the Contractor for signature. It is necessary for the grantee and the Contractor to have resolved all open issues of a financial nature prior to the execution of the release (change orders, claims, liquidated damages, etc.), and this resolution of all outstanding claims is an important step in the contract closeout process.

To prevent a construction contractor from "walking away" from a project that is almost complete by refusing to sign a *General Release* and forgoing final payment, RTA should anticipate this possibility by carefully estimating the amount of retainage in such a way that it represents twice the amount of the punch list work and undelivered items (manuals,

drawings, spare parts, etc.). A contractor who lacks sufficient financial incentive to complete the contract; e.g., if the punch list is large and there is very little money left in retainage, may profit by refusing to correct the punch list items and leave the retainage with RTA. Or the contractor may have been awarded another contract, which requires the reassignment of his personnel to another job.

- Maintenance Bond (if required)
- h) — Conduct a Post-delivery Audit for rolling stock contracts as required by 49 CFR Part 663 – Pre-award and Post-delivery Audits of Rolling Stock Purchases (<http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200049>).
- j) — Contract Closeout File review by legal counsel. For procurements involving services, construction, and larger dollar value equipment purchases, RTA may wish to have legal counsel review the closeout file to ensure the adequacy of the contractor's legal documents, including the contractor's *General Release*, insurance certificates, surety's release, maintenance bonds, etc.

7.4 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

This section addresses Pre-award and Post-delivery Audits of Rolling Stock as required by the Code of Federal Regulations, Pre-Award and Post Delivery Audits of Rolling Stock Purchases, 49 CFR Chapter VI, Part 663.

7.4.1 The Pre-Award Buy America Certification Requirement

Buses to be purchased must fall into one of two categories under this requirement.

1. Buy-America Compliant Buses: Buses meet the seventy (70) percent minimum domestic content and United States final assembly requirement established in the Buy America Rule. In the pre-award review process, RTA, or a duly appointed analyst, must review the following proposed manufacturer's Buy America information.
 - A listing of bus components and subcomponents that will be used to calculate the percent domestic content. (Each component and subcomponent on the list must be identified by manufacturer, country of origin, and cost in either a dollar or percentage format. Component manufacturing costs and final assembly costs are not to be included when calculating the percent domestic content of the bus. The analyst must verify that the buses will contain a minimum of seventy (70) percent domestic products, by cost, by reviewing the component and subcomponents listed and review the final assembly cost. The analyst subtracts the final assembly cost from the price of the buses to approximate the total component cost and thus the percentage base that the manufacturer used to calculate the domestic cost contribution for each item listed in the manufacturer's information), and
 - The proposed final assembly location. The analyst must identify the final assembly location within the United States, and
 - Activities that will occur during final assembly must be listed such as welding, subassembly, component installation, painting, etc., and
 - The proposed total cost of final assembly.

After completing the steps listed above, the analyst must complete the following pre-award Buy America Compliance Certification and keep it on file for future FTA reviews.

PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart B, RTA is satisfied that
the (number and description)

_____ of buses to be purchased from (the manufacturer)
_____ meet the requirements of

Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended.

The recipient, or its appointed analyst _____
(the analyst - not the manufacturer or its agent), has reviewed the documentation
provided by the manufacturer, which lists (1) the proposed component and
subcomponent parts of the buses identified by the manufacturer, country of origin,
and cost; and (2) the proposed location of the final assembly point for the buses,
including a description of the activities that will take place at the final assembly
point and the cost of final assembly.

Date: _____

Signature: _____ Title: _____

2. Buy America-Exempt Buses. Some manufacturer's buses may be eligible for an FTA waiver exempting the buses from the requirements. If a waiver does exist for the buses, RTA must:
 - Obtain a Buy America waiver letter from the FTA, and
 - Complete the pre-award Buy America Exemption Certification below, and
 - Keep the Buy America certification and FTA waiver letter on file for future FTA reviews.

PRE-AWARD BUY AMERICA EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart B, RTA certifies that there is a letter from FTA that grants a waiver to the (number and description) _____

_____ of buses to be purchased from (the manufacturer) _____, from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

Date: _____

Signature: _____ Title: _____

7.4.2 The Pre-Award Purchaser's Requirements Certification

The Pre-Award Purchaser's Requirements Certification is intended to eliminate those manufacturers that appear irresponsible and/or incapable of complying with RTA's solicitation specifications. To comply with this certification, RTA or the designated analyst must review and approve:

- ◆ That the manufacturer's bid specifications are in compliance with RTA's solicitation specifications including approval of any approved equals; and
- ◆ That based upon the proposed manufacturer's qualifications (quality control measures, previous customers, etc.,) that the proposed manufacturer will be capable of meeting the specifications.
- ◆ Upon completion of the review, the RTA Project Manager should complete The Pre-Award Purchaser's Requirements Certification below and keep it on file for future FTA reviews.

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart B, RTA certifies that the (number and description) _____

_____ of buses to be purchased from (the manufacturer) _____, are the same product described in RTA's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

Date: _____

Signature: _____ Title: _____

7.4.3 The Pre-Award Federal Motor Vehicle Safety Standards (FMVSS) Certification Requirement

This section discusses procedures that RTA must follow to demonstrate compliance with the FMVSS certification requirement. Most buses must comply with the FMVSS regulations. RTA must do the following to comply:

- ◆ Obtain the FMVSS self-certification sticker information from the manufacturer; and
- ◆ Complete the pre-award FMVSS compliance certification below; and
- ◆ File the FMVSS certification for future FTA reviews.

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart D, RTA certifies that it received, at the pre-award stage, a copy of (the manufacturer) _____'s, self-certification information stating that the (number and description of buses) _____

_____ will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in the Title 49 of the Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

Some buses may not be subject to FMVSS regulations as explained in Title 49 of the Code of Federal Regulations Part 555 "Temporary Exemption from Motor Vehicle Safety Standards." If the buses are not subject to the FMVSS regulations, RTA must:

- ◆ Obtain the manufacturer's certified statement indicating that the contracted buses will not be subject to the FMVSS regulations; and
- ◆ Complete the pre-award FMVSS exemption certification below; and
- ◆ File the FMVSS certification for future FTA reviews.

PRE-AWARD FMVSS EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart D, RTA certifies that it received, at the pre-award stage, a statement from (the manufacturer) _____, indicating that the (number and description of buses) _____

_____ will not be subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in the Title 49 of the Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

7.4.4 The Post Delivery Buy America Certification Requirement

RTA will adhere to the following procedures to demonstrate compliance with the post-delivery Buy America certification requirement. The buses received must fall into one of two categories under this requirement. If RTA is satisfied that the Buy America information has not change since the pre-award review, use the pre-award documentation for the post-delivery review. If RTA is doubtful that this is the case, perform another review.

1. Buy-America Compliant Buses: Buses meet the seventy (70) percent minimum domestic content and United States final assembly requirement established in the Buy America Rule. Before certifying that the purchased buses meet these requirements, RTA, or a duly appointed analyst, must review the manufacturer's Buy America information.

- A listing of bus components and subcomponents used to calculate the percent domestic content. (Each component and subcomponent on the list must be identified by manufacturer, country of origin, and cost in either a dollar or percentage format. Component manufacturing costs and final assembly costs are not to be included when calculating the percent domestic content of the bus. The analyst must verify that the buses contain a minimum of seventy (70) percent domestic products, by cost, by reviewing the component and subcomponents listed and review the final assembly cost. The analyst subtracts the final assembly cost from the price of the buses to approximate the total component cost and thus the percentage base that the manufacturer used to calculate the domestic cost contribution for each item listed in the manufacturer's information); and
- The actual final assembly location which should have been within the United States; and
- Activities that took place during the final assembly such as welding, subassembly, component installation, painting, etc.; and
- The actual total cost of final assembly.

After completing the steps listed above, the analyst must complete the following Post-Delivery Buy America Compliance Certification and keep it on file for future FTA reviews.

POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart C, RTA certifies that it is satisfied that the (number and description) _____ of buses received from (the manufacturer) _____ meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient, or its appointed analyst _____ (the analyst - not the manufacturer or its agent), has reviewed the documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the buses identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the buses, including a description of the activities that took place at the final assembly point and the cost of final assembly.

Date: _____

Signature: _____ Title: _____

2. Buy America-Exempt Buses. Some manufacturer's buses may be eligible for an FTA waiver exempting the buses from the requirements. If the buses are exempt, RTA must:
- Obtain a Buy America waiver letter from FTA;
 - Complete the Post-Delivery Buy America Exemption Certification below; and
 - Keep the Buy America certification and FTA waiver letter on file for future FTA reviews.

POST-DELIVERY BUY AMERICA EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart C, RTA certifies that there is a letter from FTA that grants a waiver to the (number and description)

_____ of buses received from (the manufacturer) _____, from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

Date: _____

Signature: _____ **Title:** _____

7.4.5 Post-Delivery Purchaser's Requirements Certification

The Purchaser's Requirements Certification is intended to help protect RTA by ensuring that the buses received are built to contract specifications. The process of certifying more than ten buses is more rigorous than certifying ten or fewer buses.

To comply with the certification requirement when **procuring more than ten buses or more than ten modified vans**, RTA, or its duly appointed analyst, must:

- ◆ Send a resident inspector to the manufacturer's final assembly facility. The resident inspector must complete a manufacturing report containing any information supporting or refuting manufacturer claims regarding its capabilities and specifications. For buses assembled in multiple stages (such as body-on-chassis buses), the resident inspector is required to visit the final-stage manufacturer's final assembly location only. The report must include accurate records of all bus construction activities (e.g., component manufacturing processes, final assembly activities, quality control data, etc.), and a description of how the construction and operation of the bus(es) fulfills the contract specifications referring to the construction activities cited above.
- ◆ After the resident inspector has completed the report, RTA or its analyst must review the report and visually inspect and road test the buses and/or vans.
- ◆ Following the two steps above, complete the Post-Delivery Purchaser's Requirements Certification below, and
- ◆ File the certification and the resident inspector's report, visual inspection sheets, and road test sheets for future FTA reviews.

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION
FOR MORE THAN TEN BUSES OR MODIFIED VANS

As required by Title 49 of the CFR, Part 663 - Subpart C, RTA certifies that a resident inspector (the resident inspector - not an agent or employee of the manufacturer) _____

_____ was at (the manufacturer) _____
_____ 's manufacturing site during
the period of manufacture of the (number and description) _____

_____ buses. The inspector
monitored manufacturing and completed a report on the manufacture of the buses
providing accurate records of all bus construction activities. The report addresses
how the construction and operation of the buses fulfill the contract specifications.
After reviewing the report, visually inspecting the buses, and road testing the buses,
RTA certifies that the buses meet the contract specifications.

Date: _____

Signature: _____ Title: _____

When procuring **ten or fewer buses or modified vans, or any number of primary manufacturer standard production unmodified vans**, RTA is not required to send a resident inspector to the manufacturing site. In order to demonstrate compliance with the post-delivery purchaser's certification requirement for ten or more buses or modified vans, RTA or its analyst must:

- ◆ Visually inspect and road test the buses before delivery in order to verify that the buses meet the contract specifications;
- ◆ Complete the Post-Delivery Purchaser's Requirements Certification below; and
- ◆ File the certification and the visual inspection data sheets and road test sheets for future FTA reviews.

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION
FOR TEN OR FEWER BUSES OR MODIFIED VANS,
OR ANY NUMBER OF STANDARD VANS

As required by Title 49 of the CFR, Part 663 - Subpart C, after visually inspecting and road testing the contract buses, RTA certifies that the (number and description) _____

_____ buses, from (the manufacturer) _____
_____ meet the
contract specifications.

Date: _____

Signature: _____ Title: _____

7.4.6 The Post-Delivery Motor Vehicle Safety Standards (FMVSS) Certification Requirement

RTA must follow to the following procedures to demonstrate compliance with the post-delivery FMVSS certification requirement.

- ◆ The manufacturer's FMVSS self-certification sticker must be affixed to each bus; and
- ◆ Complete the Post-Delivery FMVSS Compliance Certification below; and
- ◆ File the FMVSS certification for future FTA reviews.

POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart D, RTA certifies that it received, at the post-delivery stage, a copy of (the manufacturer)

_____'s, self-certification information stating that the (number and description of buses)

comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in the Title 49 of the Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

Some buses may not be subject to FMVSS regulations as explained in Title 49 of the Code of Federal Regulations Part 555 "Temporary Exemption from Motor Vehicle Safety Standards." If the buses are not subject to the FMVSS regulations, RTA must:

- ◆ Request and receive the manufacturer's certified statement indicating that the buses are not subject to the FMVSS regulations; and
- ◆ Complete the Post-Delivery FMVSS Exemption Certification below; and
- ◆ File the FMVSS certification and the manufacturer's post-delivery statement for future FTA reviews.

POST DELIVERY FMVSS EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 - Subpart D, RTA certifies that it received, at the post-delivery stage, a statement from (the manufacturer)

_____, indicating that the (number and description of buses) _____

are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in the Title 49 of the Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

7.4.7 Sample Visual Inspection Sheet

Following is a sample visual inspection sheet from the Federal Transit Administration's *Conducting Pre-Award and Post-Delivery Audits for Bus Procurements* (DOT-T-94-06). Adapt this sheet when conducting visual inspections of rolling stock (see Section 7.4.5).

Guide for Inspection:

Coach Manufacturer _____

The following items should be

Coach Number _____

inspected on every coach of each order

Test Location _____

Item	Requirement	Inspection Instruction	Result	Inspector/ Date	Remarks/ Notes
Curb Weight	Maximum curb weight of _____ lb.	Measure on certified scale	Weight		
FMVSS Stickers	Affixed to vehicle	Locate sticker	Pass/Fail		
Finish and Color	Smooth body surfaces and paint	Visually inspect all surfaces for flaws	Pass/Fail		
Interior Panel Fastening	Absence of rough edges and surfaces	Visually inspect for proper installation	Pass/Fail		
Towing Devices	Provision of towing eyes (front/rear)	Verify presence of towing eyes	Pass/Fail		
Door Control	Opening time of _____ seconds	Verify door opening time frame	Pass/Fail		
Interior Lighting	Lighting operable without engine	Switch on all interior lights	Pass/Fail		
Exterior Lighting	All vehicle lights operable	Switch on and verify lamps are on	Pass/Fail		
Fuel Tank	Fill rate and filler location	Inspect filler for easy access and check fill rate	Pass/Fail		
Chassis	Welds, axles, suspension, steering, wheels, and brakes	Inspect for leaks and interference. Check fluid levels, welds, undercoating, air lines, brake slack, and lug nuts	Pass/Fail		
Electrical	Wiring and junction boxes	Inspect for loose or stretched wires	Pass/Fail		
Batteries	Secured & polarized wiring access for jump start	Inspect compartment and jumper cable access	Pass/Fail		
HVAC	CapaRTA and performance	Operate AC, check compressor, condenser, flow and temperature	Pass/Fail		
Wheelchair Access	Clear lift or ramp access and securement area	Operate lift or ramp, inspect operation, measure areas	Pass/Fail		
Power Plant	Mounting and arrangement	Check for loose lines, leaks, and noises. Check fluid levels, belt alignment, and cap fit	Pass/Fail		

7.4.8 Sample Road Test Sheet

Following is a sample road test sheet from the Federal Transit Administration's *Conducting Pre-Award and Post-Delivery Audits for Bus Procurements* (DOT-T-94-06). Adapt this sheet when conducting road tests of rolling stock (see Section 7.4.5).

Guide for Inspection:

Coach Manufacturer _____

The following items should be

Coach Number _____

inspected on every coach of each order

Test Location _____

Item	Requirement	Inspection Instruction	Result	Inspector/ Date	Remarks/ Notes
Engine	N/A	Record low idle, fast idle, and high idle speeds	Low_____ Fast_____ High_____		
Service Brakes	Stopping distance	Verify function and indicator, check for pulling to either side	Pass/Fail		
Parking Brake	N/A	Verify indicator, and no movement	Pass/Fail		
Turning Effort	Steering wheel torque	Check effort with coach stopped	Pass/Fail		
Turning Radius	Not to exceed _____ at corner of body	Verify turning radius in both directions	Pass/Fail		
Acceleration	_____ rate from 0 to _____ mph	Verify acceleration on smooth road	Pass/Fail		
Resonance	Absence of audible and/or visible vibrations	Operate coach at various speeds, check for vibrations & rattles	Pass/Fail		
Windshield Wipers	Evenly deposited wash fluid	Operate coach at safe speed over 40 mph, check coverage, parking position, and wiper frequency	Pass/Fail		
Power Plant	N/A	Check for leaks under coach and in engine compartment, check for abnormal noises	Pass/Fail		
HVAC	Interior temperature	Operate system, check internal and ambient temp.	Int_____ Amb_____		
Door Control	Accelerator and brake interlocks	At speeds less than 10 mph, verify accelerator and brake interlocks with door open	Pass/Fail		
General	N/A	During testing, observe any abnormalities in ride and handling of coach	Pass/Fail		

APPENDIX A

STANDARDIZED PROCUREMENT FORMS

FORM A-1	PRICE DETERMINATION FOR CREDIT CARDS.....	A-1a/b
FORM A-2	"FAIR AND REASONABLE" PRICE DOCUMENTATION FOR MICRO PURCHASES (\$0 TO \$3,000)	A-2
FORM A-3	PRICE QUOTES DOCUMENTATION FOR SMALL PURCHASES (EXCEEDING \$3,000 BUT NOT \$10,000).....	A-3
FORM A-4	INDEPENDENT COST ESTIMATE FOR SMALL PURCHASES (EXCEEDING \$10,000) AND LARGE PURCHASES.....	A-4
FORM A-5	JUSTIFICATION FOR CONTRACT TYPE	A-5a/b
FORM A-6	CERTIFICATION OF CONFIGURATION MANAGEMENT AND COMPLIANCE WITH NATIONAL ARCHITECTURE FORM.....	A-6
FORM A-7	VENDOR SOLICITATION LIST	A-7
FORM A-8	BID PACKAGE/RFP REQUEST LIST	A-8
FORM A-9	SIGN IN SHEET FOR PRE-BID CONFERENCES, PRE-PROPOSAL CONFERENCES, BID OPENINGS	A-9
FORM A-10	RESPONDING VENDORS LIST	A-10
FORM A-11	BID TABULATION.....	A-11
FORM A-12	LATE BIDS/PROPOSALS LIST	A-12
FORM A-13	PRICE ANALYSIS DOCUMENTATION FOR SMALL PURCHASES EXCEEDING \$10,000 AND LARGE PURCHASES	A-13
FORM A-14	COST ANALYSIS DOCUMENTATION.....	A-14
FORM A-15	SOLE SOURCE PROCUREMENT JUSTIFICATION	A-15a/b
FORM A-16	DETERMINATION OF BEST VALUE.....	A-16
FORM A-17	CONTRACTOR VERIFICATION.....	A-17
FORM A-18	PROPOSAL EVALUATION CRITERIA FORM.....	A-18
FORM A-19	MEMORANDUM OF NEGOTIATIONS	A-19a/b
FORM A-20	CONTRACT AWARD OFFER AND ACCEPTANCE FORM	A-20
FORM A-21	NOTICE OF CONTRACT AWARD FOR BIDS AND RFPS	A-21
FORM A-22	NOTICE OF CONTRACT AWARD ACCEPTANCE FOR BIDS AND RPS	A-22
FORM A-23	NOTICE TO PROCEED.....	A-23
FORM A-24	CLOSEOUT LETTER OF RELEASE FROM LIABILITIES, OBLIGATIONS AND CLAIMS	A-24
FORM A-25	INSPECTION AND ACCEPTANCE CLOSEOUT FORM.....	A-25
FORM A-26	MASTER CONTRACT FILE CHECK LIST.....	A-26

FORM A-1
PRICE DETERMINATION FOR CREDIT CARDS

In accordance with the requirements of FTA Circular 4220.1F (Chapter VI, Sec. 3.a.(2)(c)), I hereby determine that items bought from [EXAMPLE: STAPLES] stores in [CITY/TOWN/VILLAGE] are “fair and reasonable” because adequate commercial price competition exists between [STAPLES] and stores offering the same or similar products, and also because of the store's policy of matching all competitor's prices found to exist on the same item within [X] days of the date and time of purchase. [STAPLES] also has a policy that encourages purchase of products from Underutilized Business Owners.

This determination is effective for purchases made today through [DATE].

Signature: _____

Name: _____

Title: Executive Director

Date: _____

FORM A-1
PRICE DETERMINATION FOR CREDIT CARDS

In accordance with the requirements of FTA Circular 4220.1F (Chapter VI, Sec. 3.a.(2)(c)), I hereby determine that items bought from [EXAMPLE: HOME DEPOT] stores in [CITY/TOWN/VILLAGE] are “fair and reasonable” because adequate commercial price competition exists between [HOME DEPOT] and stores offering the same or similar products, and also because of the store's policy of matching all competitor's prices found to exist on the same item at the time of purchase (with proof of receipt from a competitor). [HOME DEPOT]'s policy is to take an additional ten (10) percent off the price. When a product is found to be less expensive at [HOME DEPOT] after the date of purchase at another store, the policy is to talk to Returns.

This determination is effective for purchases made today through [DATE].

Signature: _____

Name: _____

Title: Executive Director

Date: _____

FORM A-2
"FAIR AND REASONABLE" PRICE DOCUMENTATION
FOR MICRO PURCHASES (\$0 TO \$3,000)

(For Small and Large Purchases, refer to Forms A-3 and A-4)

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

I hereby determine that the price of the product to be purchased is "fair and reasonable," based upon the methodology indicated below.

- _____ A. Telephone Quotes (Name of Offeror 1 and price) _____ \$ _____
(Name of Offeror 2 and price) _____ \$ _____
(Name of Offeror 3 and price) _____ \$ _____
- _____ B. Used a Rotating List of Qualified Suppliers:
Name of supplier selected for this procurement _____
Name of supplier selected for previous procurement _____
- _____ C. Competitor's Catalogs (Sears, Home Depot, Office Depot, etc. -- Compare catalogs for the **same time frame**. The following 4 criteria must be met. 1. Established Catalog prices exist. 2. The items are commercial in nature. 3. Items are sold in substantial quantities. 4. Items are sold to the general public.) (Attach copy of the catalog pages to this form.)
- _____ D. Newspaper Advertisements (Current advertisement only -- attach copy of ad to this form.)
- _____ E. Industrial Catalogues (The National Mechanical Contractor Estimator (NMCE) is an excellent source for pricing mechanical items.)
- _____ F. Established Market Prices (The current price established in the usual or ordinary course of business between buyers and sellers free to bargain. Verify prices by buyers and sellers who are independent of the offeror. If you do not know the names of other commercial buyers and sellers, you may obtain this information from the offeror. Provide documentation.)
- _____ G. Comparison to Previous Recent Purchase (Changes in quantity, quality, delivery schedules, and the economy cause price variations. Make sure previous price was fair and reasonable based on physical review of documentation contained in previous files. Analyze each differing situation through trend analysis. Provide Documentation.)
- _____ H. Comparison to a Valid Independent Cost Estimate (Attach estimator's methodology and data used in developing the estimate and verify the facts and assumptions.)
- _____ I. Value Analysis (Review the item and its function in order to determine its worth. The decision of price reasonableness remains with the contracting officer. Provide methodology.)
- _____ J. Government Catalogs (Federal Supply Schedules may be used for price comparison even though the they may not be able to fulfill the requirement.) (Attach catalog page.)
- _____ K. Government Price Index (Use to compare or analyze historical prices to predict current prices. Search [Http://stats.bls.gov](http://stats.bls.gov) under Data, Series Report. For code numbers for the Series Report, go to <ftp://ftp.bls.gov/pub/time.series/wp/wp.contacts> and call the contact listed.
- _____ L. Prices Established by Law or Regulation (Prices determined through a rate schedule and verified that the prices apply to the situation, e.g., utilities.)
- _____ M. Personal knowledge of item procured (Explain) _____

- _____ N. Other (e.g., Sole Source):

(Attach copies of catalogue pages, advertisements, purchase order, etc.)

Buyer's Signature

Date

FORM A-3
PRICE QUOTES DOCUMENTATION
FOR SMALL PURCHASES (EXCEEDING \$3,000 BUT NOT \$10,000)
Purchases exceeding \$10,000 must be advertised and procured through competitive bidding.
Purchases exceeding \$20,000 must be approved by the RTA Board.

*{FOR SMALL PURCHASES EXCEEDING \$10,000 AND LARGE PURCHASES,
USE FORM A-4}*

Complete this form (comments) and Form A-15 for Sole Source Procurements

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

- A. Telephone Quotes Obtain at least 3 telephone or faxed quotes.
Indicate Disadvantaged Business Enterprises with "DBE."

(Name of Offeror 1 and price) _____ \$ _____

(Name of Offeror 2 and price) _____ \$ _____

(Name of Offeror 3 and price) _____ \$ _____

(Name of Offeror 4 and price) _____ \$ _____

(Name of Offeror 5 and price) _____ \$ _____

- B. List of companies from whom quotes were requested and who did not
supply a quote. Indicate Disadvantaged Business Enterprises with "DBE."

(Attach copies of catalog pages, advertisements, purchase order, etc.)

Comments: _____

Buyer's Signature

Date

FORM A-4
INDEPENDENT COST
ESTIMATE
FOR SMALL PURCHASES (EXCEEDING \$10,000) AND LARGE PURCHASES
Purchases exceeding \$10,000 must be advertised and procured through competitive bidding.
Purchases exceeding \$20,000 must be approved by the RTA Board.

Complete this form before requesting bids or proposals.

{USE FORM A-3 FOR SMALL PURCHASES EXCEEDING \$3,000 BUT NOT \$10,000.}

{USE FORM A-2 FOR MICRO-PURCHASES \$0 TO \$3,000}

ITB OR RFP NUMBER: _____ **AMOUNT OF INDEPENDENT COST ESTIMATE: \$** _____

GRANT NUMBER: _____ **PROJECT TITLE:** _____

A. Telephone Budget Estimate

(Name of Company & Estimate) _____ \$ _____

(Name of Company & Estimate) _____ \$ _____

(Name of Company & Estimate) _____ \$ _____

_____ **B Competitor's Catalogs** (Sears, Home Depot, Office Depot, etc. -- Compare catalogs for the **same time frame**. The following 4 criteria must be met. 1. Established Catalog prices exist. 2. The items are commercial in nature. 3. Items are sold in substantial quantities. 4. Items are sold to the general public.) (Attach copy of the catalogue pages to this form.)

_____ **D. Newspaper Advertisements** (Current advertisement only -- attach copy of ad to this form.)

_____ **E. Industrial Catalogues** (The National Mechanical Contractor Estimator (NMCE) is an excellent source for pricing mechanical items. Name: _____ attach pages.)

_____ **F. Established Market Prices** (The current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the offeror. If you do not know the names of other commercial buyers and sellers, you may obtain this information from the offeror. Attach information.)

_____ **G. Comparison to Previous Recent Purchase** (Changes in quantity, quality, delivery schedules, and the economy cause price variations. Make sure previous price was fair and reasonable based on physical review of documentation contained in previous files. Analyze each differing situation through trend analysis. Explain.) _____

_____ **H. Comparison to a Valid Independent Cost Estimate** (Attach estimator's methodology and data used in developing the estimate and verify the facts and assumptions.)

_____ **I. Value Analysis** (Look at the item and the function it performs in order to determine its worth. The decision of price reasonableness remains with the contracting officer. Attach explanation.)

_____ **J. Government Catalogues** (Federal Supply Schedules may be used for price comparison even though they may not be able to fulfill the requirement.) (Attach catalogue page.)

_____ **K. Government Price Index** (Use to compare or analyze historical prices to predict current prices. Search [Http://stats.bls.gov](http://stats.bls.gov) under Data, Series Report. For code numbers for the Series Report, go to <ftp://ftp.bls.gov/pub/time.series/wp/wp.contacts> and call the contact listed. Attach analysis.)

_____ **L. Prices Established by Law or Regulation** (Prices determined through a rate schedule and verified that the prices apply to the situation, e.g., utilities. Attach schedule.)

_____ **M. Personal knowledge of item procured.** (Explain.) _____

_____ **N. Other (e.g., Sole Source):** (Explain) _____

(Attach copies of catalogue pages, advertisements, purchase order, etc.)

Buyer's Signature

Date

FORM A-5
JUSTIFICATION FOR CONTRACT TYPE

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

THE METHOD OF CONTRACTING IS:

___ Invitation for Bid
___ Request for Proposal

RFP Number: _____

This procurement was determined to be suitable for a Request for Proposal for the following reasons:

- ◆ A complete, adequate and realistic specification or purchase description allowing for competition primarily on the basis of price alone is not available,
- ◆ Discussions or negotiations may be needed with the offerors to address technical requirements as well as proposed cost or price aspects of the offerors' proposal.
- ◆ An opportunity may be needed to revise the proposal and submit a final proposal.

(Use RFPs for technological purchases, insurance, A&E, legal service, accounting services, and other services best served by an RFP rather than an ITB.)

ITB Number: _____

This procurement was determined to be suitable for an Invitation for Bid for the following reasons:

- ◆ A complete, adequate and realistic specification is available,
- ◆ Two or more responsible bidders are willing and able to compete effectively for the business,
- ◆ The procurement lends itself to a firm-fixed-price contract,
- ◆ The selection of the successful bidder can be made principally on the basis of price, and
- ◆ No discussion with bidders is needed.

THE CONTRACT TYPE IS:

___ Fixed Price (for sealed bid procurements) ___ Firm Fixed Price ___ Fixed Price with Economic Price Adjustment	___ Cost Reimbursement Contract ___ Cost Contract ___ Cost Plus Fixed Fee
--	--

___ Special

 ___ Time and Materials Contract*
 ___ Labor Hours
 ___ Letter Contract
 ___ Indefinite Delivery Contract
 ___ Definite Quantity
 ___ Indefinite Delivery
 ___ Indefinite-Quantity Contract
 ___ Blanket Purchase Agreement
 ___ Revenue Generating

***Restricted (see FTA Circular 4220.1F, Chapter VI, Sec. 2.c(2)(b))**

NOTE: Cost Plus Percentage of Cost contracts are prohibited.

The contract type was selected because: _____

SUBMITTED BY: _____ **DATE:** _____

FORM A-5 (PAGE 2)

DEFINITION OF CONTRACT TYPES

Fixed Price

Firm Fixed Price: The risk of performing the contract for a lump sum falls on the contractor and is not subject to adjustment on the basis of the contractor's cost experience. There is a minimum administrative burden on owner.

Use this type of contract when buying commercial/commercial-type products or other goods or services where reasonably definite or detailed specifications exist, and the buyer can establish fair and reasonable prices at the outset.

Fixed Price with Economic Price Adjustment: Less cost risk to the contractor and should result in lower costs to the public owner. This type of contract is characterized by a lump-sum price subject to the upward or downward adjustment of costs specified in the contract. (Paper products, fuel) Economic price adjustments may be based on:

- ◆ Established prices,
- ◆ Actual costs of labor or material, and/or
- ◆ Cost indexes of labor or material.

Cost Reimbursement Contract

Cost Contract: Reimburse costs, contractor receives no fee. This type of contract is used for consultant services and research and development contracts with nonprofit organizations.

Cost Plus Fixed Fee: Most common type of cost contract in transit. The contractor receives a predetermined fee and is reimbursed for all costs allowable under established cost principles. There is little risk to the contractor and little incentive to control costs. There is more burden on the owner to administer this type of contract. This type of contract should be used only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract. Award this type of contract only if the contractor's accounting system is adequate for determining costs applicable to the contract, and if RTA can monitor the methods and cost controls. This type of contract includes a cost analysis for overhead, labor, materials and travel. (Are benefits, pay increases, bonuses, overtime, overhead, support staff as an indirect cost included?)

Special

Time and Materials Contract: Labor is provided for an indefinite period of time on a fixed-price basis. Materials are provided on a cost-reimbursement basis. Profit is included in the labor rates, and no fee is allowed on materials. This is the least preferred method of contracting and should only be used when it is not possible to accurately estimate the extent or duration of the work or to anticipate the costs with any reasonable degree of confidence. This type of contract may specify a "ceiling price" which the contractor shall not exceed. (FTA Circular 4220.1F, Chapter VI, Sec. 2.c(2)(b) for restrictions)

Labor Hours: Labor is provided for an indefinite period of time, but the contractor is not required to provide any materials. (Equipment costs and limited materials can be calculated as part of the labor rates.)

Letter Contract: Usually used in transit emergencies to begin work quickly while a formalized contract is prepared. Used to enter into contracts quickly. Execute the formal contract as soon as possible, and certainly within 90-180 days of the preliminary letter. Limit the percentage of the cost and set a "not-to-exceed" amount.

Indefinite Delivery Contract: Used when the exact time of delivery is unknown at the time of contracting.

Definite Quantity: Provides for delivery of a definite quantity of specific supplies or services for a fixed period of time. Upon order, schedule deliveries or performance at designated locations.

Indefinite Delivery: Provides for filling all actual purchase requirements for specific items over a specified period of time. Estimates must be based upon the best information available.

Indefinite-Quantity Contract: Provides for a stated minimum quantity and also additional quantities, as ordered, up to a stated maximum.

Blanket Purchase Agreement: Used to fill anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply. Orders are made by Issuance of a delivery order.

Revenue Generating: Innovative ways to generate revenue. Advertising contracts are the most popular. (See Dear Colleague Letter C-98-25)

***Cost Plus Percentage of Cost contracts are prohibited. Under this type of contract, the owner agrees to pay the cost plus an agreed upon percentage of the costs, (e.g., 10%), up to a maximum dollar amount, including change orders.**

FORM A-6
CERTIFICATION OF CONFIGURATION MANAGEMENT AND
COMPLIANCE WITH NATIONAL ARCHITECTURE FORM

Complete this form prior to finalizing the Invitation for Bid package or Request for Proposals. Examples of Configuration Management are software interfacing properly with existing software and hardware, office furniture fits through doorways, vehicles fit in the shop.

RFP OR ITB NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

Y I certify by my signature as Project Manager, that the specifications contained in the Invitation for Bid Package or Request for Proposals conform to RTA's existing systems. The product or service to be procured is expected to react, interact with, or work as described in the Invitation for Bid Package or Request for Proposals.

Y I certify that if the product or service under procurement will or may change or alter existing systems in any way, the affected Departments have been notified in writing and have agreed to the change.

Describe any changes or alterations that will or may occur due to procurement of the product or service.

For Technology-Related Purchases

Y I certify that a clause has been included in the Invitation for Bid package or the Request for Proposal that contractors must self-certify via letter that their product or service complies with National Architecture Standards.

Project Manager

Date

FORM A-7
VENDOR SOLICITATION LIST

Use this form to keep track of vendors solicited for the purpose of sending ITBs and RFPs.

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____ **PAGE** _____ **OF** _____

CONTACT DATE	COMPANY	CONTACT	ADDRESS	CITY/STATE/ZIP	TELEPHONE	FAX NUMBER	E-MAIL ADDRESS

FORM A-8
BID PACKAGE/RFP REQUEST LIST

Use this form to keep track of vendors to whom an ITB or RFP was sent.

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____ **PAGE** _____ **OF** _____

DATE SENT	COMPANY	CONTACT	ADDRESS	CITY/STATE/ZIP	TELEPHONE	FAX NUMBER	E-MAIL ADDRESS

FORM A-9
SIGN IN SHEET
FOR PRE-BID CONFERENCES, PRE-PROPOSAL CONFERENCES, BID OPENINGS

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____ **PAGE** _____ **OF** _____

DATE: _____ **PROJECT TITLE:** _____

_____ **PRE-BID** _____ **PRE-PROPOSAL** _____ **BID OPENING** _____ **WALK THROUGH**

ATTENDANCE LIST

NAME	FIRM REPRESENTED	ADDRESS	CITY/STATE/ZIP	TELEPHONE	FAX NUMBER	E-MAIL ADDRESS

FORM A-10
RESPONDING VENDORS LIST

Use this form to document arrival date and time of Bids and Proposals

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

BID OPENING DATE: _____ **BID OPENING TIME:** _____

OR

PROPOSAL SUBMISSION DEADLINE DATE: _____

PROPOSAL SUBMISSION DEADLINE TIME: _____

PROJECT TITLE: _____

ARRIVAL DATE	ARRIVAL TIME	COMPANY OR FIRM	ADDRESS	CITY/STATE/ZIP

FORM A-11
BID TABULATION

Use this form to record the Bids that were opened at the Bid-Opening

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

BID OPENING DATE: _____ **BID OPENING TIME:** _____

PROJECT TITLE: _____ **Page** _____ **of** _____

				VENDOR NAME		VENDOR NAME		VENDOR NAME	
Item	Description	Qty	UM	Unit Price	Ext. Amount	Unit Price	Ext. Amount	Unit Price	Ext. Amount

QTY = Quantity, UM = Unit of Measure, Ext Amount = Extension Amount

NOTES: _____

**FORM A-12
LATE BIDS/PROPOSALS LIST**

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

BID OPENING DATE: _____ **BID OPENING TIME:** _____

OR

PROPOSAL SUBMISSION DEADLINE DATE: _____

PROPOSAL SUBMISSION DEADLINE TIME: _____

PROJECT TITLE: _____

ARRIVAL DATE	ARRIVAL TIME	COMPANY OR FIRM	DATE LETTER SENT TO INFORM FIRM OF LATE SUBMISSION	DATE OF RECEIPT OF FIRM'S RESPONSE TO LATE SUBMISSION AND REASON (<u>DESCRIBE</u>)	ACTION TAKEN	DATE FIRM'S BID OR PROPOSAL SENT BACK UNOPENED VIA CERTIFIED MAIL

FORM A-13
PRICE ANALYSIS DOCUMENTATION
FOR SMALL PURCHASES (EXCEEDING \$10,000) AND LARGE PURCHASES

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

Based upon the bids/quotes received as identified on the *Bid Tabulation* (Form A-11), I hereby determine that adequate price competition was obtained by comparison of the quotations and that the low price is fair and reasonable based upon one of the following methods.

The price analysis was obtained through:

_____ Comparison of bids received

_____ Comparison to Previous Purchase (Changes in quantity, quality, delivery schedules and the economy cause price variations. Make sure previous price was fair and reasonable based on physical review of documentation contained in previous files. Analyze each differing situation through trend analysis. **(Use when adequate competition does not exist.)**)

_____ Surveyed other Agencies (Contact other transit or public agencies that recently purchased a similar item to find out the price they paid. Place information in a *memorandum* or a form. Include additions or deletions for specific components (e.g., operator's seat, lighting system, signage system, etc.) **(Use when adequate competition does not exist.)**)

_____ Other: _____

_____ This was a sole source bid. (Include a letter of explanation in the contract file.)
(Complete *Sole Source Procurement Justification* Form A-15.)

COMMENTS: _____

Buyer

Date

FORM A-14
COST ANALYSIS DOCUMENTATION
For Construction Contracts, RFPs (Technological Items),
and Sole Source contracts exceeding \$10,000

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

When necessary: Perform a Cost Analysis when the offeror is required to submit the following elements of the estimated cost for professional consulting, architectural and engineering services contracts: Labor Hours, Overhead, Materials, etc. Architect/Engineering firm must provide unit quantity prices (e.g., estimates for asphalt, curb and gutter, number of hours for surveyors, drafting, etc.)

Perform a Cost Analysis whenever adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

Based upon the proposals or bids received, I hereby determine that the price is fair and reasonable based upon one of the following methods.

The cost analysis was obtained through:

_____ Technical Evaluation (This method is not directly related to price but involves an assessment of quantitative and qualitative factors that influence the offered price. This method allows an evaluation of the functions that cause cost. It is recommended that technically trained and experienced personnel assist in the analysis of hours, quantities, tooling, testing, head counts, productivity, and similar factors. When a technical evaluation is required prior to negotiations, it should address:

- 1) An estimate of necessary labor-hours with an indication of desirable adjustments;
- 2) Reasonableness of proposed material type, quantity and necessity;
- 3) The need for acquiring equipment and which equipment is considered general purpose or unique to perform a particular contract;
- 4) The possibility and availability of property that could be furnished by the Grantee;
- 5) The number, location, and need for any Grantee-funded trips for contractor personnel; and
- 6) The evaluator's summary statement and rationale that address whether or not the labor, material, travel, and other cost elements are reasonable.)

_____ Accounting Records (This method can present the cost of a job, but it is limited in determining reasonableness. Technical skills and judgements are required to determine reasonableness and necessity of the costs.)

_____ Auditor's Support (An auditor verifies proposed costs, overhead costs, and examines the vendor's estimates. Certain categories of materials, salaries, or the actual cost elements have contributed to an overhead rate. The auditor should tell you the prohibited costs included in the contractor's proposal.)

COMMENTS: _____

Buyer

Date

RTA Procurement Officer

Date

FORM A-15a
SOLE SOURCE PROCUREMENT JUSTIFICATION
Page 1 of 2

Complete this form to document the process to justify a Sole Source procurement.

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

Indicate the reason for choosing a sole source procurement based upon compliance with the following considerations from FTA Circular 4220.1F (Chapter VI, Sec. 3.i(1)(b)). For more information, see *Best Practices Procurement Manual*.

_____ (a) Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.

How did you arrive at this conclusion? _____

How did you determine the availability of the service or item? (e.g., checked on prior procurements for the same or similar item) _____

List other sources for identical or compatible parts or equipment if any and indicate if they are responsible: _____

Did a vendor or contractor help prepare the statement of work? ____ Yes ____ No

Vendor's name _____

Will they benefit if RTA proceeds with a sole source contract? _____ Yes ____ No

Explain your answer _____

_____ (b) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

Name of manufacturer or supplier _____

Describe the restrictions _____

FORM A-15b
SOLE SOURCE PROCUREMENT JUSTIFICATION
Page 2 of 2

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

_____ (c) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

Name of manufacturer or supplier _____

Reason the above is the sole source _____

Describe how you ascertained this (e.g., whom did you contact?) _____

_____ (d) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

Name of manufacturer or supplier _____

Reason the above is the sole source _____

Describe how you ascertained this (e.g., whom did you contact?) _____

COMMENTS: _____

Buyer

Date

RTA Procurement Officer

Date

FORM A-16
DETERMINATION OF BEST VALUE

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

_____ (name of company) is determined to be the lowest, **most responsive bid** and will provide the best value to RTA.

Check one of the lines below.

_____ Company's bid is the lowest bid received.

_____ Company's bid **is not** the lowest bid but is considered the best value. Document the reasons why this company was selected:

RTA Buyer or Procurement Officer

Date

FORM A-17
CONTRACTOR VERIFICATION

Use this form for the general contractor and all subcontractors.

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

I have verified through the Federal Government's System for Award Management website at <https://www.sam.gov/SAM/> and a search for exclusion records that the company

_____ awarded the RTA contract to provide _____

has not been debarred from working on federally funded projects. Likewise, I have verified through the lists above that the following sub-contractors have not been debarred from working on federally funded projects.

Company Name	Address	Subcontract Product or Service
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

RTA Buyer or Procurement Officer

Date

FORM A-18 **PROPOSAL EVALUATION CRITERIA FORM**

Each member of the Evaluation Team or Selection Committee shall use this form to rate each proposal in order to select the "most advantageous" proposal. Evaluators shall remain confidential. Use the Pass/Fail Column to score Evaluation Criteria that do not require a numerical score. The numbers in Columns B and D are suggested; tailor these numbers to meet the committee's needs. The Evaluation Criteria are suggested. Match the Evaluation Criteria with the Proposal Content listed in the RFP's "Instructions to Proposers." Do not use the "Price" Evaluation Category for Architectural and Engineering Services.

RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

NAME OF FIRM: _____

Column A	Column B	Column C	Column D	Column E	Column F
EVALUATION CRITERIA	NUMERICAL POINTS POSSIBLE	EVALUATOR'S NUMERICAL SCORE	CRITERIA IMPACT WEIGHT PERCENTAGE	WEIGHTED SCORE MULTIPLY	P = PASS F= FAIL
RESPONSIBILITY OF FIRM financial, personnel, physical capability	1-10		10%		
VENDOR QUALIFICATIONS technical experience, recommendations from previous projects, staff qualifications, licenses and credentials	1-15		10%		
SCOPE OF WORK PROPOSAL How well did the proposal address the RFP?	1-10		10%		
PROJECT METHODOLOGY Assess innovation and approach to the project	1-15		20%		
PROJECT MANAGEMENT PLAN Project time line, deliverables, status reports	1-10		15%		
DOCUMENTATION Compliance with state and federal regulations	1-5		5%		
TRAINING OF RTA STAFF Number of training hours	1-10		10%		
WARRANTIES AND SERVICE SUPPORT	1-10		5%		
CONFLICT OF INTEREST DISCLOSURE STATEMENT					
DBE	1-5		5%		
PRICE Price proposal	1-10		10%		
TOTAL SCORES					

FORM A-19
MEMORANDUM OF NEGOTIATIONS
Page 1 of 2

Use this form to document the proposal terms and conditions including price, specifications, warranty provisions, etc., if negotiations changed the original scope of the Request for Proposals or Bid Package in the case of Sole Source Procurements. (To see an example of this form, see *Best Practices Procurement Manual* Appendix B.9.)

RFP OR ITB NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

Date Prepared:

Consultant:

Project Description:

Contract Value:	Line Items	Amount
	_____	\$
	_____	\$
	_____	\$
	_____	\$
	_____	\$
	TOTAL _____	\$

Request for Proposal Form Amount: (Order of Magnitude)

Source of Funds: ____% Federal/ ____% RTA

Contract Type:

Performance Period:

Insurance:

DBE Participation: The Request for Proposal (RFP) specified ____% DBE participation in accordance with the Request for Proposal Form. Consultant currently intends to utilize _____ for _____, at ____% of the total estimated not-to-exceed price; _____ for _____, at ____%; and _____ for _____, at ____%; for a total of ____% of the total estimated not-to-exceed price for DBE participation.

FORM A-19
MEMORANDUM OF NEGOTIATIONS
Page 2 of 2

RFP OR ITB NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

Selection Process and Criteria:

Authorization:

Cost/Price Analysis-Negotiation Documentation and Results:

Contract Articles (Terms and Conditions):

Summary and Recommendations:

Agreed Upon Contract Price:

Project Manager

Date

Procurement Officer

Date

FORM A-20
CONTRACT AWARD OFFER AND ACCEPTANCE FORM
Include in Request for Proposals

RFP NUMBER: _____ **GRANT NUMBER:** _____

PROJECT TITLE: _____

Offeror shall complete this form and include this form in the price proposal.

OFFER

By execution below the Offeror _____ hereby offers to furnish equipment and services for \$ _____ as specified in the RTA Request for Proposals (Number: _____) for (description of item or service) _____ including the General Conditions, Technical Specifications and Offer and Award Provisions.

Offeror: _____
Name

Street Address

City, State, Zip

Signature of Authorized Signer

Title

Phone

Additional Notes: _____

NOTICE OF AWARD

By execution below, RTA accepts Offer as indicated above.

Name (Executive Director)

Signature

Date of Award: _____

FORM A-21
NOTICE OF CONTRACT AWARD FOR BIDS AND RFPs

If applicable, include the following: (1) description and specifications of items or services being procured; (2) quantity and unit of measure; (3) unit price; (4) extended totals.

RFP OR ITB NUMBER: _____ **GRANT NUMBER:** _____

REQUISITION NUMBER: _____

PROJECT TITLE: _____

This is to notify you that (name of company): _____

(street address): _____

(name and title of authorized person): _____

(telephone number): _____ (company identification number): _____

has been awarded the contract (contract number) _____ to provide (product or service) _____ including all terms referenced in the IFB

to RTA, for the dollar value of \$ _____,

for the period beginning _____ and ending _____.

Your contract contains a Disadvantaged Business Goal of _____%. The Contract requires that you submit work schedules and copies of executed subcontract agreements for your proposed DBE subcontractors within 30 days of the date of this award letter. You are further required to submit monthly reports of your progress toward meeting these goals, on the forms provided in the contract documents.

Upon receipt of this *Notice of Contract Award for Bids and RFPs*, complete the enclosed *Notice of Contract Award Acceptance for Bids and RFPs* (Form A-22), as well as Parts V, VI and VII of the *Bidder's Questionnaire*, located in Section VII of the Invitation for Bid package, and deliver these documents to the RTA Procurement Officer.

The following documents are attached hereto, incorporated by reference and made part of this contract for all purposes:

NOTICE OF AWARD

Procurement Officer: _____
Signature

Date of Award: _____

Executive Director: _____
Signature

FORM A-22
NOTICE OF CONTRACT AWARD ACCEPTANCE FOR BIDS AND RFP'S

Contractor must complete and sign this *Notice of Contract Award Acceptance for Bids and RFPs*, and return it to RTA within five (5) working days of receipt of the *Notice of Contract Award for Bids and RFPs* (Form A-21), along with Parts V, VI and VII of the *Bidder's Questionnaire*, located in Section VII of the Invitation for Bid Package, via fax to the RTA Procurement Officer at [FAX #], with hard copy postmarked by the fifth working day mailed to: Procurement Officer, [AGENCY ADDRESS]. Failure to return the *Notice of Acceptance of Award* and Parts V, VI and VII of the *Bidder's Questionnaire* may result in a breach of this contract and RTA has the right to annul this contract without liability and/or employ any other remedy it may have at law.

RFP OR ITB NUMBER: _____ **GRANT NUMBER:** _____

RTA REQUISITION NUMBER:

PROJECT TITLE: _____

(Company name)_____is in receipt of the *Notice of Contract*

Award (contract number)_____, dated_____, for the time period

beginning_____and ending_____, for the dollar value of \$_____.

We understand that the contract contains a Disadvantaged Business Goal of_____% , and that the Contract requires our company to submit work schedules and copies of executed subcontract agreements with proposed DBE subcontractors within 30 days of the date of the aforementioned award letter. We understand that our company is further required to submit monthly reports of progress toward meeting these goals, on the forms provided in the contract documents.

Name of Company: _____

Street Address: _____

Telephone Number:_____Company Identification Number:_____

Printed Name and Title of Authorized Person:_____

Authorized Signature

Date

FORM A-23
NOTICE TO PROCEED

Complete all pre-construction surveys and engineering prior to issuing the contractor a Notice to Proceed.

RFP OR ITB NUMBER: _____ **GRANT NUMBER:** _____

DATE

NAME AND TITLE

ADDRESS

CITY, STATE, ZIP

RE: PROJECT TITLE
CONTRACT #

Dear _____:

Enclosed is your fully executed copy of the Contract referenced above.

This letter shall serve as your Notice to Proceed. Effective _____,
you may begin providing services and incurring costs. The term of this Contract shall be
from _____ through _____.

Should you have any questions, feel free to contact me at [TELEPHONE #].

I look forward to working with you on this important project.

Sincerely Yours,

RTA Procurement Officer

Enclosure

FORM A-24
CLOSEOUT LETTER OF RELEASE
FROM LIABILITIES, OBLIGATIONS AND CLAIMS

[Date]

[Contact
Company Name
Company Street Address, Suite
City, State, Zip Code]

Dear []:

In order to finalize the contract file for the purchase of [number and product or service] that occurred on [date product delivered], RTA requires a statement from [vendor] that formally releases RTA from all liabilities, obligations, and claims.

Please sign this letter if you agree with the following statement, then return the letter to [AGENCY ADDRESS], by [DATE].

As an official of [vendor], authorized to legally bind the company, I

_____ certify that [vendor]
(print your name and title)

has sent the final invoice to RTA on [date of invoice] and received payments from RTA for [number and product or service] in the amount of [\$ amount of payment] dated [date on check]. I further certify that [vendor] has completed the work agreed to in the contract signed [date contract or Bid Form signed], and hereby formally release RTA from any and all liabilities, obligations, and claims.

Signature: _____ Date: _____

RTA certifies that all contract elements have been completed, all deliverables have been received in satisfactory condition and have been inspected and approved, and that RTA holds no claims regarding this contract against [vendor].

Signature: _____ Date: _____
RTA Executive Director

FORM A-25
INSPECTION AND ACCEPTANCE CLOSEOUT FORM
Complete this form as part of the Contract Closeout Procedure for contracts \$100,000+.

RFP OR ITB NUMBER: _____ **GRANT NUMBER:** _____
PROJECT TITLE: _____

ROLLING STOCK

I certify that the following forms have been completed and are placed in the Master File. Place N/A on lines where items are not applicable.

Buy America Compliance Cert or Exemption Cert: Pre-Award _____ Post-Delivery _____
Buy America Documentation from Contractor: Pre-Award _____ Post Delivery _____
Purchaser's Requirements Certification: Pre-Award _____ Post-Delivery _____
FMVSS Compliance Cert or Exemption Cert: Pre-Award _____ Post-Delivery _____
FMVSS Compliance Documents from Contractor: Pre-Award _____ Post-Delivery _____
Serial Number Data Sheet per vehicle _____ Bus Testing Report _____
Visual Inspection Sheet per vehicle _____ Road Test Sheet per vehicle _____
Vehicle Weight Slip per vehicle _____ Shipping Documentation per vehicle _____
Signed "Release of Delivery" Form(s) _____ Certificates of Origin per vehicle _____

ROLLING STOCK AND NON-ROLLING STOCK

I certify that the following Contract Closeout Procedures have been performed and that the documentation has been placed in the Master File. Place N/A on lines that are not applicable.

Date

_____ RTA has received all articles and/or services set forth in the contract.
_____ RTA has inspected and accepted these articles and/or services (including reports and spare parts) and is satisfied that they are in full compliance with the conditions of the contract.
_____ For RFPs involving technology, a self-certification letter from the Contractor stating compliance with the National Architecture for Intelligent Transportation Systems standards.
_____ Proof of warranty documents delivered.
_____ Proof of Insurance (for construction and renovation projects on RTA property.)
_____ Procurement Officer is in receipt of a memorandum from department stating that all required inspections have been performed and the contract has been completed.
_____ RTA has received the final invoice from the Contractor -- (write date on line).
_____ Letter from Contractor formally releasing RTA from all liabilities, obligations, & claims.
_____ All administrative actions have been completed including settlement of disputes, protests, and litigation; final overhead rates have been determined; funds have been released; property has been accounted for or disposed of properly; necessary audits have been performed. (Executive Director's initials.)
_____ RTA has made the final payment to the Contractor and has proof that the Contractor received the final payment (cancelled check, memorandum, etc.)
_____ All documentation has been placed in the Master File.
_____ Project and drawdown information entered into TEAM by Executive Director.

Procurement Officer

Date

FORM A-26 MASTER CONTRACT FILE CHECK LIST FOR PROJECT:

TAB 1	Email notifying Procurement Officer of project description	Date:
TAB 2	Independent Cost Estimate (Form A-4)	Date: Process used to derive Independent Cost Estimate:
TAB 3	Justification for Contract Type (Form A-5)	Date: Contract Type:
TAB 4	Requisition Form signed by GM	Date:
TAB 5	DBE Goal placed on Requisition Form	Date:
TAB 6	Board Agenda Item & minutes; Board agenda item for all purchases exceeding \$20,000	Board Date:
TAB 7	Invitation for Bid or Request for Proposal Package, Addenda, & Fed Clauses & Config Manage (A-6)	ITB or RFP Date: Fed Clauses Y N Add #1 Add #2 Add #3 Add #4 Add #5
TAB 8	Advertisement	Publication & Date: Publication & Date:
TAB 9	Vendor Solicitation List (Form A-7)	Yes No
TAB 10	Bid/Proposal Package Request List (Form A-8)	Yes No
TAB 11	Pre-Bid/Proposal Conference Sign-in Sheet (Form A-9) and Minutes	Conference Date:
TAB 12	Maintain list of responding vendors (Form A-10)	Yes No
TAB 13	Bid Opening / Tabulation (Form A-11)	Bid Opening Date:
TAB 14	List late bids/proposals (Form A-12) Correspondence, letters, certified mail	Applicable Not Applicable
TAB 15	Adequate price competition Price Analysis or Cost Analysis (Form A-13/-14)	Date:
TAB 16	Sole Source Procurement Justification (Form A-15)	Date if Applicable:
TAB 17	Determine low bid/best value (Form A-16) Include bids received.	Date:
TAB 18	Letters from vendors to withdraw bids or proposals	Dates if Applicable:
TAB 19	Contractor Verification (Form A-17) to see if selected contractor is debarred	Date:
TAB 20	Proposal Evaluation Criteria (Form A-18)	Date if Applicable:
TAB 21	Memorandum of Negotiations (A-19)	Date if Applicable:
TAB 22	Evaluation Team signatures: Code of Ethics and Conflict of Interest Policy	If Applicable: Yes No
TAB 23	Contract Award Offer and Acceptance (A-20) for proposals	Date sent if Applicable:
TAB 24	Notice of Award (Form A-21), Letters to rejected vendors, protest documentation	Date sent:
TAB 25	Receipt of Notice of Award Acceptance (Form A-22)	Date received:
TAB 26	Contract signed	Date:
TAB 27	Notice to Proceed (Form A-23)	Date sent:
TAB 28	Release Ltr (A-24) Closeout documentation, warranties, ins., settlements, (A-25)	Date signed:
TAB 29	Bond Documents, Notices to Sureties	
TAB 30	Miscellaneous Correspondence, letters Approved Equals, etc.	
TAB 31	Misc., such as Stop Work documentation	

FORM A-27
PIGGYBACKING WORKSHEET

Definition: *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. ("FTA Dear Colleague" letter, October 1, 1998).*

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14) (i).		

(Form A-27 continued)

WORKSHEET		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1.		

**SUBRECIPIENT AGREEMENT BY AND BETWEEN
THE ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS AND THE
REGIONAL TRANSPORTATION AUTHORITY OF CENTRAL OKLAHOMA**

This Subrecipient Agreement (“the Agreement”), made and entered into this _____ day of _____, 2019 by and between the Association of Central Oklahoma Governments (“ACOG”) and the Regional Transportation Authority of Central Oklahoma (“RTA”).

RECITALS

WHEREAS, in 2009, ACOG formed the Regional Transportation Dialogue committee comprised of local communities, elected officials, chambers, and business leaders to engage in a discussion of regional transportation alternatives; and

WHEREAS, six local communities (Del City, Edmond, Midwest City, Moore, Norman and Oklahoma City) contributed \$250,000 in local funds for a Commuter Corridors Study (CCS), which local funds were used to match \$1,000,000 of ACOG’s FHWA Planning (PL) funds; and

WHEREAS, after the CCS was completed, the same six communities pledged approximately \$2 million in local funding and formed an RTA Task Force to guide the establishment of the RTA; and

WHEREAS, in February 2019 the local communities signed a Trust Indenture to formally create the Regional Transportation Authority of Central Oklahoma; and

WHEREAS, in the FY 2020 Unified Planning Work Program, ACOG identified certain funds to update the Commuter Corridors Study and develop a system integration plan for the RTA service area; and

WHEREAS, there are funds remaining on deposit with ACOG in the amount of \$_____ (RTA Funds) (consisting of \$_____ in FTA Grant funds, and \$_____ in FHWA funds) which have been planned and programmed benefit of RTA (hereinafter referred to jointly as “RTA Funds”); and

WHEREAS, RTA intends to procure services to update the RTA Commuter Corridors Study and develop a system integration plan which work, upon execution of this Agreement, will be eligible for reimbursement from the RTA Funds under the Grants; and

WHEREAS, this Subrecipient Agreement is the most efficient means for RTA to complete the work and obtain reimbursement under the Grants.

NOW, THEREFORE, the parties do mutually agree as follows:

PART I
PROJECT

1.01. RTA intends to procure services to update the RTA Commuter Corridors Study and develop a system integration ("Project") in an amount to be funded by the RTA Funds.

Part II
FUNDING

201. There are RTA Funds available in the total amount of \$_____ (consisting of \$_____ in FTA Grant funds, and \$_____ in FHWA funds).

202. For RTA to obtain from ACOG the RTA Funds for the Project, RTA shall submit requests for reimbursement to the ACOG designated project manager. The requests shall include contractor invoices and an RTA certification that the work is complete and eligible for payment pursuant to this Agreement. ACOG shall process properly submitted requests for reimbursement within thirty (30) days of receipt by ACOG. Payments shall be made to Treasurer, Regional Transportation Authority of Central Oklahoma and sent to:

Regional Transportation Authority of Central
Oklahoma
4205 N. Lincoln Blvd.
Oklahoma City, OK 73105
Attn: James Boggs

203. In no event shall reimbursement for Project costs from the RTA Funds exceed the amount on deposit for the RTA Funds. If the FTA or FHWA determines that any federal grant funds were not properly expended by RTA, then RTA agrees to reimburse the FTA, FHWA or ACOG for any sums deemed ineligible for payment with grant funds or improperly expended.

PART III
GRANT REQUIREMENTS

3.01. The terms of FTA's Grant Award for Grant No. _____ and FHWA's Grant Award for Grant No. _____ respectively, and the FTA Certifications and Assurances FFY 2019, and the FTA Master Agreement, FTA MA (25), dated October 1, 2018, including all documents incorporated therein, and all applicable laws, regulations, and circulars, are incorporated herein by reference as if fully set forth herein. RTA shall be a subrecipient under the Grants. For the purposes of this Agreement unless the context clearly indicates otherwise, each reference in the forgoing documents to "Recipient" or "Applicant" shall mean RTA and, where appropriate to make RTA obligations under such documents due and owing to ACOG, "Government" or "FTA" shall mean ACOG. RTA shall perform the Project work in strict accordance with the provisions of the Grants.

3.02. In addition, RTA shall comply with the following:

3.02a Federal Changes: RTA shall at all times comply with all applicable Federal statutes, executive orders, FTA circulars, regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, as they may be amended or promulgated from time to time during the term of this subrecipient agreement. RTA's failure to comply shall constitute a material breach of this Agreement.

3.02b. RTA shall make all applicable Certifications and Assurances which the FTA may require of grant recipients, and any revised, updated or reissued versions of the Certification and Assurances.

3.02c. The parties agree that RTA's Certifications and Assurances are material representations of fact upon which ACOG has relied in deciding whether to enter into this Agreement and award the subgrant from the Grant proceeds. The submission of the Certification and Assurances is a prerequisite for the award of the subgrant from the Grant proceeds under various federal laws including 31 U.S.C. 1352. Failure to make the required certifications or the making of false certifications is punishable under federal law and can include civil penalties in excess of \$10,000 for each untrue or incorrect certification.

3.02d. Procurement: In accordance with FTA Circular 4220.1E, RTA shall adhere to the applicable federal procurement regulations, including, but not limited to, the following:

General: RTA may enter into third-party contracts for procurement of services required to update the RTA Commuter Corridors Study and develop a system integration plan. RTA must ensure that these services are obtained in free and open competition, prices are fair and reasonable, and are in compliance with the provisions of applicable Federal, State, and local laws.

This includes affording procurement opportunities to small and disadvantaged business enterprises.

Conformance with State and Local Law: RTA shall use its own procurement procedures that reflect State and local laws and regulations as applicable, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this Agreement.

Contract Administration System: RTA shall maintain a contract administration system that ensures that third-party contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Statutory and Regulatory Requirements: RTA is responsible to comply with all statutory and regulatory requirements applicable to grantee procurements (such as Disadvantaged Business Enterprise, Clean Air, and Buy America) contained in the FTA Master Agreement. RTA is responsible for evaluating these requirements for relevance and applicability to each procurement. RTA agrees to comply with all applicable statutory and regulatory requirements referenced in the FTA Master Agreement. Further guidance concerning these requirements and suggested wording for contractual clauses may be found in FTA's Third Party Procurement Manual (FTA Circular 4220.1E http://www.fta.dot.gov/laws/circulars/leg_reg_4063.html, and the Best Practices Procurement Manual, http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6_037.html)

- 302e. Access to Records and Reports: In accordance with 49 CFR 633.17, RTA shall require third-party contractors to provide ACOG, RTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives access to the Contractor's records related to the contracts for which RTA receives reimbursement, in whole or in part, with funds from the Grant.

RTA shall require the contractor to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

RTA shall require the contractor to maintain all books, records, accounts, and reports for a period of not less than three years after the date of termination or expiration of its contract, except in the event of litigation or settlement of claims, in which case, contractor shall agree to maintain the same until ACOG, RTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

RTA will give ACOG, the FTA, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award, and will establish a proper accounting system in accordance with generally accepted standards of agency directives. RTA will also require its third-party contractors to do the same.

3.02f. Breaches and Dispute Resolution:

Claims for Damages. Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies. Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between RTA and ACOG arising out of or relating to this subrecipient agreement or its breach may be decided by a mutually agreeable form of alternative dispute resolution, or in a court of competent jurisdiction within the State of Oklahoma.

Rights and Remedies. The duties and obligations imposed by the Agreement documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed by law. No action or failure to act by ACOG or RTA shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

3.02.g. ACOG Oversight: ACOG may inspect the Project to ensure compliance with the Agreement. Inspection by ACOG of the project work does not relieve RTA of its responsibilities and liabilities as the responsible party for carrying out the Grants.

3.02.h Termination of Subrecipient Agreement: In the event that RTA fails to perform services in the manner called for by the Agreement, ACOG may terminate the Agreement for default. Termination shall be effective by serving a notice of termination on RTA setting forth the manner in which RTA is in default. RTA will only be reimbursed for services performed in accordance with the manner of performance set out in the Agreement.

(1) Opportunity to Cure: ACOG in its sole discretion may, in the case of termination for breach or default, allow RTA time to cure the default. In such case, the notice of termination will state the time period in which

cure is permitted and other appropriate conditions. If RTA fails to remedy to ACOG's satisfaction the breach or default or any terms, covenants, or conditions of this Agreement within ten (10) business days after receipt of the written notice from ACOG setting forth the nature of the breach or default, ACOG shall have the right to terminate the Agreement without any further obligation to RTA. Any such termination for default shall not in any way operate to preclude ACOG from also pursuing all available remedies against RTA for said default or breach.

3.03. Contractors and Subcontractors: RTA shall place on its contractors and subcontractors those obligations which the Master FTA Agreement requires recipients to include in third-party contracts and subcontracts. RTA agrees to include in its contracts entered into and for the Project the same certifications, assurances, and agreements which RTA is obligated under Section 3.01.

3.04. No Obligations to Third Parties: RTA acknowledges and agrees that, notwithstanding any concurrence by the Federal Government and/or ACOG in or approval of a third-party contract, absent express written consent by the Federal Government and/or ACOG, neither the Federal Government nor ACOG is a party to the third-party contract and shall not be subject to any obligations or liabilities to the third-party contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from the underlying contract.

RTA agrees to include the above clause in each third-party contract for which RTA will receive reimbursement, in whole or in part, from Grant funds. It is further agreed that the clause shall not be modified, except to identify the third-party contractor who will be subject to its provisions.

3.05. Incorporation of Federal Transit Administration Terms: The proceeding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Agreement. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of conflict with other provisions contained in this Agreement, RTA shall not perform any act, fail to perform any act, or refuse to comply with any ACOG requests which would cause RTA to be in violation of the FTA terms and conditions.

3.06. Recitals: The recitals are incorporated into this Agreement.

PART IV NOTICES

All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when either: personally delivered; or received by certified or registered mail, first class, postage paid,

return receipt requested to any party hereunto as follows:

If to ACOG: Association of Central Oklahoma Governments
4205 N. Lincoln Blvd.
Oklahoma City, OK 73105
Attn: Executive Director

If to RTA: Regional Transportation Authority of Central Oklahoma
4205 N. Lincoln Blvd.
Oklahoma City, OK 73105
Attn: Chair, Board of Directors

PART V SEVERABILITY

5.1. The parties agree that the provision of federal funds for the Project under this Agreement makes the federal statutes, rules, regulation, circulars and other forms of written guidance controlling over any inconsistent state or local statutes, rules and regulations. To the extent not covered by any federal statute, rule, regulation, circular, or other written guidance, the parties agree that if any provision of this Agreement shall contravene, or be invalid under, the applicable laws of the particular state, or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement but the Agreement shall be construed as if not containing the particular provision or provisions held to be invalid in the same particular state or jurisdiction and the rights and obligations of the parties shall be construed and enforced accordingly.

PART VI ACKNOWLEDGMENT AND EXECUTION

This Agreement shall inure to, be to the benefit of, and bind ACOG and RTA and their respective successors and/or assigns as if they had been named therein.

THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001

Executed this ____ day of _____, 2019.

THE ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS

By: _____
Its

Attest: _____

For REGIONAL TRANSPORTATION AUTHORITY OF CENTRAL OKLAHOMA

By: _____
Its

Attest: _____

DRAFT