



**CONTRACTS AND PROCUREMENT
POLICY AND PROCEDURES
MANUAL**

**ADOPTED BY THE
BOARD OF DIRECTORS
10-26-2022**

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CHAPTER 1

INTRODUCTION

This manual is intended to serve [AGENCY] 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 *Contracts and Procurement Policy and Procedures Manual* establishes guidelines and minimum standards that SCRTD will use to process third party contracts. This manual is intended to help SCRTD 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," (http://www.access.gpo.gov/nara/cfr/waisidx_00/49cfr18_00.html.) 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. SCRTD will avoid the following situations considered to be restrictive of competition:

- (1) Unreasonable requirements placed on firms in order 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.

SCRTD 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. Addresses, telephone numbers, and website addresses have been included to help the buyer expedite each step. Appendix B contains the standardized forms to be used to document practices.

FTA Circular 4220.1F, “Third Party Contracting Guidance,” can be found at http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html.

To ensure full compliance, the SCRTD 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 Best Practices Procurement Manual

http://www.fta.dot.gov/documents/BPPM_fulltext.pdf

FTA Procurement Helpline http://www.ftahelpline.com/frequently_asked_questions.htm.

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/>.

New Mexico Procurement Code

<http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>.

New Mexico Purchasing Guide

http://www.generalservices.state.nm.us/spd/purchasing_guide.pdf.

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 SCRTD, stated as follows.

2.1.1 Personal Conflict of Interest

No SCRTD 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.

SCRTD 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 SCRTD 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 (less than \$25.00) 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 so as to be fully substantiated and legally defended in accordance with the authority of the South Central Regional Transit District. At all times, SCRTD 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 the South Central Regional Transit District Attorney to review all situations that appear to have the potential for an organizational conflict of interest. (See Appendix A for the name, telephone number, and e-mail address of the person to contact.)

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 SCRTD;
- ◆ 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, SCRTD 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 SCRTD 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, in light of the interest(s) identified in (a) 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 (1) 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) The South Central Regional Transit District Attorney will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to SCRTD, 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 South Central Regional Transit District Attorney may (a) disqualify the offeror, or (b) determine that it is otherwise in the best interest of SCRTD 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 South Central Regional Transit District Attorney. 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 South Central Regional Transit District Attorney may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of SCRTD 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. [AGENCY] 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 SCRTD has paid the contractor to develop, or which SCRTD 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. Grantees are advised to 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 a SCRTD 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 SCRTD 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 SCRTD Procurement Officer will obtain copies of these agreements.

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

SCRTD 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, SCRTD 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 SCRTD 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 SCRTD 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 SCRTD.

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 *Contracts and Procurement Policy and 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* Sec. 4.1).
- ◆ 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 B-2).
- ◆ Splitting procurements to avoid the \$3,000 competition requirement is not allowed. (For more information, see *Best Practices Procurement Manual* Sec. 4.1)
- ◆ Contract clauses are not required for Micro-Purchases.
- ◆ Purchase cards may be used if the *Price Determination Form* (Form B-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* Sec. 4.1.1)
- ◆ Make sure the project complies with Configuration Management. For more information, see Form B-6. Form B-6 does not need to be signed for Micro-Purchases.
- ◆ To justify Sole Source Procurements, complete Form B-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 B-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 B-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

SCRTD 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 Section 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 B-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 estimate exceeds \$10,000.
- ◆ The SCRTD 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* Sec. 4.1)
- ◆ Small Purchases are exempt from the Buy America requirements.
- ◆ To justify Sole Source Procurements, complete Form B-15 and attach it to the Purchase Order documentation.
- ◆ SCRTD 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,
 - 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 State General Services Department, going out to bid is not required. **Contact the NMDOT Transit & Rail Division for assistance with making purchases from Statewide Price Agreements, to ensure compliance with FTA and/or NMDOT requirements** (see Appendix A for contact information).

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 B-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 B-6. Form B-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 B-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 estimate is required for purchases of at least \$10,000.01.
- ◆ Advertise Invitation for Bid or Request for Proposals if the independent estimate exceeds \$10,000.
- ◆ [AGENCY] Board of Directors approval is required if the independent 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 or not the purchase, service, or construction project exceeds \$10,000 by completing the *Independent Estimate* (Form B-4.)

_____ **Step 4: If the independent estimate exceeds \$20,000, the purchase must be approved by the SCRTD Board of Directors.** Prepare an

agenda item for the Board Meeting. For assistance, see the Administrative Assistant (Appendix A).

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

_____ Step 6: Request that the DBE Officer (See Appendix A for the person in this position) 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 SCRTD.)

_____ Step 8: Prepare the Specifications and Bid Package. (See Chapter 4 for specific information.) Coordinate basic safety and user requirements with all SCRTD 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 B-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 B-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* Sec. 2.4.2.2.1, Brand Names.)

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 Las Cruces Bulletin 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 [NEWSPAPER] (see Appendix A for the fax and phone numbers), 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 the [CITY/TOWN/VILLAGE] Secretary and Public Information Officer (see Appendix A for the e-mail addresses) on the day when the notice is sent to the newspapers. The [CITY/TOWN/VILLAGE] Secretary will see that the notice is posted on the [CITY/TOWN/VILLAGE] Hall bulletin board, and the Public Information Officer will post the notice on the [CITY/TOWN/VILLAGE] website and television station until the Bid Opening Date.
- (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 SCRTD 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 B-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 B-8). SCRTD is allowed to 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 B-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 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. (For more information on the Pre-Bid Conference, see the *Best Practices Procurement Manual* Sec. 4.3.2.4.) 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 B-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 B-11).
- _____ Step 18: Any sealed bids that reach SCRTD after the bid opening time and date must be mailed back to the source without opening. Complete the *Late Bids/Proposals List* (Form B-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 B-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 B-16). In determining which products or services are

in the best interest of SCRTD, 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* Sec. 4.4.4.)

_____ Step 21: If the lowest bid is not selected, document the reasons for the selection on the *Determination of Best Value* (Form B-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 Section 4.4.3 of 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 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. You may want to ask legal counsel for advice. Call the SCRTD Attorney. (See Appendix A for the name, telephone number, and e-mail address of the person to contact.)

_____ Step 23: Check to see if the selected bidder has not been debarred from working on Federal Contracts. Check the Federal Government's General Services Administration Debarred Bidder's List at www.gsa.gov under Public Information, Publications, Directories and Catalogues, Debarred Bidders List. Complete the *Contractor Verification* (Form B-17.)

- _____ **Step 24: If the contract exceeds \$20,000, the [AGENCY] Board of Directors must award the contract.** Prepare an agenda item for the Board meeting. For assistance, see the Administrative Assistant (Appendix A).
- _____ Step 25: Following Board approval, send a *Notice of Contract Award for Bids and RFPs* (Form B-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 B-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 B-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 B-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 [LOCAL GOVERNMENT] Attorney (see Appendix A) 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 B-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 B-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 estimate exceeds \$100,000.
- ◆ The [AGENCY] Board of Directors is required to approve all contracts and procurements exceeding \$20,000 through an agenda item.
- ◆ In order 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 on the basis of 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 sufficient 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.)
- ◆ SCRTD 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 or not the purchase, service, or construction project exceeds \$100,000 by completing the *Independent Estimate* (Form B-4.)

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

_____ Step 5: Request that the DBE Officer (See Appendix A) 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 [AGENCY].)

_____ **Step 6: If the independent estimate exceeds \$20,000, the purchase must be approved by the [AGENCY] Board of Directors.** Prepare an agenda item for the Board Meeting. For assistance, see the Administrative Assistant (Appendix A).

_____ 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 [AGENCY] 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 B-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 B-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* Sec. 2.4.2.2.1, Brand Names.)

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

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- Step 8: The **advertisement** for the large purchase competitive sealed bid must be published in newspapers published in [CITY/TOWN/VILLAGE] 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 [NEWSPAPER] (see Appendix A for the fax and phone numbers), 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 the [CITY/TOWN/VILLAGE] Secretary and Public Information Officer (see Appendix A for the e-mail addresses) on the day when the notice is sent to the newspapers. The [CITY/TOWN/VILLAGE] Secretary will see that the notice is posted on the [CITY/TOWN/VILLAGE] Hall bulletin board, and the Public Information Officer will post the notice on the [CITY/TOWN/VILLAGE] website and television station until the Bid Opening Date.
 - (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 SCRTD 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 B-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 B-8). SCRTD is allowed to 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 B-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* Sec. 4.3.2.4.) **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 B-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 B-11).
- _____ Step 17: Any sealed bids that reach SCRTD after the bid opening time and date must be mailed back to the source without opening. Complete the *Late Bids/Proposals List* (Form B-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 B-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 B-16). In determining which products or services are in [AGENCY]' 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* Sec. 4.4.4.)
- _____ Step 20: If the lowest bid is not selected, document the reasons for the selection on the *Determination of Best Value* (Form B-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 Sec. 4.4.3 of 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. Call the SCRTD Attorney. (See Appendix A for the name, telephone number, and e-mail address of the person to contact.)

_____ Step 22: Check to see if the selected bidder has not been debarred from working on Federal Contracts. Check the Federal Government's General Services Administration Debarred Bidder's List at www.gsa.gov under Public Information, Publications, Directories and Catalogues, Debarred Bidders List. Complete the *Contractor Verification* (Form B-17.)

_____ **Step 23: All contracts and procurements exceeding \$20,000 must be awarded by the [AGENCY] Board of Directors.** Prepare an agenda item for the Board meeting. For assistance, see the Administrative Assistant (Appendix A).

_____ Step 24: Following Board approval, send a *Notice of Contract Award for Bids and RFPs* (Form B-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 B-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 B-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 B-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 SCRTD Attorney (See Appendix A) 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 B-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 B-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* Sec. 4.3.1.)
- ◆ 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 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 SCRTD Procurement Officer will control the dissemination of proposals within SCRTD so that only staff with a demonstrable "need to know" have access to the proposals.
- ◆ The SCRTD 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* Sec. 4.5.

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 Estimate* (Form B-4.)
- _____ Step 4: Determine the Contract Type by completing the *Justification for Contract Type* (Form B-5.)
- _____ Step 5: Request that the DBE Officer (See Appendix A) 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 SCRTD.)
- _____ **Step 6: If the independent estimate exceeds \$20,000, the purchase must be approved by the [AGENCY] Board of Directors.** Prepare an agenda item for the Board Meeting. For assistance, see the Administrative Assistant (Appendix A).
- _____ Step 7: For purchases exceeding \$20,000, inform the Procurement Officer via e-mail. See Appendix A for the name of the person currently in this position.
- _____ 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. 4.5, Chapter 4 of this manual, and use the *Request for Proposal Boiler Plate* template.) Include information about the Price Proposal in the Request for Proposals and include the *Contract Award Offer and Acceptance Form* (Form B-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 SCRTD 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 B-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 B-6).

_____ Step 9: The **advertisement** for competitive proposals must be published in newspapers published in [CITY/TOWN/VILLAGE] 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 [NEWSPAPER] (see Appendix A for the fax and phone numbers), 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 the [CITY/TOWN/VILLAGE] Secretary and Public Information Officer (see Appendix A for the e-mail addresses) on the day when the notice is sent to the newspapers. The [CITY/TOWN/VILLAGE] Secretary will see that the notice is posted on the [CITY/TOWN/VILLAGE] Hall bulletin board, and the Public Information Officer will post the notice on the [CITY/TOWN/VILLAGE] website and television station until the Bid Opening Date.

(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 SCRTD 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 B-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 B-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 B-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* Sec. 4.3.2.4.) 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 B-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 B-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* Sec. 5.1 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 [AGENCY] after the submission deadline must be mailed back to the source without opening. Complete the *Late Bids/Proposals List* (Form B-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 B-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 B-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 B-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 B-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 B-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 General Services Administration Debarred Bidder's List at www.gsa.gov under Public Information, Publications, Directories and Catalogues, Debarred Bidders List. Complete the *Contractor Verification* (Form B-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 [AGENCY] Board of Directors.** Prepare an agenda item for the Board meeting. For assistance, see the Administrative Assistant (Appendix A).

_____ Step 25: Within five (5) working days following Board approval, send a *Notice of Contract Award for Bids and RFPs* (Form B-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 B-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 SCRTD was made carefully, is factually supported, and is in the best interest of SCRTD. It can also help offerors improve future proposals. If debriefing is conducted in person and a vendor's legal counsel is present, SCRTD 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* Sec. 4.5.8 and 5.3.2 for more information regarding Method of Debriefing and information that can be disclosed.)
- _____ Step 28: Send the vendor the *Notice to Proceed* (Form B-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 B-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 SCRTD Attorney (See Appendix A) 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 B-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 B-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 [AGENCY] 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 B-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 <http://www4.law.cornell.edu/uscode/40/541.html>.) (Also see *Best Practices Procurement Manual* Sec. 6.5 for more discussion on procuring Architectural and Engineering Services.) 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* Sec. 2.4.3 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* Sec. 6.5 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 SOLE SOURCE PROCUREMENTS

- ◆ 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 SCRTD.
- ◆ 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 Estimate* (Form B-4.)

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

_____ **Step 5: If the independent estimate exceeds \$20,000, the purchase must be approved by the [AGENCY] Board of Directors.** Prepare an agenda item for the Board Meeting. For assistance, see the Administrative Assistant (Appendix A).

_____ Step 6: For purchases exceeding \$20,000, inform the Procurement Officer via e-mail. See Appendix A for the name of the person currently in this position.

_____ 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 [AGENCY] 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 B-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 B-6). In Sole Source procurements, include the *Contract Award Offer and Acceptance Form* (Form B-20) in the ITB or the RFP.

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

- _____ Step 9: Complete *Cost Analysis Documentation* (Form B-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 B-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 General Services Administration Debarred Bidder's List at www.gsa.gov under Public Information, Publications, Directories and Catalogues, Debarred Bidders List. Complete the *Contractor Verification* (Form B-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 [AGENCY] must first negotiate with the vendor to arrive at an agreement, complete the *Memorandum of Negotiations* (Form B-19), and have it signed by the vendor and [AGENCY] 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 [AGENCY] Board of Directors.** Prepare an agenda item for the Board meeting. For assistance, see the Administrative Assistant (Appendix A).
- _____ Step 13: Within five (5) working days of Board approval, if needed, or signing the *Memorandum of Negotiations* (Form B-19), if the contract is \$20,000 or less, send a *Notice of Contract Award for Bids and RFPs* (Form B-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 B-22).
- _____ Step 15: If there were negotiations, complete the information and signatures on the *Contract Award Offer and Acceptance Form* (Form B-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 B-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 B-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 SCRTD Attorney (See Appendix A) 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 B-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 B-26).

3.6 CONSTRUCTION PROJECTS

- ◆ For construction projects worth \$2,000 or more in which Federal funds are used, SCRTD 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&WAIAction=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 SCRTD. 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 SCRTD property. Complete the insurance page (page 2) of the "Request to Solicit Competitive Bids or Proposals" form. **Also**, contact the [AGENCY] 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). **Contact the NMDOT Transit & Rail Division for assistance with making purchases from Statewide Price Agreements, to ensure compliance with FTA and/or NMDOT requirements** (see Appendix A for contact information).

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 SCRTD Procurement Officer) and the item to be procured,
 - ___ SCRTD 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),
 - ___ SCRTD 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 B, the second page of *Justification for Contract Type* (Form B-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 [AGENCY] 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
(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 SCRTD
- 12.2 ___ Location of Nearest Parts Distribution Center to SCRTD
- 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 SCRTD 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 \$100,000)
- 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 (No procurement) (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 SCRTD Procurement Officer) and the item or service to be procured;
- ___ SCRTD 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);
- ___ SCRTD 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 [AGENCY] 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* 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 \$100,000)
- 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)
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 - 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 SCRTD 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 SCRTD Procurement Officer no later than five (5) days prior to the bid or proposal due date. SCRTD 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 their 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 dollars 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 SCRTD.
- ❑ 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 [AGENCY] 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* Sec. 2.4.2.2.1 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 SCRTD department that will use the product or service.

4.4.2 Where to Obtain Specifications

The SCRTD 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 SCRTD. 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 SCRTD 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 more complete and 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 SCRTD.

- 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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
Baterly March Park
Quincy, MA 02269
617/770-3000

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, SCRTD 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. SCRTD will accept and review the protest with the understanding that the integrity of the procurement process may be at stake. SCRTD 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 SCRTD Procurement Officer shall direct the protester to mail or deliver the protest to relevant parties.

Mail the protest to:
Procurement Officer
SCRTD
830 Anthony Drive
Anthony, NM 88021

OR

Overnight or hand deliver the protest to:
Procurement Officer
SCRTD
830 Anthony Drive
Anthony, NM 88021

Faxed or e-mailed protests will not be accepted.

The SCRTD 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, SCRTD, 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* Sec. 11.2)

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

5.1 PRE-BID OR SOLICITATION PHASE PROTEST

A Pre-Bid or Solicitation Phase Protest must be received in writing by the SCRTD 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 SCRTD 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 readvertising.

SCRTD 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 SCRTD 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 SCRTD 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.

5.2 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 SCRTD 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 readvertise.

SCRTD 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 SCRTD 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 SCRTD 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.

5.3 POST-AWARD PROTEST

SCRTD 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.

5.4 APPEALS

The SCRTD 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 SCRTD 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.

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

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

- ◆ The Protester has exhausted all administrative remedies with SCRTD, and
- ◆ SCRTD 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 SCRTD 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, SCRTD will grant an allowance for request for reconsideration.

5.5 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 SCRTD is required to secure FTA review and concurrence in a proposed claim settlement before using Federal funds, refer to the *Best Practices Procurement Manual* Sec. 11.2.

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, SCRTD will issue Request for Proposals. All proposals except for A&E shall require both technical and cost proposals. SCRTD shall solicit proposals from a minimum of three sources to ensure adequate competition. SCRTD reserves the right and sole discretion to cancel the solicitation, without penalty. SCRTD reserves the right to reject all proposals and resolicit or cancel the procurement if this action is considered to be in the best interest of SCRTD. SCRTD also reserves the right to award the contract based upon initial submissions or on the basis of a best and final offer without conducting written or oral discussions if the solicitation specifically stipulates this reservation of SCRTD rights. Whenever SCRTD enters negotiations with one proposer, SCRTD must enter discussions with all proposers that submitted proposals within SCRTD predetermined price range, except in the case of A&E (see below). If SCRTD does enter into negotiations, SCRTD shall make the final selection at the conclusion of formal negotiations based upon the evaluation of best and final offers, unless SCRTD 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, SCRTD will enter negotiations with the most technically qualified firm to arrive at a fair and reasonable price. If an agreement cannot be reached, [AGENCY] 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 SCRTD 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 SCRTD 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 into 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 B-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 SCRTD Purchasing Director. Refer to Appendix S of the National Transit Institute's *Orientation to Transit Procurement*.

6.2 NONCOMPETITIVE NEGOTIATION

Whenever SCRTD performs a "Sole Source Procurement," noncompetitive negotiation is involved. After receiving only, a single bid or determining that competition is inadequate, discuss with the Procurement Officer about entering into negotiations with the single 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. These negotiations can be more pointed and open because there is no competitive environment involved and the integrity of the procurement process is not involved.

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 SCRTD 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.
- ◆ SCRTD has made all payments on the services or articles including the Final Payment.
- ◆ The Contractor has formally released SCRTD 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

SCRTD will make the Final Payment for the article or service once the contract is complete and SCRTD 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 SCRTD Procurement Officer must receive a memorandum from the SCRTD 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. SCRTD 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, SCRTD 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 SCRTD'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 SCRTD 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 SCRTD 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, SCRTD'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 B-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 SCRTD's Finance Department as proof of final payment.

Contracts for personal services, complex equipment, rolling stock, construction, and other one-of-kind items require a number of steps to effect 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 SCRTD 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.
- d) ___ Settlement of all subcontracts by the prime contractor.
- e) ___ Performance of all inspections (and acceptance tests if any) by the grantee's project manager, with appropriate documentation.
- f) ___ Conduct a cost audit for cost-reimbursement contracts and resolve questioned costs, if any.
- g) ___ 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>.
- h) ___ 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. SCRTD 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 [AGENCY]'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, SCRTD 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 SCRTD. Or the contractor may have been awarded another contract, which requires the reassignment of his personnel to another job.

MARTA's procedures provides an example in which the contract provisions call for the retainage of at least 5% of the total contract value as the work progresses (10% if there are problems observed with the work). At the point of final inspection and punch list preparation, MARTA's resident engineer estimates the value of the punch list items and the undelivered items such as spares, manuals, warranties, etc., and then MARTA pays out the retainage minus twice the value of all the unfinished work. By establishing the retainage in this way, the contractor is motivated to complete the contract, because the contractor will actually receive twice the amount of money that it takes to finish the work. When all else fails, the grantee should definitely involve the surety in the issue of unfinished work (even if the amount of work is relatively small) because the contractor's relationship with its surety is a vital one for its future business. If the contractor loses the confidence of its surety, it is effectively foreclosing on its ability to bid on future work requiring performance bonds.

- Maintenance Bond (if required)
- i) — 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 council. For procurements involving services, construction, and larger dollar value equipment purchases, SCRTD 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 49 CFR Part 663 (<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>). For a hard copy, see Code of Federal Regulations, Pre-Award and Post Delivery Audits of Rolling Stock Purchases, 49 CFR Chapter VI, Part 663. For more information, refer to: <http://www4.law.cornell.edu/cfr/49p663.htm>, <http://www.fta.dot.gov/library/reference/buyamerica/byamrdc3.htm>, and *FTA Conducting Pre-Award and Post-Delivery Audits for Bus Procurements*. Pre-Award and Post Audit Forms can be found in the SCRTD Procurement Files.

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 sixty (60) percent minimum domestic content and United States final assembly requirement established in

the Buy America Rule. In the pre-award review process, SCRTD, 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 sixty (60) 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.

<u>PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION</u>		
As required by Title 49 of the CFR, Part 663 - Subpart B, SCRTD 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, SCRTD 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, [AGENCY] 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 SCRTD's solicitation specifications. To comply with this certification, SCRTD or the designated analyst must review and approve:

- ◆ That the manufacturer's bid specifications are in compliance with SCRTD'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 SCRTD 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, [AGENCY] certifies that the (number and description) _____

_____ of buses to be purchased from (the manufacturer) _____, are the same product described in [AGENCY]'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 SCRTD must follow to demonstrate compliance with the FMVSS certification requirement. Most buses must comply with the FMVSS regulations. SCRTD 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.

<u>PRE-AWARD FMVSS COMPLIANCE CERTIFICATION</u>	
As required by Title 49 of the CFR, Part 663 - Subpart D, [AGENCY] 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, SCRTD 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.

<u>PRE-AWARD FMVSS EXEMPTION CERTIFICATION</u>	
As required by Title 49 of the CFR, Part 663 - Subpart D, SCRTD 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

SCRTD 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 SCRTD 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 SCRTD is doubtful that this is the case, perform another review.

1. Buy-America Compliant Buses: Buses meet the sixty (60) 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, SCRTD, 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 sixty (60) 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, [AGENCY] 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, SCRTD 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, [AGENCY] 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 [AGENCY] 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**, [AGENCY], 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, SCRTD 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, SCRTD 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, [AGENCY] 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**, SCRTD 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, SCRTD 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, SCRTD 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

SCRTD 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, SCRTD 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, SCRTD 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, SCRTD 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	Capa[AGENCY] 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		

APPENDIX A
CURRENT CONTACT LIST
10-26-2022

The purpose of this Appendix is to provide the names of the people currently filling the positions referenced in the manual.

Executive Director: David Armijo
949-322-9881, darmijo@scrtd.org

Safety Coordinator: Cristina Gamboa
915-841-9248, cgamboa@scrtd.org

Procurement Officer: Sara Vasquez
915-274-7628, vasquez@scrtd.org

DBE Officer: Sara Vasquez
915-274-7628, vasquez@scrtd.org

Attorney: Carrillo Law Firm
575-647-3200

Legal Notices: Las Cruces Bulletin
575-524-8061

NMDOT Transit & Rail Division
Rural Transit Programs Coordinator: Ernestina Martinez
Telephone (505) 795-0246
E-mail: Ernestina.Martinez@state.nm.us

Federal Transit Administration, Region VI
Regional Administrator: Robert Patrick
819 Taylor Street, Suite 8A36
Fort Worth, TX 76102
Telephone (817) 978-0550; Fax (817) 978-0575

Director of Program Management and Oversight: Gail Lyssy
Telephone (817) 978-0556

APPENDIX B

STANDARDIZED PROCUREMENT FORMS

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

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

(For Small and Large Purchases, refer to Forms B-3 and B-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 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 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 B-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 [AGENCY] Board.

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

Complete this form (comments) and Form B-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 B-4
INDEPENDENT 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 SCRTD Board.

Complete this form before requesting bids or proposals.

{USE FORM B-3 FOR SMALL PURCHASES EXCEEDING \$3,000 BUT NOT \$10,000.}
{USE FORM B-2 FOR MICRO-PURCHASES \$0 TO \$3,000}

ITB OR RFP NUMBER: _____ AMOUNT OF INDEPENDENT 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 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 B-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:

- | | |
|---|---|
| <input type="checkbox"/> Fixed Price (for sealed bid procurements) | <input type="checkbox"/> Cost Reimbursement Contract |
| <input type="checkbox"/> Firm Fixed Price | <input type="checkbox"/> Cost Contract |
| <input type="checkbox"/> Fixed Price with Economic Price Adjustment | <input type="checkbox"/> 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 B-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 [AGENCY] 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 B-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: _____

- I certify by my signature as Project Manager, that the specifications contained in the Invitation for Bid Package or Request for Proposals conform to [AGENCY]'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.

- 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

- 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 B-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 (DESCRIBE)	ACTION TAKEN	DATE FIRM'S BID OR PROPOSAL SENT BACK UNOPENED VIA CERTIFIED MAIL

**FORM B-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 B-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 B-15.)

COMMENTS: _____

Buyer

Date

FORM B-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

[AGENCY] Procurement Officer

Date

FORM B-15
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* Sec. 4.6.

____(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 [AGENCY] 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 B-15
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

SCRTD Procurement Officer

Date

B-15b
FORM B-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 SCRTD.

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:

SCRTD Buyer or Procurement Officer

Date

**FORM B-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 General Services Administration Debarred Bidder's List at www.gsa.gov under Public Information, Publications, Directories and and Catalogues, Debarred Bidders List, that the company _____ awarded the SCRTD contract to provide _____ (product or service)

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
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SCRTD Buyer or Procurement Officer

Date

FORM B-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 timeline, deliverables, status reports	1-10		15%		
DOCUMENTATION Compliance with state and federal regulations	1-5		5%		
TRAINING OF [AGENCY] 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 B-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/___% SCRTD

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 B-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 B-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 SCRTD 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, SCRTD accepts Offer as indicated above.

Name (Executive Director)

Signature

Date of Award: _____

FORM B-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 SCRTD, 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 B-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 fax these documents to the SCRTD Procurement Officer at [TELEPHONE #], and then **mail** it to: Procurement Officer, 830 Anthony Drive, Anthony, NM 88021.

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 B-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 SCRTD within five (5) working days of receipt of the *Notice of Contract Award for Bids and RFPs* (Form B-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 SCRTD Procurement Officer at [FAX #], with hard copy postmarked by the fifth working day mailed to: Procurement Officer, 830 Anthony Drive, Anthony NM 88021. 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 SCRTD 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:** _____

[AGENCY] 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 B-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,

SCRTD Procurement Officer

Enclosure

FORM B-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], SCRTD requires a statement from [vendor] that formally releases SCRTD from all liabilities, obligations, and claims.

Please sign this letter if you are in agreement with the following statement, then return the letter to 830 Anthony Drive, Anthony NM 88021, 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 SCRTD on [date of invoice], and received payments from SCRTD 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 SCRTD from any and all liabilities, obligations, and claims.

Signature: _____ Date: _____

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

Signature: _____ Date: _____
SCRTD Executive Director

FORM B-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

_____ [AGENCY] has received all articles and/or services set forth in the contract.
_____ [AGENCY] 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 [AGENCY] 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.
_____ SCRTD has received the final invoice from the Contractor -- (write date online).
_____ Letter from Contractor formally releasing SCRTD 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.)
_____ SCRTD 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 B-26 MASTER CONTRACT FILE CHECK LIST FOR PROJECT:

TAB 1	Email notifying Procurement Officer of project description	Date:
TAB 2	Independent Estimate (Form B-4)	Date: Process used to derive Independent Estimate:
TAB 3	Justification for Contract Type (Form B-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 (B-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 B-7)	Yes No
TAB 10	Bid/Proposal Package Request List (Form B-8)	Yes No
TAB 11	Pre-Bid/Proposal Conference Sign-in Sheet (Form B-9) and Minutes	Conference Date:
TAB 12	Maintain list of responding vendors (Form B-10)	Yes No
TAB 13	Bid Opening / Tabulation (Form B-11)	Bid Opening Date:
TAB 14	List late bids/proposals (Form B-12) Correspondence, letters, certified mail	Applicable Not Applicable
TAB 15	Adequate price competition Price Analysis or Cost Analysis (Form B-13/-14)	Date:
TAB 16	Sole Source Procurement Justification (Form B-15)	Date if Applicable:
TAB 17	Determine low bid/best value (Form B-16) Include bids received.	Date:
TAB 18	Letters from vendors to withdraw bids or proposals	Dates if Applicable:
TAB 19	Contractor Verification (Form B-17) to see if selected contractor is debarred	Date:
TAB 20	Proposal Evaluation Criteria (Form B-18)	Date if Applicable:
TAB 21	Memorandum of Negotiations (B-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 (Form B-20) for proposals	Date sent if Applicable:
TAB 24	Notice of Award (Form B-21), Letters to rejected vendors, protest documentation	Date sent:
TAB 25	Receipt of Notice of Award Acceptance (Form B-22)	Date received:
TAB 26	Contract signed	Date:
TAB 27	Notice to Proceed (Form B-23)	Date sent:
TAB 28	Release Ltr (B-24) Closeout documentation, warranties, ins., settlements, (B-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 B-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 B-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.		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3—*Joint Procurements of Rolling Stock and “Piggybacking,”* and (c) FTA Circular 4220.1F.

APPENDIX C: CURRENT CONTACT LIST