

Policies and Procedures

TITLE: PURCHASING/PROCUREMENT POLICY 5.10

Issued: July 1, 1989
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I. Purpose:

To update the formal, competitive procurement procedures. Procurements shall be conducted using the procurement guidelines set forth in the current RPTA Procurement Guidelines. Copies of these guidelines are attached and shall be retained by the Procurement Department.

In addition to the procurement guidelines, all competitive procurements will be submitted to the Executive Director in summary form prior to issuance. The Executive Director will determine the strategic value to the agency and, if deemed significant, will decide if the procurement project/equipment/services estimated to be priced less than \$50,000 merits Board input. All competitive procurements estimated to be valued at \$50,000 and above automatically will be forwarded to the Board for approval prior to issuance.

No contracts or amendments will be finalized until reviewed by the Executive Director and the Director of Finance.


Executive Director

6/16/11
Date

Attachment

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RPTA PROCUREMENT GUIDELINES

Section I – Definitions

“Board” means the governing board of the Valley Metro Regional Public Transportation Authority.

“Change Order” means a written order signed by the Executive Director or Chief Procurement Officer directing the contractor to make changes that the contract authorizes that official to order.

“Chief Procurement Officer” means the Contracts and Procurement Manager of the RPTA.

“Construction” means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.

“Contract” means all types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

“Contract Amendment” means any written alteration in the specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

“Contractor” means any person having a contract with a governmental body.

“Contract Administration System” means a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

“Days” means calendar days unless otherwise specified.

“Executive Director” means the Executive Director of the RPTA.

“FTA” refers to the Federal Transit Administration.

“Grant” means the furnishing by the federal, state or city government of assistance, whether financial or otherwise, to any person to support a program authorized by law.

“Grantee” means the public or private entity to which a grant or cooperative agreement is awarded by FTA. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document. Grantee also includes any sub-grantee of the Grantee. Furthermore, a Grantee is responsible for assuring that its sub-grantees comply with the requirements and standards of the 4220.1E circular, and the sub-grantees are aware of requirements imposed upon them by federal statutes and regulations.

“IFB” means an Invitation for Bid. IFBs are solicitations issued by a public agency (government) organization inviting bids from possible suppliers of a product or service.

“Materials” means all personal property, including but not limited to equipment, supplies, printing, insurance and leases of personal property, but does not include real property, a permanent interest in real property or leasing space.

“Person” means any business, individual, union, committee, club, other organization or group of individuals.

“Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any materials, services or construction. It also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation or sources, preparation and award of a contract, and all phases of contract administration.

“Procurement Officer” means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

“Purchasing Office” means the unit within the RPTA under the direct supervision of the Senior Manager, Management Services responsible for conducting procurements.

“Public Notice” means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists and web site(s) designated by the RPTA and maintained for that purpose.

“RFP” means a Request for Proposals. RFPs are a request issued to potential providers of a product or service by a public (government) entity to supply a product or service.

“RFQ” means a Request for Qualifications. RFQs are a solicitation for services that requests a submission of proposers’ qualifications. The document contains a list of information (qualifications) and data related to the solicitation.

“RPTA” means the Valley Metro Regional Public Transportation Authority.

Section II - General Provisions

A. Applicability and Types of Funds

Except as provided in Paragraph B of this Section, these guidelines apply to the expenditure of funds, including federal grant funds, by the RPTA under a contract. To the extent that the requirements of any grant or gift mandate procurement procedures that conflict with those set forth in these guidelines, the requirements of the grant or gift shall prevail.

B. Exempt Procurements

Contracts for the items specified below shall be exempt from the provisions of these guidelines:

1. Legal services;
2. Arbitrator or mediator services;
3. Hearing officer services;
4. Settlement of administrative claims, prospective litigation or litigation;

5. Services of professional witnesses if the purpose of the contract is to provide for professional service or testimony relating to an existing or probable administrative or judicial proceeding in which the RPTA is or may become a party;
6. Risk management services and insurance; or
7. Intergovernmental agreements.

C. Authority to Contract

1. Generally

The authority to conduct procurements and sign contracts and amendments, including those that the Board has approved as described in Paragraph D of this Section, shall reside in the Executive Director or his/her designee.

2. Formal Procurements

By virtue of the Executive Director's issuance of these guidelines (to expedite the solicitation process), the authority to conduct procurements expected to exceed \$50,000 is delegated to the Chief Procurement Officer. The authority to sign contracts resulting from those procurements and contract amendments and change orders to them shall remain with the Executive Director.

3. Informal Procurements

By virtue of the Executive Director's issuance of these guidelines, the authority to conduct procurements up to and including \$50,000, and to sign the resulting contract documents including purchase orders, is delegated to the Chief Procurement Officer or his or her designee.

D. Approval of Contracts and Amendments

The funding for any contract entered into by the RPTA must be included in an approved annual budget, as may be amended. The Board shall approve procurements that are expected to exceed \$50,000 before the Purchasing Office issues the solicitation. In the case of

emergencies, contracts may be procured without a competitive solicitation process pursuant to Section IV.G.2 of this policy, but the funding for such contracts shall be subject to budget approval. No competitive solicitation may be issued without Executive Director approval. Following the completion of such competitive solicitation, contracts in excess of \$50,000 may only be awarded after Board approval, and contracts equal to or less than \$50,000 may be awarded after Executive Director approval. Change orders to contracts may be approved by the Executive Director if the amount of the change order (when added to the amount of the contract that is the subject of the change order) does not exceed Board approved budget authority. Change orders to contracts in an amount (when added to the amount of the contract that is subject to the change order) that exceeds Board approval budget authority must be submitted to the Board for approval.

An example is illustrated in the table below. Please note that the table is not meant to address every change order scenario.

Description	Approved by	Amount
Original Contract Award Amount	Board	\$200,000
Contract Change order 1	Executive Director	\$20,000
Contract Change order 2	Executive Director	\$30,000
<i>Note: Next change order would require Board approval as changes would be over the \$50,000 threshold</i>		
Contract Change order 3	Board	\$10,000

Section III – FTA Ethical Standards for Federally Funded Procurement Actions

(As detailed in RPTA’s Ethics Policy, 6.1 in Appendix A)

A. Written Standards of Conduct

RPTA adheres to a written ethics code pertaining to the standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No RPTA employee, officer, agent, or Board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate

in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.

The RPTA's officers, employees, agents or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. RPTA may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the recipient's officers, employees, agents, board members, or by contractors or subrecipients or their agents.

Supplemental to this procedural document is a document entitled Regional Public Transportation Authority's Third Party Contracting Responsibilities as outlined in FTA Circular 4220.1F. This document addresses RPTA's responsibilities in conjunction with FTA regulations. That document is formally incorporated by reference.

Section IV - Types of Procurement Methods

Summarized in Section IV, subsections A and B are the major types of procurement methods used by RPTA. Each of these procurement methods, and the procedures to be followed, is described in further detail under Section IV C through G of this Manual.

In all procurements, an Independent Estimate shall be conducted to determine which procurement method shall be used. The Independent Estimate will vary in complexity and detail based on the cost and type of goods or services being purchased. The Independent Estimate will be developed without the benefit of bid or proposal information from a prospective bidder or proposer. The estimate will be submitted with the requisition or request for contract and may be used by the Procurement Department to support a price analysis. The user department has primary responsibility for developing the Independent Estimate. A "Fair and Reasonable Price

Determination” shall be performed for each/all types of purchase procedures/methods involving FTA funding.

A. Summary of Small Purchase Procedures

1. **Micro Purchases.** This method may be used for any purchase of materials, supplies, equipment, services, or construction work not exceeding \$3,000. At least one informal quote is obtained.
2. **Informal Bidding for Small Dollar Purchases.** Informal bidding may be used for purchases estimated to cost \$50,000 or less for services, materials, supplies and equipment; and construction. Generally, at least three written quotes or proposals are obtained and award is made to the lowest responsive and responsible bidder.
3. **Informal Proposals.** A simplified proposal procedure may be used for services not exceeding \$50,000. This selection may be based on qualitative factors in addition to price.

B. Summary of Formal Procedures

1. **Invitation for Bids (IFBs)** - This method must be used for purchases estimated to cost over \$50,000 for materials, supplies and equipment, and construction (except for certain types of rolling stock and technological equipment); and may be used for services and revenue source producing contracts. All revenue solicitations must be competitively procured. Generally, formal bid documents are prepared and must be advertised, and an award is made to the lowest responsive and responsible bidder.
2. **Request for Proposals (RFPs)** - This method may be used for purchases of over \$50,000 for services; certain types of rolling stock and technological equipment as permitted by statute; and other purchases for which this method of

procurement is permissible as approved by the Board of Directors, including revenue source producing contracts. A Request for Proposals is issued, and proposals are evaluated based upon qualitative factors in addition to price. The RFP shall contain language that the award of the contract is based on an evaluation that produces the “best value” for the RPTA.

3. **Non-Competitive Purchase** - These are used for the purchase of approved sole source procurements, emergency procurements, or other procurements in which a competitive process is infeasible and would not serve the best interests of RPTA, as determined by the Board of Directors (for purchases over \$50,000) or by the Executive Director (for purchases of \$50,000 or less).
4. **Joint Procurements, State Cooperative Purchasing Programs, and Piggyback Procurements with Other Public Agencies** - These may be used when consistent with applicable state statutory and federal grant requirements. Contract dollar value is defined as the total dollars for all years excluding option years. Tag-ons are not permitted to be used as a mechanism to purchase supplies, services, or equipment. Specific quantities must be stated, or option quantities must be known and evaluated prior to award. Tag-ons are typically additional quantities added on to the contract after award, and thus cannot be used to meet the needs of the agency.
5. **Alternative Project Delivery** - In addition, procurements in connection with construction manager at risk, design build and job order contracting delivery methods may also be conducted pursuant to Title 34 of the Arizona Revised Statutes pursuant to procedures that the Executive Director may implement consistent with Title 34 of the Arizona Revised Statutes. In accordance with

4220.1F, if FTA funds are to be used to fund projects utilizing alternative project delivery procurement, FTA will be consulted.

C. Award to Responsible Contractors

In compliance with 49 U.S.C. 5325(j), the RPTA will award contracts only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement and, before awarding a contract, RPTA will consider:

1. The integrity of the contractor,
2. The contractor's compliance with public policy,
3. The contractor's past performance, and
4. The contractor's financial and technical resources.

RPTA shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, small purchase procedures, past performance, and financial, human, and technical resources.

D. Small Purchase Procedures

1. Purchasing Card Program

a) Purchases inclusive of all taxes, shipping and handling, may be made by using the Purchasing Card (P-Card Program) Program for those employees the Executive Director approves for participation in the program. The P-Card is a credit card, issued through First Union Bank, which may be used for purchases on all non-restricted commodities from any merchant that accepts the Procurement Card type currently in use.

b) Each P-Card has limited monthly spending limits and a limit on the number of approved merchants. The P-Card may not be used to purchase alcoholic beverages, personal items, or to obtain cash advances. The Chief Procurement

Officer and the Deputy Executive Director for Finance manage the P-Card Program and coordinate payments on the P-Cards.

c) The P-Card Program is subject to RPTA's enabling legislation and to all the requirements of this Manual. Fraudulent and/or misuse of the P-Card may result in termination of P-Card privileges and may lead to disciplinary action, including termination of employment. See Purchasing Card Policies, and Procedures Manual, RPTA Number 5.13 in Appendix B. for detailed information on the program.

2. Micro-Purchases

Whenever the aggregate amount of micro services inclusive of all taxes, shipping and handling does not exceed \$3,000, micro-purchases may be used if the price to be paid is fair and reasonable. Micro-purchases should not be used to avoid the requirements for competition above the \$3,000 threshold. RPTA is to equitably distribute contracts to qualified vendors when competition is not obtained. When micro-purchases are made, a fair and reasonable price determination shall be made on all purchases using FTA funds.

The following procedures for micro-purchases are to be followed:

a) Requisition - The requisitioner initiates the procurement by submitting a requisition through Sage MIP specifying the products or service to be purchased to the Chief Procurement Officer. The requisition contains the following information:

- Specific description of the desired products or services using, whenever possible, dimensions, sizes and catalog numbers;
- The quantity of desired products or services;
- The date on which the products or services are required;

- The place of delivery for the product or service;
- Financial codes;
- Budget balance; this information is not incorporated on the requisition, although budgets are checked through Sage through the requisition initiation and approval process.
- Scope of service and special provision is applicable.

The Requisition Form must be approved in Sage MIP by the requisitioner's Department/Manager or Supervisor, whichever is appropriate and enforced in Sage MIP. The approving manager is responsible for verifying the availability of funds with Accounting for the purchase. The Chief Procurement Officer, or his designee, reviews, approves and edits as necessary all requisitions before processing them.

AUTHORIZATION TO REQUEST PAYMENT
Signature Approval Limits

Position	Approval Limit (not to exceed)
Executive Director	No Limit
Deputy Executive Director	No Limit
Sr. Manager	\$5,000
Manager	\$5,000

b) Price Quotations - Micro-purchases may be made without obtaining competitive quotations if the price to be paid is fair and reasonable. To be considered fair and reasonable, price quotes should be solicited either by e-mail, telephone or in writing. When quotes are solicited by telephone, they should be documented. When feasible, at least three quotations are obtained.

c) Selection of Vendor - The Chief Procurement Officer shall select the vendor on the basis of the price quoted, quality and availability of the product, and the

vendor's experience and history of service to RPTA. In addition, a determination of responsibility will be prepared for each awarded contract and each change order tied to a new task. After selection, the assigned Procurement Specialist shall notify the successful vendor of award of contract with price and all other significant items, including the Purchase Order Number. The Procurement Specialist then sends the Purchase Order to the vendor with a copy of the Purchase Order Terms and Conditions Form.

d) File Documentation - Micro purchases shall be used on the Small Purchases documentation form released and approved by the Chief Procurement Officer.

3. Informal Bidding Procedures

a) Informal bidding consists of the issuance of an Informal Bid Form describing the desired product or service and sets forth the terms of the procurement to potential bidders without formal advertising. The informal bid procedure may be used for the following procurements:

- Purchases of materials, equipment, and supplies whenever the estimated expenditure for the procurement is in excess of \$3,000 but does not exceed \$50,000;
- Procurements of non-professional services, when the estimated cost of which is in excess of \$3,000 but does not exceed \$50,000. (Simplified Negotiations may also be used for this category.); and
- Construction work that does not exceed \$3,000 but does not exceed \$50,000; provided however, if the contract amount exceeds \$2000, contractor must abide by Davis Bacon wage rates, when federal funds are used.

RPTA shall not arbitrarily split contracts or procurements so as to avoid the formal competitive bidding procedures.

b) Initiation of Informal Bidding Process - The requesting department shall initiate the informal bidding process by forwarding a completed requisition to the Procurement Department specifying the materials or services desired and the estimated cost. The Requisition Form must be approved in Sage MIP by the requisitioner's Department/Manager or Supervisor, whichever is appropriate and enforced in Sage MIP. The approving manager is responsible for verifying the availability of funds with Accounting for the purchase. The Chief Procurement

Officer, or his designee, reviews, approves and edits as necessary all requisitions before processing them.

c) Preparation of Bid Solicitations - Once the requisition has been approved, the Procurement Specialist shall prepare the standardized Informal Bid in the following manner:

- The Informal Bid document shall be numbered and distributed to prospective vendors with RPTA's "Bid Terms and Conditions."
- The Informal Bid Form shall specify the basic terms and conditions of the procurement, including but not limited to:
 - Description of the products or services required;
 - Quantities required;
 - F.O.B. point;
 - Delivery date;
 - Delivery address;
 - Components of bid prices;
 - Technical specifications (if required by the nature of product or services); and
 - Date and time by which the informal bids must be submitted to RPTA.
- The Informal Bid Form may specify brand names or manufacturers, but in such event must provide for an approved equal process. Bonding and insurance requirements shall also be set forth, as appropriate.

d) Solicitation - The Informal Bid Form shall be sent to potential bidders, whose names may be obtained from multiple sources, such as locator files, trade journals, trade sources and DBE Vendor Lists. The Informal Bid Form shall be

sent to an adequate number of potential bidders (usually a minimum of three) to maximize competition.

e) Receipt of Informal Bids - Immediately upon receipt of informal bids by the Procurement Department, the bids shall be time and date stamped. No bids shall be accepted after the date and time specified in the Solicitation.

f) Informal Bid Opening - The Procurement Department shall review the bids. Bids shall be tabulated and bid documents shall be submitted to the department initiating the procurement for technical evaluation, along with a written notification recommending award. The Procurement Specialist shall also be advised by the requesting department of the technical results.

g) Informal Bid Evaluation and Award - RPTA shall award contracts based upon informal bids to the lowest responsible and responsive bidder, after it has been determined that the price is fair and reasonable. Bids shall be evaluated on the basis of the following criteria:

- lowest monetary bid;
- responsiveness to the specification requirements; and
- responsibility of the bidder.

After it has been determined that the price is fair and reasonable, utilizing Attachment C. After review and approval of the selected bidder by the department initiating the purchase, the Procurement Department shall notify the successful bidder of award of contract with price and all other significant items, including Purchase Order Number.

The Procurement Department shall issue the Purchase Order or Contract, as appropriate, to the successful bidder.

If only one bid is received or potential bidders decline to bid, the Procurement Department shall contact the potential bidders that declined to bid to determine why they declined to bid.

4. Informal Proposal Procedures

Informal proposals consist generally of the issuance of a letter soliciting informal proposals describing the scope of services required, time frame, and deliverables, without formal advertising. Selection is made based upon the proposer's qualifications and experience, timeliness, approach and, for non-architectural/engineering services, cost. (See discussion of architectural/engineering services.) RPTA may negotiate the terms and conditions of the engagement with the highest ranked proposer, or may award the contract without negotiations.

This process may be used to retain professional and non-professional services when the cost does not exceed \$50,000. RPTA shall not arbitrarily split contracts or procurements so as to avoid the formal competitive bidding procedures.

a) Initiation of Informal Proposal Process - The department initiating the purchase initiates the informal proposal process by forwarding a completed Requisition to the Procurement Department describing the scope of services requested, time for completion. Such a requisition shall be approved by the appropriate Department/Manager or Supervisor, enforced in Sage MIP and verified with the Accounting Department that funds are available within the approved budget.

b) Solicitation - The department then prepares a Request for Informal Proposals describing the scope of services requested, time for completion, minimum qualifications, and selection criteria in relative order of importance, and attaches

the Agreement that will apply to the engagement. The Procurement Department shall make best efforts to obtain a minimum of three written proposals, utilizing names obtained from multiple sources such as locator files, trade journals, trade sources and the DBE Vendor Lists.

c) Receipt of Proposals - Written proposals shall be received within the time frame specified in the Request for Informal Proposals and shall describe the proposer's qualifications and experience, approach to the work, and cost proposal (for non-architectural/engineering contracts).

d) Evaluation and Award - Proposals shall be evaluated by the designated selection committee in accordance with the previously prepared Source Selection Plan. The proposer that best meets RPTA's needs in accordance with the selection criteria identified in the Request for Informal Proposals shall be selected for award or for further negotiations as to the final scope of work and price, if necessary. Upon successful completion of negotiations, the selection committee shall notify the Executive Director, or designee. The purchase order or contract shall be executed by the Executive Director or designee and the consultant and retained by the Procurement Department. Required insurance coverage shall be verified before the RPTA issues the Notice to Proceed.

5. Issuance of Purchase Orders - Upon receipt of the completed Requisition Form, the Procurement Department will generate and process a purchase order. The purchase order will be approved by the Chief Procurement Officer. Copies of the purchase order will be distributed as follows to insure internal controls for materials, equipment, supplies and services received:

- The original purchase order or contract, with invoicing instructions, will be sent to the vendor for a commitment of the order.

- The Finance Department's copy will be routed through the computerized financial system to the Accounting Department for accounting personnel to verify the invoice to the purchase order.
- The receiving copy will be sent to the applicable Department to verify receipt of the requisitioned items or services.

A file copy for all purchase orders will be kept in the Procurement Department.

6. File Documentation

Informal Purchases shall be documented using the Small Purchases documentation form approved and released by the Chief Procurement Officer.

E. Formal Procurement Procedures

1. Invitation for Bids (IFB)

Summary. The formal competitive bidding process is commenced upon the public advertisement of a Notice Inviting Bids and the issuance of comprehensive Contract Documents, of which the Notice is a part. The Contract Documents set forth a clear description of the products or services sought and all other relevant terms and conditions of the procurement. On the date set forth in the Notice, the Bids are opened and read publicly. The contract is awarded to the lowest responsible and responsive bidder within the time specified in the Contract Documents.

Formal Bids Are Required for:

- Construction contracts in excess of \$50,000.
- Procurements of equipment, supplies and materials in excess of \$50,000.
- Non- professional services in excess of \$50,000.

RPTA shall not arbitrarily split contracts or procurements so as to avoid the formal competitive bidding procedures.

Alternatively, competitive negotiations pursuant to b, noted on the following page, may be used when it is in the best interest of RPTA to use qualifications-based criteria in addition to cost.

a) Initiation of the Competitive Bidding Process - The department seeking the purchase initiates the informal proposal process by forwarding a completed Requisition to the Procurement Department describing the proposed items requested, time for completion. Such a Requisition shall be approved by the appropriate Department/Manager or Supervisor, and enforced in Sage MIP and verified with the Accounting Department that funds are available within the approved budget. The Executive Director must first obtain Board of Directors to issue the solicitation

b) Preparation of the Contract Documents - The Procurement Specialist prepares the Contract Documents, with the exception of the technical specifications, which are prepared by the department initiating the Requisition form. Each set of Contract Documents shall contain the following items:

- Notice Inviting Bids. The Notice Inviting Bids is a publicly advertised document which notifies potential bidders of the nature of the particular contract and the date, time and place of the opening of bids submitted pursuant thereto. The date established for the submission of bids must be at least twenty-eight (28) days from the date of initial publication of the Notice. Additional days may be provided on more complex procurements or when procuring non-standard items. The Notice Inviting Bids should be substantially in the form included in the Procurement Forms Binder. The required contents of the Notice may vary depending on the nature of the contract, as outlined below:

For all formally-bid contracts, the following information shall be provided in the Notice Inviting Bids:

- The nature of the contract and the date, time and place of receipt of bids;
 - The applicable Disadvantaged Business Enterprise requirements and other significant requirements under applicable federal or state laws;
 - The required bidder's security, if applicable;
 - The Notice shall be dated as of the date that the Executive Director or designee signs the notice.
 - If a pre-bid conference will be held, it is also advisable to include the date and location.
 - The method, time and place for obtaining copies of the Contract Documents
 - Whether or not the contract is subject to prevailing wages, federal or state.
 - If RPTA is requiring the Contractor to be licensed under state law, the Notice shall so state and shall include the classification of the contractor's license requirements, which a contractor shall possess at the time a contract is awarded.
 - If the Contract to be let is financed in whole or in part by the United States Department of Transportation, the Notice shall so state and shall further state that bidders will be required to comply with all terms and conditions prescribed for Third-Party Contracts in the grant contract between RPTA and the Department of Transportation.
 - The Notice shall include the nondiscrimination assurance.
 - State that all bidders will be required to certify that they have not been suspended or debarred from participation in federally-funded contracts.
- General Conditions and Instructions to Bidders. The General Conditions and Instructions to Bidders sets forth standard terms and conditions applicable to most RPTA contracts, except as modified by the Special Provisions or Technical Specifications.
 - Technical Specifications. The Technical Specifications prescribes the legal terms and conditions governing the particular procurement and describes the nature of the detailed elements of the procurement. The Technical Specifications constitutes the Contract Documents and shall clearly define the items or services to be procured in order that the bidder may formulate a responsive bid. The Technical Specifications may include a statement as to

the qualitative nature of the material, product or service to be procured and must set forth those minimum essential characteristics and standards to which the material, product or service must conform in order to satisfy RPTA's intended use thereof. When it is impractical or uneconomical to specify a clear and adequate description of the technical requirements for a particular product, a brand name may be used in the Technical Specifications, provided that the bidders are afforded the opportunity to propose to RPTA a substitute for approval as an equal to the brand name specified in the contract documents. Technical Specifications shall not unduly restrict competition.

The Other Provisions may set forth particular requirements for the bidding process, such as the minimum qualifications of bidders, instructions on completion of bid form, method for evaluation of bids, approved equals' procedures, and requirements for bidder's security. The Other Provisions also describe specific contract requirements, such as delivery requirements, time for performance, place of performance, inspection, acceptance, warranty, insurance requirements, liquidated damages, and contract bond requirements. Clauses as may be required for federally assisted contracts (e.g., Title VI, cargo preference, Buy America, etc.; see Section V.A.7, below for more federal requirements) also shall be described in the Other Provisions. Discussions of some other significant provisions to be included are as follows:

- Indemnification/Insurance. For contracts subject to formal competitive bidding, RPTA generally requires insurance for protection in the event of default, excusable failures to perform, accident, injury, or other liability or

loss. Insurance requirements vary according to the type and estimated cost of the contract, the source of funding, market conditions and other considerations.

All contracts for services and construction shall carry, at a minimum, workers' compensation, employer's liability, automobile liability and comprehensive general liability insurance. In addition, any contracts for the procurement of supplies, equipment, or materials, where on-site installation, inspection, or delivery activities are incident to the procurement, shall include these insurance coverages. RPTA approval of a Contractor's insurance policies and coverages shall be a condition precedent to entering into the Agreement.

- Bonding. The principal protection of RPTA's interests in the case of default or other failure to perform shall be by means of bonds. All of the bonds described below must be executed by an admitted surety insurer authorized to transact business in the State of Arizona. Except as specified in Section V.A.7, for federally-funded procurements, bonding requirements on formal competitively bid procurements are as follows:
 - Bidder's Security. RPTA may require a bidder's security to be submitted with each bid in order to protect the RPTA's interests in the event that a bidder fails or refuses to honor its bid or to enter into a contract awarded to it. The Director of Procurement or his or her designee may, in his or her discretion, waive this requirement on a case-by-case basis, taking into account the nature and magnitude of the procurement, market conditions, and the potential for enhancing DBE participation.

If bidder's security is required, it should be either a bid bond, unconditional certified or cashier's check, or an irrevocable letter of credit issued to RPTA.

- Performance Bonds. Performance bonds are not required for non-construction contracts. However, the Executive Director, or his or her designee, at his or her discretion, may require Performance Bonds for contracts when necessary to secure fulfillment of all the Contractor's obligations under the contract in any amount up to 100 percent of the contract price.
- Payment Bonds. Payment bonds may be required in contracts for the procurement of services or products which involve subcontracting.
- Liquidated Damages Clause. The Special Provisions may include a clause setting the time in which the whole, or any specified portion of the work, called for under the contract should be completed, and providing that each day completion is delayed beyond the specified time for performance, the Contractor shall pay to RPTA a specified sum of money, to be deducted from any payments due or to become due to the Contractor.

Liquidated damages should be considered in contracts when it would be inconvenient, difficult or impracticable to otherwise obtain an adequate remedy for the delay, or to prove the losses or to assess the actual quantity of damages. The amount to be established as liquidated damages shall be reasonable in light of the anticipated harm that may be caused by a delay in the contract performance. The department initiating the purchase evaluates these factors and sets a sum as liquidated

damages. Liquidated damages are not to be assessed against a Contractor that is terminated for default nor may liquidated damages be used as a penalty.

- Use of Options. An option is a contract right in favor of RPTA in which RPTA may, for a specified time, elect to purchase additional supplies, equipment, or services called for by the contract, or it may elect to extend the term of the contract. In some cases, an option can increase substantially the flexibility of RPTA in its procurements. RPTA must follow specific guidelines when using options in federally funded contracts. In particular, option quantities must be evaluated at the time of the initial evaluation to determine the initial contract award. Further when exercising options, an analysis shall be conducted in accordance with the contract to ascertain that the price is better than available in the market, or is more advantageous at the time the option is exercised.
- Pre-Bid Conference. As noted earlier, if a Pre-Bid Conference is scheduled, the Special Provisions should include the date, time and location of the conference.
- Qualifications of Bidders. In contracts where the nature of the work is such that the qualifications of the bidders are an essential criterion for evaluating the bidders' responsibility, the Special Provisions may include a clause setting forth the required qualifications of bidders. Construction contracts and service contracts may contain such clauses. In addition, contracts for the provision of supplies, equipment, and materials, where a specially manufactured product and/or technical guidance and advice are called for, may also contain a provision regarding qualifications of bidders.

Qualification provisions should clearly state that RPTA may reject any bid that does not meet the stated qualifications requirements. The provision should also include requirements that bidders demonstrate they are regularly engaged in the manufacture, construction, or provision of the work or product called for in the contract and that they have the necessary resources, facilities and personnel to perform the contract. Additionally, bidders must attest that they have previously and satisfactorily performed work with characteristics comparable to those specified in the contract. Finally, bidders may be required to furnish adequate references. The "Bidder's Statement of Qualifications and Business References" may be included in the contract documents to be completed by bidders, a copy of which is included in the Procurement Forms Binder.

- Bid Documents.
 - Bid Form. The Bid Form calls for the bidder to submit price information regarding the products or services solicited. In developing the Bid Form, separate cost quotations shall be included for all relevant aspects of the procurement, including, where applicable, unit price, extended price, cost of delivery, and sales or use taxes. In all cases, the Bid Form shall be structured so as to insure the ability of RPTA to make an objective comparison of the bids. Whenever possible, this will be accomplished by structuring the Bid Form so as to request a Grand Total Bid Price.
 - Sample Agreement. A Sample Agreement form shall be included in Contract Documents for all formally advertised procurements. A copy of such form is included in the Procurement Forms Binder.

- Sample Contract Bonds. When required by the Special Provisions, the Contract Documents shall include a sample Bidder's Bond, sample Performance Bond and sample Payment Bond. The precise terms of the Performance Bond will vary depending upon whether the Performance Bond will remain in effect through a warranty period and, if so, upon the length of such period. The sample Bond Forms are included in the Procurement Forms Binder.
- Other Bid Documents. Additional Bid Documents will vary depending upon the nature of the particular procurement and whether federal funding is involved. Such forms may include, but are not limited to,
 - Non-Collusion Affidavit,
 - Buy America Certificate,
 - Bidder's Certification Regarding Debarment and Suspension,
 - Bidder DBE Report and other legally required certification forms.

(See Section IV. F.3 for additional certifications required for bus procurements.)

- Contract Documents for Construction Projects - The basic components detailed in the above Section shall be followed for construction projects.
 - General Conditions. The requesting Department will select the specifications format most appropriate for the particular contract for construction, repair, improvement, or renovation.
 - Special Provisions. The Special Provisions modify identified Sections of the Standard Specifications or RPTA's General Conditions. Other terms unique to construction work that may be included in the Special Provisions are described below.

- Use of Alternates in Public Works Contracts. The term “Alternate” means the use of additive or deductive items. In these circumstances, a base bid covers most of the project; bidders are then required to separately price potential additive or deductive items (the Alternates).
- Other Components. Other components to be incorporated in Contract Documents for Construction projects, which components have not been addressed in connection with procurement contracts discussed above, include:
 - Location Map and plans, if required; and
 - List of Subcontractors, Bidder DBE Report, Sample DBE Affidavit, and Non-Collusion Affidavit. Bid Documents, shall include Schedule of Prices, Signature Sheet, Acknowledgement of Insurance Requirements.
- Consideration of Disadvantaged Business Enterprise Participation. RPTA, where appropriate, assigns DBE goals on solicitations. DBE participation that is obtained on contracts that have no specific DBE goal, or where prime contractors use a strictly competitive bidding process or do not consider the DBE’s status as a DBE in awarding a subcontract shall be considered race-neutral and gender-neutral DBE participation. In addition, the District will use the following measures as appropriate:
 - Configuring large contracts into smaller contracts when feasible, when to do so would make contracts more accessible to small businesses, and would not impose significant additional cost, delay or risk to the District.

- Identifying components of the work which represent subcontracting opportunities and identifying the availability of DBE subcontractors to participate in proportion to total available subcontractors. Contractors will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their bids. Contractors will be required to document the process it used throughout the bid preparation period for soliciting and selecting subcontractors.
- Assisting in overcoming limitations in bonding and financing.
- Providing technical assistance in orienting small businesses to public contract procedures, use of the Internet, and facilitating introductions to the District's and other U.S. DOT recipients' contracting activities.
- Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of DBEs.
- Ensuring the distribution of the DBE Database to the widest feasible universe of potential prime contractors.
- Providing business development assistance.

c) Solicitation

- Advertisement of Bid - The Procurement Department shall advertise the Notice Inviting the IFB in a newspaper of general circulation no later than 21 days before the bid opening date.
- Notice to Potential Bidders - To facilitate maximum participation, the Procurement Department shall send the Notice Inviting Bids directly to

potential bidders identified by bidder's lists. Alternatively, a letter of interest may be sent to potential bidders informing them of the project and requesting a response if interested.

- Notice to Potential DBE Bidders - In addition to the advertisements set forth above, RPTA, when appropriate, should cause the Notice Inviting Bids to be published in publications, newspapers and newsletters which have wide dissemination among minority groups and women.
- Changes and Revisions/Preparation of Addenda - Once the Notice Inviting Bids has been published, all changes necessary to correct errors in the Contract Documents, to revise requirements contained in such documents, or to extend time requirements for the benefit of RPTA or the bidders, shall be accomplished through the issuance of an Addendum. The Addendum shall contain the following information: (a) contract number and title; (b) date of issuance of Addendum; (c) Addendum number; (d) specific reference to the provision of the Contract Documents that is being amended, deleted, or supplemented by the Addendum; (e) substance of the change or addition; and (f) appropriate replacement language of the Bid Documents clearly detailing the change or addition. The Procurement Department shall issue the Addendum to all firms or persons who have received a copy of the Contract Documents. If the information in the original publication set forth in the Notice Inviting Bids, as published, has changed, then a revised notice inviting bids should be published.
- Pre-Bid Conference - The Procurement Specialist may conduct a pre-bid conference within a reasonable time but no later than ten (10) days before bid

opening to discuss the procurement requirements and solicit comments from prospective bidders.

2. Receipt and Bid Opening

- The Procurement Department shall preside at all bid openings and shall adhere to the following procedures when the date and time for opening bids has arrived:
 - The sealed envelope containing the bid shall be date stamped and marked with the date and time received.
 - The Chief Procurement Officer, or designee, shall open and read all bids aloud. Bids which are received after the time specified in the Notice Inviting Bids will not be accepted and will be returned, unopened, to the respective bidders.
 - A statement listing each bid received, and if opened the total amount of the bid, shall be recorded, dated and signed by the person(s) opening the bids.
 - No bidder shall be permitted to change its bid or any other bid after the bids are opened.
 - Subsequent to the bid opening, the Chief Procurement Officer, at his or her discretion, may forward any or all of the bids to RPTA Legal Counsel for review to determine compliance with the legal requirements contained in the Contract Documents.
- Relief of Bidders - Subsequent to the bid opening, unless by consent of RPTA, a bidder shall not be relieved of its bid nor shall any change be made to a bid because of a claimed mistake in the bid. If a bidder claims a mistake in its bid, staff shall apply the standards below when considering whether or

not to grant relief to the bidder.

- A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting its bid.
- After bid opening, a bidder may not correct or withdraw a bid mistake based on an error in judgment. Errors in judgment are those requiring the exercise of bidder discretion; for instance, those which relate to pricing strategies rather than to clerical or mathematical error. Non-judgmental bid mistakes may be corrected or withdrawn pursuant to the following:
 - The Chief Procurement Officer may either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the RPTA. Nothing in this Section shall be construed as requiring the Chief Procurement Officer to waive any informality or to allow their correction.
 - If a mistake and the intended bid are evident on the face of the bid, the bid may not be withdrawn and shall be corrected to the intended bid.
- The Chief Procurement Officer may permit a bidder to withdraw a bid if:
 - A non-judgmental mistake is evident on the face of the bid but the intended bid is not evident; or
 - The bidder establishes by clear and convincing evidence that a non-judgmental mistake was made.
- In the event of a discrepancy between the unit price and its extension in the bid, the unit price shall govern.
- Mistakes shall not be corrected after award of the contract except where the Executive Director prepares a determination that it would be in the RPTA's best interest to permit correction, and the basis for the decision.
- If correction or withdrawal of a bid after the bid opening is permitted or denied, the Chief Procurement Officer shall prepare a determination showing that the relief was permitted or denied, and the basis for the decision.

3. Evaluation of Bids - RPTA shall award all contracts to the lowest responsible bidder whose bid conforms to the requirements of the Contract Documents. The Procurement Department shall be principally responsible for the evaluation of

bids to determine which bidder is the lowest responsible and responsive bidder. The department initiating the purchase shall be responsible for evaluating the technical responsiveness of the bids. If only one bid is received or potential bidders decline to bid, the Procurement Department shall contact the potential bidders that declined to bid to determine why they declined to bid. This is to eliminate the possibility of a restrictive specification or restrictive bidding procedures.

- Responsiveness. The bids shall be examined by the department initiating the purchase to determine if it is responsive to the contractual and technical requirements. The DBE Administrator shall review the bid documents for compliance with any DBE participation requirements. The Procurement Department shall review the bid documents to ensure that the bidder has made no unauthorized deletions, amendments, or changes to the Contract Documents, verify that required bid forms and certificates have been completed, and confirm that all signatures are in place and appear in order. If for any of these reasons the bidder appears nonresponsive, the Procurement Department shall make a determination as to whether the deficiency is a minor irregularity. The Chief Procurement Officer, or designee, may contact the bidder and discuss the aspects of the bid which appear nonresponsive. With respect to deficiencies representing minor irregularities, the bidder may be given the opportunity to correct the deficiency so that the bid may be considered responsive. If the bidder does not correct the minor irregularity and make the bid responsive, or if the deficiency is substantive in nature, the bid is therefore determined to be nonresponsive. The Chief Procurement

Officer, or designee, shall determine which bidder is the next lowest monetary bidder and determine the responsiveness of that bidder.

- Responsible Bidder. RPTA shall then determine if it is a “responsible” bidder, i.e., whether the bidder has demonstrated the attribute of trustworthiness, as well as quality, financial capability, fitness, capacity, and experience to satisfactorily perform the contract. The determination is made on the basis of bidder’s past experience and history of service to RPTA, if any; the bidder’s responses to those proposal documents requiring a listing of experience, qualifications, and references, if required; and the expertise, dependability and financial stability of the bidder as revealed to RPTA from any other legal source. In evaluating the bidder’s submission and in checking references listed therein, the department initiating the purchase shall determine whether bidder meets the minimum technical standards set forth in the contract documents and shall not assess the bids as to relative superiority. A determination of responsibility shall be documented in the file.
- Lowest Bid. The bids shall first be examined to determine which bid is the lowest. The following rules shall apply:
 - The formula for determining the basis for evaluating bids, as described in the Contract Documents, shall be utilized. Normally the comparison shall include any pricing given for options;
 - The unit price governs whenever both unit price and extended price(s) or total(s) are given;
 - All bids showing item extensions and/or totals shall be reviewed for accuracy. Any errors shall be noted and shall be called to the attention of

the assigned Procurement Specialist and, if necessary, RPTA's Legal Counsel;

- The Procurement Specialist must insure that all bids show the same f.o.b. point;
- The Procurement Specialist shall review the terms of payment for the effect of those terms upon the bid price.
- Tied Bids. If two bids are identical and are also the lowest responsible bids, the tie will be broken by a coin toss conducted by the Chief Procurement Officer, or designee.
- Cost or Price Analysis. In the event that only one bid is received, a cost or price analysis shall be performed to verify that the price is fair and reasonable.
- Recommendation for Contract Award. On the basis of the foregoing evaluation method, the department initiating the purchase, with the concurrence of the Chief Procurement Officer, shall make a recommendation to the Executive Director as to which bidder has been deemed the lowest responsible bidder within the time period specified in the Contract Documents for reporting the bid results. The report containing the recommendation to the Board or Executive Director should set forth the bases for the recommendation in the event of the circumstances described above.
- Contracts Valued over \$50,000. If the contract award is to be recommended to the Board, upon conclusion of the bid evaluation by staff, the Chief Procurement Officer shall send a notice to all bidders advising of the staff's recommendation for contract award and of the date and time of the Board

meeting at which the recommendation will be considered. Such notice shall be sent at least seven (7) calendar days prior to such meeting.

- Rejection of Bids. Any determination to reject a lowest bid on the basis that the bidder is not responsible or that the bid is not responsive must be recommended by the department initiating the purchase, and approved by Legal Counsel. The Chief Procurement Officer, with input from the Requisitioning Department, will be responsible for drafting staff's recommendation to the Executive Director. The report shall specify the reasons for rejection of the bid. The Chief Procurement Officer shall notify all bidders of the staff recommendation.

4. **Award of Contract** - The requisitioning Department shall recommend award of the contract to the Board of Directors of RPTA. Upon approval by the Board of Directors, the contract will be made available to the lowest bidder for execution. The Chief Procurement Officer shall notify the successful bidder in writing of the contract award and shall issue the purchase order and forward the Agreement and any and all requisite bond forms to the bidder for execution. The successful bidder must execute the Documents within the time specified in the Contract Documents.

- a) The contract shall be awarded to the offeror whose proposal is determined to be the most advantageous to the RPTA based on the evaluation factors set forth in the RFP. The prices for any contract extension or renewal shall be considered in determining which is the proposal most advantageous to the RPTA.
- b) Each unsuccessful offeror shall be notified in writing of the proposed award.

- c) If the offeror designates a portion of the proposal as confidential, offeror shall isolate and identify in writing the confidential portions to be withheld. The Executive Director shall determine according to Paragraph I of this Section whether the information is confidential under applicable law.
- d) Prohibition against geographic preferences. RPTA will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt state licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- With few exceptions, formal bids will be awarded to the lowest responsible responsive bidder. Upon return of the executed documents, the Chief Procurement Officer shall forward copies thereof to RPTA's Executive Director for signature. Completed Certificates of Insurance shall be sent to RPTA's Chief Procurement Officer for compliance to contract requirements. Once it has been determined that the pertinent documents have been satisfactorily completed, the Chief Procurement Officer shall notify the department initiating the purchase that the contract documents have been executed. The Chief Procurement Officer may then issue the Notice to Proceed to the Contractor.

- Rejection of All Bids - For any contracts for which competitive bids have been received, the RPTA Board of Directors has the right to reject all bids. The department initiating the purchase may decide to recommend this course of action to the Board in instances where:
 - the bids received were too high and the funds available in the budget are insufficient to cover the amount of the contract if it were awarded to the lowest responsible bidder;
 - none of the bids was deemed responsive to the requirements of the Contract Documents
 - none of the bidders was deemed sufficiently responsible to perform the contract in a satisfactory manner; or
 - staff otherwise determines, in furtherance of the best interests of RPTA, that it would be imprudent to proceed with the contract award.

F. Competitive Negotiations (RFP)

Summary. All services may be procured without formal competitive bidding.

Instead, competitive negotiation procedures may be used, whereby a Request for Proposal (“RFP”) is issued, and proposals are evaluated based upon qualitative factors in addition to price. Revenue service contracts may be procured through a Request for Proposal type solicitation. Staff must maintain a complete written description of the process and the policies and procedures used in the competitive negotiation, including a complete record of RPTA’s actions on the procurement, and all of the standards, criteria, public protest procedures and method of contract award used.

When Competitive Negotiations May Be Used

1. Professional Services

The competitive negotiation method bases the selection on qualitative criteria, in addition to price, and permits RPTA to negotiate the terms of the contract with the selected contractor. RPTA's RFP procedure consists of acquisition planning, solicitation of proposals, evaluation of proposals, negotiation with prospective bidders, award of contract, and contract administration.

This process may be used to retain specially trained persons or firms to provide services in connection with financial, economic, accounting, engineering, administrative, or other matters involving specialized expertise or unique skills, including revenue projects or contracts. There are special rules for architectural/engineering services; these services can only be procured on the basis of qualifications, not cost, as further discussed later in this section.

2. Non-professional Services

RPTA may procure non-professional services (some examples of which are janitorial services, security services, window washing, exterminator services, waste management and equipment maintenance) exceeding \$50,000 either using the Formal Competitive Bidding (low bid) or by Competitive Negotiations.

RPTA may elect to use competitive negotiation procedures when it is desirable to select the contractor on the basis of qualitative factors in addition to price.

3. Technology, Equipment, and Rolling Stock

Performance specifications, which are by their nature more subjective than design specifications, may be the best way to describe the requirements to the prospective suppliers. This applies to some commodities and services that are very difficult, if not impossible, to obtain through a sealed bidding process under which award is made to the low responsive responsible bidder.

There may be technical and price tradeoffs that can be achieved and the ability to make more informed decisions relating to price. RPTA may be willing to pay a somewhat higher price to obtain a commodity that does more for the system, but there is a limit to what RPTA will pay. You may find that the quantities or time required are unknown. The price risk associated with a fixed price contract may be burdensome on the contractor and would be borne at too high a price to the agency to use that type of contract. Consequently, there is a need to have the ability to negotiate cost elements for the contract that could result in a cost reimbursement type contract. There may be a variety of good sound business reasons why you need the ability to negotiate a contract and are willing to spend the time to do so.

RPTA may choose to purchase the goods, vehicles and equipment through competitive negotiations in lieu of formal competitive bidding. A competitive negotiation permits the consideration of price, technical experience, past performance, management or other factors in selecting the most cost-effective proposal. The process includes negotiations with proposers during which performance, technical standards or other criteria may be revised to secure proposals most advantageous to RPTA.

a) Initiation of the Competitive Negotiation Process - The department initiating the purchase initiates the competitive negotiation proposal process by forwarding a completed Requisition to the Procurement Department describing the scope of services requested, time for completion. Such Requisition shall be approved by the appropriate Department/Manager or Supervisor, whichever is appropriate, and enforced in Sage MIP and verifying with the Accounting

Department that funds are available within the approved budget. The Executive Director must first obtain Board of Directors to issue the solicitation.

b) Request for Statement of Qualifications - The department initiating the purchase may, working closely with the Procurement Specialist, prepare and send to potential proposers a Request for a Statement of Qualifications. The names of such persons or firms may be obtained from the telephone directory, DBE directories and trade journals. The proposers list should be developed with consideration of RPTA's DBE program.

The Request for Statement of Qualifications shall contain a generalized statement of the Scope of Work which will be required of the proposer and shall request that the person or firm submit, if interested, a Statement of Qualifications evidencing specific expertise in the area. The Request shall establish a date on which Statements of Qualifications shall be submitted to RPTA.

RPTA is not required to issue a Request for Statement of Qualifications before issuing a Request for Proposals if it finds it unnecessary to pre-screen proposers, or, as an alternative, incorporates the "Qualification" review into the RFP process.

c) Request for Proposals - The department initiating the purchase under the oversight of the Procurement Specialist shall prepare the scope of work required, the experience and qualifications required, project deliverables, proposal schedule, the time in which the project must be completed, and evaluation criteria specifically tailored to the project. Such criteria may include, but not be limited to, the proposer's proven experience and competence, understanding of the scope of work, financial ability and resources to perform the work, willingness to cooperate with RPTA purchasing and technical staff, and proposed method for

assuring timely and acceptable performance and management of the work. The RFP shall identify all significant evaluation criteria, including price or cost where required, and their relative importance.

The Procurement Specialist shall oversee and coordinate the development of the Request for Proposals and its issuance. A sample agreement containing all material terms and conditions of the engagement shall be attached to the RFP.

Concurrently, the procurement Specialist will prepare the "Source Selection Plan." The plan will define in detail the selection process and criteria to be utilized for the selection.

Where feasible, a Pre-Proposal Conference shall be held. The Conference shall be chaired by the Assistant Executive Director or Designee who will cover basic requirements for the contract, contract type, evaluation criteria, and specific points to be addressed in the Proposals. The Request for Proposals shall be publicized.

d) Consideration of Disadvantaged Business Enterprise Participation - The City of Phoenix DBE Administrator will evaluate the proposer's response to the DBE information requested in the RFP to determine compliance with DBE program requirements for award of contract to the highest ranked responsible proposer. In the event that a proposer is found not to have complied with the DBE requirements, the proposer will be notified in writing. The notification shall include the reasons for the determination and that the proposer has the right to submit further written documentation.

e) Changes to the RFP: Preparation of Addenda - The department initiating the purchase, working closely with the Procurement Specialist shall prepare any addenda to the RFP to document changes and revisions to the RFP. Addenda

shall be signed by the Chief Procurement Officer or Designee and issued by the Procurement Department.

f) Review of Proposals - Proposals shall be submitted to the Procurement Specialist for distribution to RPTA personnel for evaluation in accordance with the Source Selection Plan. Proposals shall be reviewed by a selection committee consisting of personnel appropriate to evaluate the proposals in consultation with RPTA's Legal Counsel. Individuals with the appropriate technical expertise shall be included in the review process, as necessary. No member of the selection committee shall have a conflict of interest with any firms under consideration.

The review process shall begin with the verification that the Proposals received are in conformity with the proposal specifications, including compliance with RPTA's EEO and DBE goals. The review shall adhere strictly to the Source Selection Plan and the evaluation criteria set out in the RFP and discussed at the Pre-Proposal Conference; no discriminatory waiver of criteria shall be allowed.

The conclusions of the reviewers shall be summarized in writing and those firms or persons judged by the selection committee to be the most qualified to perform the work required under the contract may be placed upon an "interview list."

Those on the interview list shall be requested to present a detailed scope of work and to make a formal presentation of their Proposals to the selection committee. Firms shall be rated, in order of importance, by the evaluation factors identified in the RFP. The selection committee shall make a final ranking of the Proposers.

g) Price Analysis - When competitive price quotations are sought, the Selection Committee shall conduct a price analysis to determine whether the compensation terms of the proposals offered by the Proposers under consideration are fair and

reasonable for the anticipated work or services. A price analysis may be conducted on the basis of any of the following methods:

- A comparison of competitive price quotations submitted to RPTA;
- A comparison of prior quotations and contract prices with current quotations for the same or similar services and/or products;
- The use of rough yardsticks, such as hourly rates for similar services and market unit costs for specified materials, as a basis of comparison to point up apparent gross inconsistencies;
- A comparison of prices or published price lists issued on a competitive basis, and published market prices of commodities, together with discount or rebate schedules;
- A comparison of proposed prices with independent estimates of cost developed within the Procurement Department;
- In the event that (a) RPTA receives only one proposal in response to the RFP, (b) the responses reveal a lack of adequate competition, or (c) the RFP required the proposer to outline the elements of the estimated costs for the work, the selection committee shall conduct a cost or price analysis to determine whether the compensation proposals are fair and reasonable. (See Section IV G.1.c) below regarding cost analysis discussion.)

h) Negotiations - The selection committee may accept the proposal from the person or firm ranked first without negotiation, or may negotiate with the first ranked firm or representative in order to establish a precise scope of work, the time and schedule for completion of the work, the cost of services and the

method and manner of payment. In the event negotiations with the first ranked proposer are unsuccessful, the selection committee may terminate negotiations with that proposer and commence negotiations with the next ranked proposer and so on, until a successful negotiation is achieved.

i) Recommendation for Contract Award - On the basis of the foregoing evaluation method, the department initiating the purchase shall make a recommendation to the Executive Director or designee. The Chief Procurement Officer shall send a notice to all proposers advising of the staff's recommendation for contract award and of the date and time of the Board meeting at which the recommendation will be considered.

j) Award of Contract - Board of Directors shall authorize the award of the contract. Following award of the contract, the Procurement Specialist, in conjunction with the department initiating the purchase, shall prepare the Agreement to be executed by RPTA and the Proposer. The Chief Procurement Officer or designee shall notify the successful Proposer, advising of award of contract. The Proposer shall be given a reasonable time period, normally not to exceed two weeks, for submission of the required bonds, guarantees, and certification of insurance coverage and execute the agreement.

k) Notice to Proceed - Insurance certificates will be reproduced and forwarded to RPTA's insurance advisor for review and approval. Upon satisfactory receipt of the Proposer's evidence of insurance and an executed Agreement, the Chief Procurement Officer or designee shall forward the Agreement to the Executive Director, for signature. Upon execution by the Executive Director the Procurement Specialist shall issue a Notice to Proceed to the Proposer.

4. Architectural/Engineering Services

Architectural/engineering services are defined as professional services of an architectural or engineering nature associated with research, development, design, construction, alteration or repair of real property that are required to be performed by a registered or licensed architect or engineer, and such other professional services which uniquely or to a substantial extent require performance by architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms. Examples of such services include program management, construction management, feasibility studies, environmental studies, preliminary engineering, design, survey and mapping.

Arizona Revised Statutes, Title 34, Chapter 2, Public Buildings and Improvements, establishes procedures by which the RPTA shall use competitive proposal procedures based on the Brooks Act when contracting for A&E services as defined in 40 U.S.C. §541 40 U.S.C. and 49 U.S.C. 5325(d). 31.5 services or construction manager at risk, design build or job order contracting delivery methods authorized pursuant to Title 34 of the Arizona Revised Statutes. The Brooks Act requires that:

- An offeror's qualifications be evaluated;
- Price be excluded as an evaluation factor;
- Negotiations be conducted with only the most qualified offeror; and
- Failing agreement on price, negotiations with the next most qualified offeror are conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.
- If price negotiations fail with the most qualified proposer RPTA will open price negotiations with the next most qualified proposer and continue this process until a negotiated price is reached that is determined to be fair and reasonable.

This “qualifications-based procurement method” can only be used for the procurement of A&E 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.

RPTA will announce all requirements for architectural/engineering services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective proposers to perform the services required at fair and reasonable prices. Selections for architectural/engineering services shall not use price as a factor in determining the best qualified proposer in conformance with statutes, federal regulations and FTA procurement guidelines.

Records of the Procurement. Staff must maintain a complete written description of the process and the policies and procedures used in the competitive negotiation, including a complete record of RPTA’s actions on the procurement, and all of the standards, criteria, public protest procedures and method of contract award used.

For **Design-bid procurements**, RPTA must procure design-bid services through a competitive bid process that is based on the Brooks Act set forth in FTA Circular 4220.1F when the preponderance of the work to be performed is considered to be for architectural and engineering (A & E) services as defined in FTA Circular 4220.1F.

These services must be procured in a way that conforms to applicable state and local laws.

G. Non-Competitive Procurement

1. Sole Source Procurement

Summary. Regardless of the estimated cost of the procurement, RPTA is not required to engage in the competitive bidding process, either formal or informal, when procuring material, equipment, supplies or services for which there exists only a sole source of supply.

Such procurements often arise where the specifications and requirements for the items or services to be procured are so unusual or distinct as to narrow possible sources down to one. This may be the case, for example, with replacement parts for brand name machinery, equipment, or vehicles where only one source of supply is available. In this example, however, if more than one distributor is available, the product is not exempt from competitive bidding as a sole source.

The sole source must be the only known source of supply with the capability of meeting the bona fide specification requirements. A sole source decision is not permitted merely upon the grounds that the source demonstrates technical or administrative superiority is the most convenient, or shows superior performance potential at lowest cost.

a) Initiating Sole Source Purchase - The department desiring to procure equipment, supplies or services for which there is only one available source of supply shall initiate such purchase by completing a Requisition and shall indicate that the procurement is a "sole source" purchase. A determination of "sole source" shall be made only after the department has verified that there is only one vendor or supplier of the materials, goods, equipment or services desired. Such a Requisition shall be approved by the appropriate Department/Manager or Supervisor, whichever is appropriate and enforced in Sage MIP and verifying with the Accounting Department that funds are available within the approved budget. The Executive Director must first obtain Board of Directors approval to enter into a contract that was sole source procurement.

b) Verification of Sole Source – In all cases, Chief Procurement Officer, or his/her designee, shall verify that the particular procurement meets the definition of a sole source set forth above.

When the estimated expenditure for a particular procurement reaches the dollar amounts that require formal competitive bidding or when there is any doubt as to whether the procurement qualifies under the sole source exception, the Requisitioning department shall prepare a sole source justification request demonstrating that where the specifications and requirements for the items or services to be procured are so unusual or distinct as to narrow possible sources down to one source. Requisition initiator shall submit request to the Procurement Department. The Procurement Department shall review the sole source request and either reject the request or approve the request for award. No purchase order shall be issued to the vendor until the Chief Procurement Officer has concurred that the procurement qualifies as a sole source purchase.

c) Price or Cost Analysis - The Procurement Department shall obtain a price for the proposed procurement from the sole source. Unless the reasonableness of the price can be established on the basis of a catalog or market price for a similar commercial product sold in substantial quantities to the general public, or on the basis of prices set by law or regulation, the Procurement Department shall conduct a cost analysis. A cost analysis is a detailed evaluation of the cost elements that comprise the proposed price to determine whether the Contractor is applying sound management and appropriate resources to the procurement and whether the costs are proper, allowable and allocable. The cost analysis shall be reviewed and approved by the Executive Director or designee.

- Method of Analysis. A cost analysis involves the following steps: (a) the verification of cost data; (b) the evaluation of specific cost elements, including labor hours, quantities, tooling, testing, etc.; and (c) the projection of the cost data to determine its effect on prices.
- Factors to Consider. In order to form a judgment as to whether the price offered is reasonable, the following factors are to be considered: (a) the necessity for certain costs; (b) the reasonableness of amounts estimated for necessary costs; (c) the bases for allocating overhead costs; (d) allowances for contingencies; and (e) the appropriateness of allocations of particular overhead costs to the contract.

Modifications and Change Orders shall be considered sole source procurements for the purposes of cost or price analysis.

In some cases it may be necessary to conduct contract audits to validate cost or pricing data submitted by contractor. In such cases a contract audit may be requested. Said auditors will verify that the costs being proposed are consistent with the contractor's accounting system. The audit shall verify the adequacy of the contractor's accounting system. It will also include a determination that the proposed costs are allocable, allowable and reasonable in accordance with established cost principles.

Technical evaluations of the labor and materials proposed will supplement audit results.

Audits will only be conducted when the cost of the audit is justified by the cost risk of the proposal, for construction change orders or when required by FTA.

d) Issuance of Purchase Order

- In all cases, the Purchase Order for the procurement of equipment, material, supplies or services from a sole source vendor or supplier shall be issued from the Procurement Department and shall be signed by the Procurement Department.
- The Board of Directors shall approve sole source procurements in excess of \$50,000.
- All FTA-funded sole source procurements in excess of one million dollars (\$1,000,000) must be approved by FTA prior to issuance of a Purchase Order or execution of a contract.

2. Emergency Procurements

Summary. In case of an emergency, the Executive Director may declare and determine that public interest and public necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice.

a) Initiating the Emergency Purchase. Emergency purchases should be made by staff members who have expertise related to the emergency giving rise to the need for the procurement. Upon approval by the head of the requesting department and the Executive Director or his/her designee, staff may contact one or more vendors by telephone and, as expeditiously as possible, determine the best price and quality of product or services available from the vendor(s). The department head then shall relay such information to the Executive Director or his/her designee.

b) Authorizing the Emergency Purchase The Executive Director is authorized to declare an emergency to procure necessary equipment, services and supplies and to repair or replace RPTA facilities in the event of a declared emergency. If such action is taken, the Executive Director shall report back to the Board at the next regularly scheduled Board meeting after such emergency action is taken.

c) Confirmation of Emergency Purchase. After having placed the order, staff shall notify the Procurement Department: (a) that an emergency procurement has been effected, and the nature of the procurement; (b) the nature of the emergency; (c) that the head of the requesting department or authorized designee has approved the procurement; and (d) the name and location of the vendor or supplier. Upon verification of the emergency procurement, the Procurement Department shall cause a confirming purchase order to be issued to such vendor, confirming the procurement and its significant terms.

3. Intergovernmental Agreements

RPTA may enter into agreements with federal, state and local agencies so long as both agencies follow the procurement procedures similar to those outlined in this Manual. This includes the ability of RPTA to select another agency as the provider of a product or service.

To foster greater economy and efficiency, RPTA may avail itself of state and local intergovernmental agreements, as well as other cooperative agreements, for procurement or use of common goods and services. These programs consolidate the purchasing needs of participating agencies to obtain products at prices generally available only to large volume buyers. Competitive bidding procedures and nonrestrictive specifications are used. These programs should

be utilized to the extent prices are lower than what RPTA could obtain through its normal purchasing procedures.

If a joint procurement will be funded with a FTA grant, the requirements for FTA-funded projects shall apply and should be included in the specifications.

4. Piggyback Guidelines and Procedures

Piggybacking allows a third-party agency who was not contemplated in an original procurement to purchase the same supplies or equipment through the original contract. This process may be used provided that the procurement process satisfies the statutory requirements applicable to RPTA for procurements and, for FTA-assisted procurements, satisfies FTA guidelines.

FTA has determined that piggybacking is permissible when the solicitation document and the resultant contract contain an assignability clause that provides for the assignment of all or part of the specified deliverables as originally advertised, competed, evaluated (taking into consideration the base and option quantities) and awarded. The bid and award of the original contract must have followed FTA procedures. In addition, the original solicitation and resultant contract must contain both a minimum and maximum quantity representing the reasonably foreseeable needs of the parties to the solicitation. FTA does not require prior approval to execute a piggyback agreement. (FTA Dear Colleague Letter dated October 1, 1998.)

Piggybacking may be used when: (1) the bid and award of the original contract were completed substantially in accordance with RPTA statutory requirements and FTA procedures, when applicable; (2) the option to be exercised is still current and valid; (3) the number of units to be procured by the piggybacking agency does not exceed the option amount in the original contract; and (4) the

number of units to be procured by the original and piggybacking agencies does not collectively exceed the original contract amount.

After the above conditions have been determined, an interagency agreement must be executed, which can be in the form of a letter agreement from the original contracting agency. The agreement must set forth the following: (1) specific permission for RPTA to exercise the agency's option on an identified contract; (2) the date through which the option that will be exercised is valid; (3) assurance that FTA rules and regulations were followed in bidding and awarding the original contract; and (4) assurance that there are not other agencies authorized to piggyback on the contract for the number of units set aside for RPTA.

5. Joint Procurements

Joint procurements by several public agencies are a permissible method of procurement, provided the competitive bidding requirements applicable to RPTA are followed.

H. Aggregate Value of \$500,000

RPTA shall include provisions in all its requests for proposals, solicitations, Federal assistance applications, forms, notifications, press releases, or other publications involving FTA assistance, stating that FTA is or will be providing Federal assistance for the project, the amount of Federal assistance FTA has provided or expects to provide, and the Catalog of Federal Domestic Assistance (CFDA) Number of the program authorizing Federal assistance. Further, this responsibility is also shared by lower tier contractors, sub-recipients, lessees, or third party contractors, and they must also fully comply with this requirement.

Section V – Special Rules for FTA-Funded Contracts

Procurements Funded By Federal Transit Administration. RPTA is the recipient of capital grants from the Federal Transit Administration (FTA). When procuring supplies, equipment or services pursuant to such grants, RPTA shall conform to the procurement guidelines promulgated by FTA and set forth in FTA Circular 4220.1F. Staff should consult with Legal Counsel for current information on requirements for federally funded contracts.

A. Maintenance of Procurement Records

In connection with all FTA-funded contracts entered into by RPTA, RPTA shall maintain records sufficient to document the significant history of the procurement. Such records include, but are not limited to:

- A determination of why the particular procurement method was selected;
- A determination of why the particular contract type was selected;
- A determination of why the particular contractor(s) was selected for award and/or not selected for award;
- A determination of how the price being paid by RPTA was determined fair and reasonable.

1. Contract Cost and Price. RPTA shall perform a cost or price analysis in connection with every procurement action, including contract modifications. Before receiving bids or proposals, RPTA must make an independent price estimate. A price analysis may be used to determine the reasonableness of the proposed contract price, except in the following instances where a cost analysis must be used:

- When the bidder is required to submit the elements of his estimated cost, such as in architectural and engineering services contracts; and

- When adequate price competition is lacking, and for sole source procurements.

In all contracts where there is no price competition and in all cases where a cost analysis is performed, RPTA is required to negotiate profit as a separate element of the price. In establishing a fair and reasonable profit, RPTA shall consider the complexity of the work, the Contractor's risk and investment, the amount of subcontracting, the Contractor's past record, and industry profit rates for similar work.

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles. RPTA may reference its own cost principles if they comply with the applicable federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. (OMB C. A-102, 49 CFR 18; FTA C. 4220.1F.)

2. Noncompetitive Capital Maintenance Item Purchases.

- If the item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced, the RPTA must first certify in writing to FTA: that such manufacturer or supplier is the only source for such item; and that the price of such item is no higher than the price paid for such item by like customers.

3. Options. Options are only allowed in FTA-funded contracts when:

- The option price is evaluated as part of the bid or proposal evaluation process;
 - The option price is advantageous for RPTA when compared against market prices; and
 - The total of the basic and option periods does not exceed five (5) years for rolling stock or replacement parts. RPTA must obtain FTA approval before going out to bid for the inclusion of an option provision in excess of five years for rolling stock or replacement parts. (FTA C. 4220.1F.)
- 4. Advance Payments.** FTA will not participate in funding payments made by RPTA to a Contractor prior to the incurring of costs by the Contractor. (FTA C. 4220.1F.)
- 5. Progress Payments.** RPTA may include a clause providing for payments to the Contractor prior to delivery or completion that are determined on the basis of costs incurred by the Contractor and the percentage or stage of completion of the project only when the following requirements are met:
- When progress payments are made to the Contractor only for those costs incurred in performance of the contract; and
 - When RPTA obtains title to property for which progress payments are made. Alternative security, by irrevocable letter of credit or equivalent means to protect RPTA's interests in the progress payments, may be used in lieu of title. (FTA C. 4220.1F.)
- 6. Requests for Proposals.** FTA requires that all Requests for Proposals issued for FTA-funded contracts are publicized, and that the Request for

Proposals identify all evaluation factors and their relative importance. FTA also requires that Proposals be solicited from an adequate number of qualified sources. RPTA may make a selection based on the original proposals, without negotiation with any proposer. If RPTA does decide to conduct negotiations, FTA requires that it negotiate with all proposers in the competitive range, i.e., all proposers that RPTA determines have reasonable chances of being selected for award based on cost or price and other factors stated in the RFP.

FTA requires that RPTA use competitive proposal procedures for all qualifications-based procurement of architectural and engineering services, and all architectural and engineering related services, such as construction management, feasibility studies, surveying, design, mapping or related services. Following this method, RPTA is required to evaluate the competitor's qualifications and select the most qualified competitor subject to negotiation of fair and reasonable compensation. RPTA is not allowed to consider price as an evaluation factor, and it may negotiate only with the most qualified proposer.

7. Contractual Provisions. The Procurement Department is responsible for ensuring that the appropriate provisions are included in each RPTA procurement contract. The FTA-required provisions vary according to the type and amount of the contract. As FTA may clarify, revise, and update such provisions from time to time, only a broad outline describing such provisions is contained in this Procurement Manual and Appendix B.

- Bonding Requirements. For FTA-funded construction or facility improvement contracts and subcontracts valued over \$100,000,

RPTA shall meet the following requirements: (1) a bid guaranty of at least 5 percent of the bid price; (2) a performance bond is equal to 100 percent of the contract; (3) for contracts valued at not more than \$ 1 million, a payment bond of at least 50% of the contract price; (4) for contracts valued over \$1 million but not more than \$5 million, a payment bond of at least 40% of the contract price; and (5) for contracts valued over \$5 million, a payment bond of at least \$2.5 million. (FTA C. 4220.1F.)

- Liquidated Damages. FTA-funded contracts may contain a liquidated damages clause if the following requirements are met: (1) RPTA can reasonably expect to suffer damage from late completion; (2) contract damages would be difficult or impossible to establish; (3) the liquidated damages are set at specific rate per each day of overrun; (4) the daily rate is specified in contract; and (5) any liquidated damages recovered are credited to the project account, unless the FTA has expressly permitted otherwise.
- Disadvantaged Business Enterprise. FTA-funded contracts shall specify the DBE policy and obligations pursuant to the requirements embodied in 49 CFR Part 26, as may be amended from time to time. (OMB C. A-102, 49 CFR 18; FTA C. 4220.1F.)
- Equal Employment Opportunity (EEO). FTA-funded contracts, with the exception of contracts for standard commercial supplies and raw materials, shall contain provisions incorporating EEO requirements. Construction contracts over \$100,000 require far more extensive provisions than other contracts, and must

incorporate in detail the requirements of Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations at 41 CFR Part 60 et seq. (OMB A-102, 49 CFR 18.)

- Title VI, Civil Rights Act of 1964. FTA-funded contracts, except those for standard commercial supplies and raw materials, must include provisions requiring compliance with Title VI (49 U.S.C. 2000d), and the regulations of the Department of Transportation issued therein, 49 CFR Part 21, as they may be amended from time to time. (OMB A-102, 49 CFR 18)
- Cargo Preference. FTA-funded contracts under which supplies, equipment, or materials may be transported by ocean vessel must contain a provision assuring compliance with regulations at 46 CFR Part 381. (FTA C. 4220.1F)
- Fly America. The Fly America requirements apply to the transportation of persons or property by air between a place in the U.S. and a place outside the U.S., when the FTA will participate in the costs of such air transportation. FTA-funded contracts involving such air transportation include a provision assuring compliance with 41 CFR Part 3101-10. (FTA C. 4220.1F, 49 U.S.C. 40118)
- Buy America. FTA-funded contracts valued over \$100,000 must include the appropriate Buy America requirements and a Buy America Certificate, in compliance with the Surface Transportation Act of 1982 and regulations promulgated therein at 49 CFR 660 et

seq. (FTA C. 4220.1F) For acquisition of rolling stock, a pre-award Buy America audit must be conducted prior to contract award and a post-delivery Buy America audit must be conducted prior to acceptance and final payment. The Buy America Audits and required certifications are to be obtained and conducted by the Maintenance Department.

- Conservation. FTA-funded contracts shall include a provision requiring compliance by the Contractor with mandatory standards and policies relating to energy efficiency, contained in the State energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.). (OMB A-102, 49 CFR 18)
- Labor Provisions. FTA-funded contracts for construction or repair shall include extensive provisions guaranteeing compliance with relevant federal law concerning minimum and prevailing wages, withholding, payroll and other records, “anti-kickback,” apprentices and trainees, and such other labor provisions as may be mandated from time to time. This shall include provisions guaranteeing compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 875), the Davis-Bacon Act (40 U.S.C. 276a-a7) for construction contracts in excess of \$2,000, and for construction contracts in excess of \$2,000, and all other contracts in excess of \$3,000 which involve the employment of mechanics or laborers, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330). Such contract provisions shall also guarantee the

Contractor's and any subcontractors' compliance with those regulations set forth at 29 CFR 3 and 5.5. (OMB A-102, 49 CFR 18)

- Remedies/Sanctions for Breach of Contract. FTA-funded contracts shall contain provisions allowing for administrative, contractual, or legal remedies to cover instances where a Contractor violates or breaches the contract terms, and shall provide for such remedies and sanctions as may be appropriate. (OMB A-102, 49 CFR 18.)
- Termination. FTA-funded contracts shall contain provisions for termination by RPTA, including the manner by which such termination will be effected and the basis for settlement. In addition, all contracts shall describe conditions under which the contract may be terminated for default, as well as conditions under which the contract may be terminated for convenience of the government. (OMB A-102, 49 CFR 18.)
- Environmental Violations. FTA-funded contracts in excess of \$100,000 shall contain provisions requiring the Contractor's compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7601 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR Part 15) which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included

on the E.P.A. List of Violating Facilities. (OMB A-102, 49 CFR 18.)

- Transit Vehicle Manufacturers: Compliance with DBE Regulations. FTA-funded contracts relating to the procurement of transit vehicles shall require that all bidders complete and submit a certificate guaranteeing compliance with DBE goals as required by regulations at 49 CFR Part 26.
- Debarment and Suspension Certification. FTA-funded contracts exceeding \$100,000 shall require all bidders to submit the Debarment and Suspension Certification, which also includes certifications regarding offenses such as fraud and embezzlement. (49 CFR 18.35; FTA C. 2015.1)
- Lobbying Certification for Federal Aid Contracts. All FTA-funded contracts exceeding \$100,000 shall require all bidders to submit a certification that no federally appropriated funds were used to lobby a federal employee or entity for the awarding of the federally funded contract. (31 U.S.C. 1352)
- Motor Vehicle Safety and Pollution Certification. All FTA-funded contracts for transit vehicles shall require all proposers to certify that the bus offered is and will be on the date of manufacture in compliance with United States Environmental Protection Agency, including Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines (40 CFR Part 85), Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures (40 CFR Part

86), and Fuel Economy of Motor Vehicles (40 CFR Part 600); U.S. DOT, including Federal Motor Vehicle Safety Standards; and State of California Highway Patrol regulations and requirements. (Grant Contract subsection 23(b)(1)(b).)

- Bus Testing Certification. All FTA-funded contracts for transit vehicles shall require proposers to certify that the bus model has already been tested at the bus testing facility in Altoona, Pennsylvania, and complies with Federal Transit Act and Code of Federal Regulations, Title 49, Part 665 or that the model intended for manufacture has not already been tested. (Grant Contract subsection 17(m)(3).)
- Miscellaneous Recommended Clauses. As the Grants and Audits Administrator deems advisable and upon the advice of Legal Counsel, FTA-funded contracts may also include clauses addressing the following: Patent Rights; Rights in Data; Access to Records; Recycled Products; and Sole Bid Evaluation/FTA Review.

8. Rejection of Bids. FTA authorizes RPTA to reject any and all bids if, in its discretion, there is a sound business reason for such rejection. These reasons shall be adequately documented in RPTA's files.

9. Disadvantaged Business Enterprise Participation

Policy. RPTA is committed to a Disadvantaged Business Enterprise ("DBE") policy in accordance with Federal Regulations issued by the Department of Transportation and set forth in 49 CFR Part 26. It is the intention of RPTA that DBEs shall be afforded every practicable opportunity to participate in the

performance of contracts relating to RPTA's procurement, construction and professional services activities. RPTA's participation with Disadvantaged Business Enterprises is based on participation with the City of Phoenix DBE program, including the establishment of goals.

a) Contract Specific Goals. The City of Phoenix, as the federal grant recipient for FTA funds, shall establish contract-specific DBE participation goals on particular federally assisted prime contracts with subcontracting opportunities to the extent that RPTA cannot achieve its annual overall goals with race-neutral and gender-neutral measures. Where a contract-specific DBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made sufficient good faith efforts to do so. A bidder shall be ineligible for contract award if it does not meet the goal or demonstrate sufficient good faith efforts.

The RPTA contract goal shall be established by the City of Phoenix Public Transit Department substantiated by information furnished by the DBE Administrator. The contract-specific goal shall apply to the percentage participation of DBEs in the total contract work and shall be set forth in the Special Provisions of the contract specifications. The City of Phoenix is not required to establish a contract-specific goal for every RPTA prime contract with subcontracting opportunities. For each contract involving subcontracting opportunities, the factors outlined below will be considered to determine whether a contract-specific goal should be established for the particular contract and, if so, what the percentage goal shall be:

- The projected portion of the annual overall goals that will be met by establishing contract-specific goals;

- The progress toward achieving the annual overall goals;
- The full range of activities in the proposed contract;
- The availability of DBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
- The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize, or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two sub-trades may not be appropriate for a contract-specific goal due to the fact that establishing a goal could result in restrictive bidding.);
- The effect that the contract-specific goal might have on the time of completion; and
- Any other relevant criteria.

10. Disadvantaged Business Enterprise Program

a) Awarding Contracts with Contract-Specific Goals. RPTA shall award contracts to the lowest responsible and responsive bidder, where applicable. For such contracts, as well as for contracts awarded pursuant to a Request for Proposal procedure where the lowest responsible and responsive bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract-specific DBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed “responsive” and, therefore, shall be ineligible for award of the contract.

b) Evaluation of Bids or Proposals. After the bid opening or submission deadline for proposals, the DBE Administrator shall evaluate all bids/proposals to determine whether the bidders/proposers submitted all of the information

required by 49 CFR 26.53(b). The responsible bidder with the lowest apparent bid price, or the most highly ranked proposer, who also meets the contract-specific DBE goal or demonstrates sufficient good faith efforts shall be recommended for the contract award. In the event that the bidder with the lowest monetary bid price fails to meet the contract-specific goal or fails to demonstrate sufficient good faith efforts, or is otherwise unresponsive or not responsible, the DBE Administrator shall evaluate the bidder with the next lowest bid price. Should the DBE Administrator determine that additional information is needed to evaluate a bidder's or proposer's submission with regard to the DBE requirements, the DBE Administrator shall request said bidder or proposer to submit the required information, or may contact the listed DBEs directly.

c) Evaluation of DBE Certification Status. RPTA shall require that any DBEs listed by bidders for participation in the contract be certified DBEs as of the time of bid opening. The DBE Administrator shall review the Prime Contractor and Subcontractor/Sub-bidder/Supplier Report to confirm each DBE firm's certification status. RPTA will only accept current certifications by the California Department of Transportation or other FTA Uniform Certification Cluster Providers.

d) Determination of Amount of DBE Participation. The DBE Administrator shall review the total dollar value of the work and the total contract bid price reported on the Prime Contractor and Subcontractor/Sub-bidder/Supplier Report for accuracy and shall compare it to the contract-specific goal established for the contract.

e) Determination of Good Faith Efforts. If the amount of DBE participation does not meet the contract-specific goal, the DBE Administrator shall review the

good faith efforts report submitted by the bidder. The DBE Administrator shall determine whether the bidder has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal in accordance with 49 CFR Part 26.

f) Bidder's Right to Administrative Reconsideration. In the event that the DBE Administrator determines that the apparent low bidder has not met the contract-specific goal and has not demonstrated good faith efforts, the DBE Administrator will notify the bidder in writing. The notification shall include the reasons for the determination and that the bidder has the right to submit further written documentation or appear before the Review Committee for reconsideration prior to the time that a recommendation for award of contract is presented to the Executive Director or the Board of Directors. The Review Committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination. In the event that the Review Committee finds that the bidder has not met the contract goal or demonstrated good faith efforts, the DBE Administrator will deem said bidder not responsive and evaluate the bidder submitting the next lowest bid.

g) Recommendation for Award. Following the determination of the lowest responsive and responsible bidder with the assistance of the Review Committee, the DBE Administrator shall prepare a report on the lowest responsive and responsible bidder's compliance with the DBE requirements for review and action by the Executive Director for contracts not exceeding \$50,000, or, if the contract is valued at over \$50,000, for presentation to the Board of Directors at the time the contract award is considered. The decision on the award of contract, if such

a decision is made, shall be final and binding on all parties, subject to compliance with RPTA's bid protest procedures.

B. Contract Administration

1. General

The Project Manager shall be responsible for monitoring and reviewing the project in order to determine whether contract terms and conditions, including deliverables, are being met shall endeavor to resolve any problems concerning adherence to terms and conditions of the contract. The Procurement Specialist shall be responsible for resolving complex contract issues, including but not limited to performance, delivery dates quality assurance issues, and breach of contract terms and conditions.

2. Notice to Proceed

The Procurement Specialist shall issue the Notice to Proceed for all formally bid contracts and contracts awarded through competitive negotiations. For commodities and non-professional services, the department originating the procurement shall assume primary responsibility for purposes of communicating with all vendors, suppliers, and contractors as to the commencement and progress of the contract. With respect to construction contracts, the Project Manager shall serve as RPTA's authorized representative. The department initiating the purchase shall serve as the principal contact with bidders retained for professional services.

3. Maintenance of Procurement Records

The original executed contract for formally bid contracts and contracts awarded through competitive negotiations shall be maintained in the Procurement Department's offices. The Procurement Department shall maintain a procurement/contract file for each RPTA contract. The contract file shall contain all records sufficient to document the significant history of the contract, including all formal and informal communication between RPTA

and the vendor, supplier, or contractor. In addition, such file shall include, but not be limited to, the following records:

- a) Any and all documents evidencing the rationale for the method of procurement;
- b) Any and all documents relating to the selection of the vendor, supplier, or contractor;
- c) Change orders and contract amendments.

4. Change Orders and Contract Amendments

Summary. When in the course of the performance of a construction or other contract, the department initiating the purchase deems it necessary that extra work be performed, or that certain authorized work be omitted, or that modifications be made regarding the contract requirements, then a written change order must be issued to the Contractor. The parties may disagree as to the price of any contract modification; these change order procedures assume that any such price dispute has been resolved. Resolution of disputes concerning change orders shall be made in accordance with the procedures outlined in **Section VIII** "Resolution of Contract Claims and Controversies."

The Procurement Specialist will monitor compliance with the technical requirements of the contract, but shall have no authorization unilaterally to implement changes in the scope of work. When such changes are initiated by RPTA, the Procurement Specialist shall request a proposal from the contractor covering the areas of cost impact, schedule change, and increase or decrease in scope. All formally bid contracts and contracts awarded through competitive negotiations shall require that the contractor advise RPTA in writing immediately upon notice of any unanticipated condition or contingency that may cause a change in the scope of work or an adjustment in the specified compensation. The written notice shall explain the circumstances giving rise to the

unforeseen condition or contingency and shall set forth the proposed adjustment in compensation resulting therein. Such notice shall be given to RPTA prior to the time that contractor performs work or services giving rise to the proposed adjustment in compensation.

a) Procedures. The department initiating the purchase shall prepare a Change Order/Contract Amendment Requisition on the standardized form issued by the Procurement Department and attach supplemental information as necessary to adequately describe the Contract, the contract modification required, and the reasons. The request shall be reviewed and approved by the Procurement Specialist and the appropriate Deputy Executive Director.

For commodities and non-professional services, Procurement Department staff shall verify the estimated cost of the contract modification and shall transcribe the documentation onto an accepted change order form. The change order shall identify the cost of the contract modification in both dollar amount and percentage increase over the original Contract price. Procurement Department staff shall verify that the change order complies with the terms of the Board Resolution authorizing the original Contract. RPTA Engineering Department shall perform these functions for construction contracts. The department initiating the purchase shall perform these functions for professional services agreements.

The Executive Director is authorized to approve change orders to contracts awarded in accordance with the procedures set forth in this Procurement Manual if the following criteria are met:

- Change order can be funded within the contract contingency
- For contracts with an original contract price over \$50,000, the Executive Director is authorized to issue contract change orders or amendments

cumulatively not to exceed twenty percent (20%) or \$100,000, whichever is greater of the original contract price or any single subsequent change order.

All other change orders shall be approved by the Board of Directors. Upon the completion of this review and approval process, the change order shall be issued to the Contractor. With respect to FTA-funded projects, a change order that is not within the scope of the original contract must meet FTA's criteria for noncompetitive negotiation.

5. Exercise of Options

In deciding whether to exercise an option, RPTA shall make its determination on the basis of the following methods of price analysis:

- A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option;
- An analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer; or
- The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer.

Staff shall make the following additional findings regarding the exercise of such options:

(a) staff shall evaluate the performance of the Contractor to determine if said performance has been satisfactory, and determine whether there are sufficient funds in the approved operating budget for the project to extend or renew the term pursuant to the option.

Based upon the foregoing analysis, staff shall forward to the Executive Director a recommendation regarding the exercise of the contract option. The Executive Director

shall have the authorization to exercise the option at his/her discretion when the cost of exercising the option does not exceed the option price included in the original purchase price and is within the approved budget. Renewal or extension of the contract term shall be in accordance with those terms and conditions specified in the original contract documents.

6. Contract Expiration

For commodities and non-professional services, the Chief Procurement Officer shall provide notice to the department initiating the purchase whenever a contract is due to expire within one hundred twenty (120) days of such expiration. The Procurement Department shall develop a new bid document, if the contract was originally bid, and forward it together with the revised contract. The department initiating the purchase shall review and recommend changes to the contract documents and return the corrected copy of the documents to the Procurement Department within ten (10) working days. This process must be accomplished in a timely fashion, so as to allow a minimum of sixty (60) days for re-advertisement, bid opening, and award. Notwithstanding that the contract is a renewal, all applicable procedures as set forth in this Procurement Manual shall be followed.

7. Contract Closure

The Chief Procurement Officer shall issue a close-out form for completed contracts in the form provided in the Procurement Forms Binder. Such form will be completed when the final product is received and all contractual obligations have been met.

At the time of contract closure, the Chief Procurement Officer, and RPTA staff with technical expertise in the area shall have the opportunity to submit comments to the file on the contractor's performance. Such comments will be relevant for future contracting purposes.

8. Construction Contract Administration

Progress payment vouchers within the contract budget shall be reviewed and approved by the Construction Project Manager as to work completed and payments due, whereupon RPTA shall issue payment to the Contractor.

Procedures for resolving claims or disputes arising out of construction contracts shall be in accordance with the applicable provisions of the particular contract specifications.

In addition, RPTA shall adhere to the following rules and procedures in construction contract payment:

a) Progress Payments. If progress payments are used, in no event shall RPTA release progress payments in excess of 95 percent of the actual work completed, plus a like percentage of the value of unused materials delivered by the contractor on one ground or stored subject to, or under the control of, the local agency. RPTA shall withhold not less than 5 percent of the total contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if RPTA determines that satisfactory progress has been made, RPTA may make remaining progress payments in full for actual work completed.

b) Prompt Payment. RPTA shall pay any progress payment within thirty (30) days of receipt of an undisputed and properly submitted invoice from the contractor. Any invoice received by RPTA and determined not to be a proper invoice shall be returned to the contractor after receipt thereof, accompanied by a written explanation of why the invoice was not proper.

c) Escrow for Retention. If RPTA withholds funds, it shall allow the contractor to deposit securities equivalent to the monies withheld to RPTA or to a bank, who shall then pay the withheld funds to the contractor. In the alternative, the

contractor may request RPTA to make payment of the retentions earned directly to an escrow agent, allowing the contractor to direct the investment of the payments into securities and to collect interest on the investments.

d) Retentions. RPTA shall release any retention withheld from the contractor within sixty (60) days of completion of the work. If there is a dispute as to an amount due to the contractor, RPTA may withhold from the final payment.

9. Contract Types

Policy - The RPTA may use any type of contract that is appropriate under the circumstances except that it shall not use cost-plus-a-percentage-of-cost contracts. Contracts shall be in a form and contain terms and conditions approved by the Executive Director.

RPTA will use time and material type contracts only after a determination that no other type of contract is suitable and if the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

RPTA shall use the following approved contract types when contracting for goods and services on behalf of RPTA. RPTA Counsel shall approve all contract types as to form either individually or as a class.

a) Firm Fixed Price – This type of contract is used for sealed bidding and is preferred by RPTA. This contract type puts the maximum risk of performance on the contractor and reduces the risk of cost performance on RPTA. The prices contained in the contract are firm and fixed. There are fixed price contracts that contain economic or price re-determination clauses but these clauses shall only be added with the approval of RPTA Counsel and the Executive Director prior to the issuance of a solicitation.

b) Cost Plus Fixed Fee – This type of contract is used when the total price of the goods or services being purchased cannot be estimated with any certainty. It provides that a contractor will be compensated their actual costs plus a fixed fee. The contract must have an acceptable cost accounting system and will only be reimbursed those costs that are consistent with Federal Cost Principles or a cost standards promulgated by RPTA. Variations of this contract type include award fee and cost reimbursement contracts.

c) Time and Materials – This contract type is used only after a written determination is made that no other contract type is suitable. The contract must specify a ceiling price that the contractor shall not exceed except at its own risk. When competing this solicitation type, the evaluation will include the analysis of proposed rates and not necessarily the bottom line price. The analysis of bottom line price may be appropriate for services that are relatively homogenous with well-established industry standards of performance. Labor Hour contracts are variations of Time and Materials contracts and shall be processed in accordance with the same guidelines and rules contained in this Section.

d) Unpriced Purchase Orders – Unpriced purchase orders may be used on small purchases less than the threshold for formal purchase procedures. These contracts provide an agreed to amount of compensation for the contractor to Teardown, Test and Evaluate items of repair. The contractor then negotiates a price with RPTA or classifies the repair action within pre-established pricing categories that are subject to concurrence of RPTA. The contractor is then compensated on the agreed upon rates.

10. Contract Terms and Condition

- a). Every contract that the RPTA enters into shall include a clause authorizing the following:
- Cancellation of the contract for a conflict of interest under Arizona Revised Statutes §38-511;
 - Termination of the contract for the convenience of the RPTA;
 - Termination of the contract for contractor default;
 - Termination of the contract due to unavailability of funds;
 - Full and open competition;
 - Prohibition against unreasonable competition;
 - Prohibition against unreasonable requirements;
 - Prohibition against arbitrary actions;
 - Clean air and clean water; and
 - All applicable federal clauses.
- b). Every contract that the RPTA enters into that exceeds \$50,000 shall include the terms and conditions identified in Subparagraph 1 as well as additional terms and conditions authorizing at a minimum the following:
- The right of the RPTA to inspect at a reasonable time the contractor's and its subcontractors' places of business;
 - The right of the RPTA to audit at reasonable times and places the books and records of any person submitting cost or pricing data, or the books and records of a contractor, relating to the performance of the contract for a period of three (3) years after the final payment under the contract;
 - Administrative, contractual or legal remedies in instances where a

contractor violates or breaches contract terms, including appropriate sanctions and penalties.

Section VI - Development of Specifications and Scopes of Work

A. Maximum Practicable Competition

All specifications and scopes of work shall seek to promote the best value for the RPTA concerning the material, service or construction procured; encourage competition; and not be unduly restrictive.

1. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- a) Unreasonable requirements placed on firms in order for them to qualify to do business;
- b) Unnecessary experience and excessive bonding requirements;
- c) Noncompetitive pricing practices between firms or between affiliated companies;
- d) Noncompetitive awards to any person or firm on retainer contracts;
- e) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the RPTA; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- f) Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics.

RPTA may define the salient characteristics in language similar to the following:

- a) Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties; or
- b) Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in (describe the bus, engine, or other component the part must be compatible with) and will not compromise any OEM warranties; and
- c) Any arbitrary action in the procurement process.

B. Brand Name or Equal Specification

- 1. **A brand name or equal specification** shall be used only if the Chief Procurement Officer determines that its use is advantageous to the RPTA.
- 2. **A solicitation containing a brand name or equal specification** shall provide for the submission of substantially equivalent materials and shall explain that the use of the specification is for the purpose of describing the standard of quality, performance, and characteristics desired.
- 3. **A brand name or equal specification shall designate as many different brands as practicable as "or equal" references.** The specification shall also include a description or list of the specific design, functional or performance characteristics of the brand name material that are sought in the material being procured, unless the Chief Procurement Officer determines that the essential characteristics of the brand names designated are commonly known.

C. Specifications, Plans or Scopes of Work Prepared by Non-RPTA Employees

The RPTA may contract for the preparation of specifications, plans and drawings or scopes of work with persons other than RPTA personnel. Contracts for such services

shall provide that the contractor prepare specifications, plans and drawings, or scopes of work that comply with the provisions of this Section.

Section VII - Protest Procedures

A. Filing a Protest

An aggrieved person may protest a solicitation or a proposed contract award. Further, the FTA will review a protest that alleges a violation of federal law. The FTA will entertain a protest that alleges that RPTA failed to follow our own protest procedures and that such a protest must be filed in accordance with FTA Circular 4220.1F. RPTA must disclose information regarding a protest to the FTA. Finally, a protester must exhaust all administrative remedies with the RPTA before pursuing a protest with the FTA. RPTA includes protest procedures in all solicitations.

B. Time of Filing

A protest alleging defects or ambiguities in the solicitation shall be filed no later than three (3) days before the date set for bid opening or closing date for receipt of proposals. All other protests shall be filed within five (5) days after the protester knew or should have known the basis for the protest and, where applicable, before the Board makes an award decision. In procurements funded by FTA grant monies, the Board shall not make an award for five (5) working days following issuance of a decision or dispositive order on the protest, other than permitted under Paragraph H-2-b. Awards of contracts shall be final and no protest may be filed after award upon receipt of protest information in all instances shall be disclosed to the FTA. RPTA will allow for reconsideration of a protest if data or information becomes available that was not previously known, or there has been an error of law or regulation. Deadlines for filing a request for re-consideration must be made within five (5) days after the protester knew or should have known the basis for the reconsideration of the protest.

C. Contents of a Protest

A protest shall be in writing and shall:

1. State the name and address of the aggrieved person;
2. Identify the contracting activity and the name of the solicitation, and the solicitation number;
3. Contain a statement of the grounds of the protest;
4. Include supporting exhibits, evidence or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

D. Place of Filing a Protest

A protest shall be filed within applicable time limits at the following address:

Office of the Executive Director
Regional Public Transportation Authority
302 N. 1st Ave., Ste. 700
Phoenix, AZ 85003

E. Hearings

1. If the Executive Director determines that a hearing is appropriate, the Executive Director or his/her designee shall notify the protester of the time and place set for a hearing on the protest. The hearing shall be informal. The Executive Director may also give notice of the hearing to any other persons involved in the solicitation whose interests may be affected by the ruling requested from the Executive Director. Any person whose interest is affected shall be permitted to intervene and participate in such hearing.
2. The Executive Director or his/her designee shall dismiss a protest, upon a written determination, before scheduling a hearing, if:

- a) The protest does not state a valid basis for protest; or
 - b) The protest is untimely pursuant to these guidelines.
3. If a protester fails to appear and participate in the hearing, the Executive Director or his/her designee may summarily rule upon the protest based upon information then available.

F. Decision

The Executive Director shall issue a written ruling within a reasonable time after conclusion of the hearing. The ruling shall be final. RPTA will respond in detail to each substantive issue raised in the protest. The decision of the Executive Director shall be final.

G. Remedies

1. Generally

If the Executive Director sustains the protest in whole or part and determines that a solicitation or proposed contract award does not comply with the procurement statutes, applicable grant requirements or these guidelines, the Executive Director shall implement an appropriate remedy. In determining an appropriate remedy, the Executive Director shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, costs to the RPTA, the urgency of the procurement and the impact of the relief.

2. Possible Remedies

An appropriate remedy may include one or more of the following:

- a) Reissuance of the solicitation;
- b) Issuance of a new solicitation;

- c) Award of a contract consistent with procurement statutes, applicable grant requirements or these guidelines; or
- d) Such other relief as is determined necessary to ensure compliance with procurement statutes, applicable grant requirements or guidelines.

H. Protests to the Federal Transit Administration

1. Generally

Under certain limited circumstances, an interested party may protest to the FTA the award of a contract funded under an FTA grant. The FTA's review of any protest shall be limited to the alleged failure of the RPTA to maintain written protest procedures or its alleged failure to follow those procedures.

2. Time for Filing

a) Protesters shall file a protest with the FTA not later than five (5) working days after a final decision is rendered under the RPTA's protest procedure. In instances where the protester alleges that the RPTA failed to make a final determination on the protest, the protester shall file a protest with the FTA not later than five (5) working days after the protester knew or should have known of the RPTA's failure to render a final determination on the protest.

b) The RPTA shall not award a contract for five (5) working days following its decision on a procurement protest except if the Executive Director makes a determination concerning one of the following:

- The items to be procured are urgently needed;
- Delivery or performance will be unreasonably delayed by the failure to make an award promptly; or
- The failure to make an award will otherwise cause undue harm to the RPTA or to the federal government.

c) If award is made, the Executive Director's determination shall be retained in the procurement file and prompt written notification given to the protester and, as appropriate, to other interested parties of the determination to proceed with an award.

3. Submission of Protest to FTA

Protests should be filed with the appropriate FTA Region IX Office, with a concurrent copy to the RPTA, according to FTA Circular 4220.1F. The protest should include at a minimum of the following:

- a) The name and address of the protester;
- b) The name of the RPTA, the project number or name, and the number of the solicitation;
- c) A statement of the grounds for the protest and any supporting documentation;
and
- d) A copy of the local protest filed with the RPTA and a copy of RPTA's decision, if any.

Section VIII - Contract Claims or Controversies

A. Filing Contract Claims or Controversies

A contractor shall file a claim or controversy under a contract with the Executive Director within a reasonable time after the claim or controversy arises but in no event later than one hundred eighty (180) days after the cause of action accrues. The claim or controversy shall be in writing and identified as a claim or controversy. The claim shall specify in detail the factual and legal basis for it, identify the contract number, state the specific relief sought including where applicable the dollar amount of any claim, and request a final decision.

B. Decision

1. If a claim or controversy cannot be resolved by mutual agreement, the Executive Director may initiate alternative dispute resolution procedures. If the claim or controversy is not resolved by mutual agreement or otherwise, the Executive Director shall issue a final written decision. The final decision shall include:

- a) A description of the controversy;
- b) A reference to the pertinent contract provisions;
- c) A statement of the factual areas of agreement or disagreement; and
- d) A statement of the decision, with supporting rationale.

2. Final decisions shall be made within thirty (30) days of the date that the Executive Director determined that a mutual agreement could not be reached. The Executive Director may extend the time limit for good cause for a reasonable time not to exceed an additional thirty (30) days. If extended, the Executive Director shall notify the contractor in writing that the time has been extended and the date by which a decision shall be issued.

C. Notice of Decision

The final decision shall be furnished to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

Section IX - Suspension and Debarment

A. Generally

The Executive Director may suspend or debar a person under this Section. Suspension of any person shall not exceed one year. A debarment shall be from three (3) years to an indefinite period of time, based on cause and the number of times the person has been previously debarred.

B. Causes

The causes for debarment or suspension may include, but are not limited to, the following:

1. Conviction of any person or subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
2. Conviction of any person or any subsidiary or affiliate of any person under any statute of the Federal Government, this State or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offenses indicating a lack of business integrity or business honesty which affects responsibility as an RPTA contractor.
3. Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
4. Violations of contract provisions or a charter which are deemed to be so serious as to justify debarment action, such as either of the following:
 - a) Knowingly failing without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
 - b) Failure to perform or unsatisfactory performance in accordance with the terms of a contract, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
5. Any other cause deemed to affect responsibility as an RPTA contractor, including financial instability, failure to pay sub-consultants or suppliers, suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause listed in the established rules.

C. Notice

Before imposing a suspension or debarment, the Executive Director shall give the affected party written notice of the grounds for suspension or debarment and shall afford such person an opportunity for a hearing.

Section X - Disposal of Surplus Property

A. Responsibility

The Chief Procurement Officer shall be responsible for disposing of RPTA surplus property.

B. Disposal Methods

The Chief Procurement Officer may convey surplus property to another public entity or use any other disposal method that is appropriate in light of the reasonable value of the property.



Policies and Procedures

TITLE: Ethics Policy for Valley Metro Employees **NO:** 6.1
(does not apply to METRO employees)

Revised: June 15, 2011

Our agency culture is based on core values which define the character of the Regional Public Transportation Authority (RPTA). These values, set forth in our Ethics Policy, are organized around fundamental business practices and guiding principles. RPTA's guiding principles are to support a culture of openness, trust, and integrity.

The guiding principles provide a standard of integrity and business conduct that each of us is expected to understand and honor. They acknowledge that our commitment to ethics is a serious and shared responsibility. Webster defines ethics as, "A system of moral principles or values."

These standards help us understand the ethical considerations we must weigh; however, they could not possibly address every situation that may arise, nor are they a substitute for our individual responsibilities to exercise good judgment and to obtain further guidance whenever needed. Any exception to this policy must be approved by the Executive Director.

I. Purpose:

To ensure that all RPTA business is conducted in strict accordance with law, regulations, and in keeping with the highest level of ethics.

II. Policy:

It is the policy of the RPTA to uphold, promote and demand the highest standards of ethics from all of its employees. Accordingly, all Agency employees should maintain the utmost standards of personal integrity, truthfulness, honesty, and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, and never use their position or powers for improper personal gain.

A. In all matters pertaining to the operation of RPTA, employees must avoid any undisclosed, unapproved relationship or engage in any activity which might:

- Involve or lead to personal obligations which could impair the objectivity of such person's judgment; or
- Imply to others that favoritism or obligations exist between RPTA or its employees and any other party.

- B. Employees of RPTA shall not participate in the selection, award, or administration of a contract if a conflict of interest real, apparent, or perceived would be involved unless such participation was first disclosed and approved by the Executive Director in writing.

No employee will publicly endorse any particular product or service, unless in the act of their duties (i.e., deciding which bid overall is best for the agency and assuming no other conflicts).

III. Conflicts of Interest

An employee's involvement in any activity that is a conflict of interest is prohibited. A conflict of interest is any interest of the employee (financial, personal, collaborative or otherwise) that could impair the independence of judgment or the ability of a reasonable employee to act in the Agency's best interests in any matter. A conflict of interest may arise from outside employment, donor/recipient relationships, debtor/creditor relationships, consulting arrangements, family or personal relationships, legal or fiduciary arrangements and financial investments, or any other matter that could be construed by a reasonable third party as conflicting with the employee's duties.

- A. Employees will disclose to their Department Heads any potential conflicts of interest that may affect any matter or aspect of their Agency duties. Employees will not participate as agents or representatives of the Agency or take any action or make recommendations on any matter in which they have a conflict of interest as determined by the Executive Director.
- B. The following minimum standards for full disclosure by employees may be further delineated by individual departments or directives of the Executive Director:
 1. It is the responsibility of each employee to immediately inform his/her Department Head of any potential conflict of interest and the full nature of that interest which may affect an assigned duty.
 2. The Department Head will determine whether a conflict exists and if the employee must recuse himself/herself from taking any action in a matter that may be affected by his or her interest.
 3. Department Heads may make individual policies to reassign duties where a conflict exists and when an employee has a conflict of interest.

IV. Preferential Treatment/Acceptance of Gifts

- A. Employees will not use or attempt to use their official Agency positions to secure or grant privileges, exemptions, advantages, contracts, or obtain preferential treatment or gifts for themselves or others. Gifts are defined as any item over \$25 in value.

Employees will not directly or indirectly accept from any person a loan, cash, credit, services, gifts or other complimentary benefits in connection with his/her Agency employment. Gifts which may influence a reasonable employee in the performance of his/her duties, or which appear to be intended as a reward for any official action on

the employee's part, or which potentially creates the perception of impropriety, as determined by the Executive Director, shall be refused.

The following guidelines are minimum standards:

- Food that is sent to the office to be shared by all is not considered a gift to an individual employee.
- Items under \$25 in value are not considered gifts (pens, pencils, coffee mugs, calendars, books, CDs, etc.). Large dollar value items are not to be accepted.
- Gifts of bottled alcohol must never be accepted.
- Unsolicited payment of meals may be accepted, provided the acceptance of a meal is not intended to influence the employee's performance, or is not intended as a reward for official action, or does not create a potential for a perception of impropriety, or does not occur on a regular basis. The acceptance of meals must be disclosed to the employee's Department Head, or in the case of a Department Head to the Executive Director.
- Conference events and give away items under \$25 in value that are part of an agency-paid conference can be accepted.
- Free training can be accepted at the discretion of the Executive Director.

Any other possible exceptions will be submitted to the Executive Director for consideration. Any violation of this policy is subject to discipline up to and including termination.

V. Agency Sponsored Events

RPTA sponsors events and dinners that focus on interaction with our members or supports worthwhile community causes. If an event is agency sponsored, then agency employees can participate; however, they may be required to use a personal day to attend some specific events. Agency employees shall not dominate the overall attendance at events.

VI. Confidential Information

- A.** Employees will respect and protect confidential information to which they have access in the course of official Agency duties, avoid any interest or activity that lies in conflict with the conduct of official Agency duties, and seek no favor for personal economic interest or the interest of others obtained through confidential information.
1. No employee who acquires information in the course of his/her duties, which information by law or policy is not available at the time to the general public, will use such information to further his/her own economic interest or that of others.
 2. No employee may use work hours or Agency resources to secure information intended to be used to further his/her economic interest.

VII. Additional Compensation/Notice of Additional Employment

- A. An employee will not accept any salary, retainer, augmentation, expense allowance, or other compensation from any private source for the performance of his/her duties as a public employee. An employee will inform the Agency of any outside employment unrelated to official duties. Prior to beginning any employment activity in addition to Agency service, the employee must notify their department head in writing. If it is determined that a conflict exists, the employee will be informed that he/she may not hold both positions simultaneously.
- B. To ensure no conflict of interest exists, no employee may:
 - 1. Seek or accept additional employment, ownership, or partnership in a business outside Agency service which is determined to be in conflict with his/her duties as an employee or in conflict with the functions and responsibilities of the department.
 - 2. Hold an Agency position and contract employment with the Agency simultaneously.

VIII. Use of Agency Property

- A. Employees will not directly or indirectly use or permit others to use Agency property of any kind for personal use. Employees will protect and conserve all Agency property, including equipment and supplies entrusted or issued to them. Employees will be required to replace or reimburse the Agency for any property lost or damaged due to the employee's negligence.
- B. The following are minimum standards for the use, security, and care of Agency property and equipment. Additional guidelines for the use of property may be established by directive of the Executive Director or by individual departments.
 - 1. Agency equipment and vehicles are for employee use in the performance of assigned duties; and
 - 2. Any equipment or supplies entrusted or issued to an employee should be cared for properly.

X. Use of Agency Time

Employees are expected to begin and end work at assigned times and to adhere to lunch and rest break times as defined by their position. Carelessness or not observing work schedules or breaking the rules can lead to disciplinary action up to and including termination. In addition, employees are expected to be productive during work time. Loafing, tardiness and abuse of paid time destroy the public respect and trust for what we do.

XI. Political Activities

- A. RPTA employees, as individuals, may privately express their own personal opinions on candidates or issues, but they are prohibited from engaging in political election activity while on duty or using company property or equipment. The provisions of this policy extend to all full-time, part-time and temporary employees. The only exception to this policy would be to further explain or promote an upcoming

referendum related to agency business.

B. The following standards are established to further delineate the conduct of employees with respect to political activities:

1. No employee shall engage in political activities involving current RPTA Board members, including campaigning, circulating nomination petitions, making personal donations, or fundraising.
2. An employee may make a personal, financial contribution to a political party, a candidate, or to support or oppose an election issue, as long as it does not involve a current RPTA Board member.
3. Each employee is encouraged to exercise his/her rights as a citizen to vote and become involved in political campaigns of his/her choice outside work hours.
4. An employee may express a personal opinion on candidates or issues for city, county, utility, state, special district and federal elections on his or her own time.
5. An employee may display bumper stickers, posters, or pamphlets on private property for the endorsement of candidates or issues.
6. An employee may sign nominating, initiative, referendum or recall petitions on his or her own time.
7. An employee must exercise extreme diligence in separating personal political views from his/her official duties and position as an employee, especially on the job.
8. An employee must not engage in any political activities at the workplace (i.e., soliciting votes or contributions, use any RPTA authority or influence for interfering or affecting election results).
9. An employee may not place bumper stickers, posters, buttons or pamphlets on RPTA vehicles or RPTA facilities, unless said poster, sticker, etc. is part of an RPTA-generated or sanctioned program, event, or marketing effort.
10. An employee must not wear campaign buttons, hats, or other paraphernalia during the workday, or display political items in the work area, including but not limited to restrooms and other building common areas.
11. An employee shall not use an RPTA title or designation of employment with the RPTA in political advertisements, endorsements or speeches.
12. Employees cannot wear RPTA shirts or uniforms during election activities.

XII. Off Duty Conduct

There are times when an employee's off-duty conduct may affect their ability to perform their duties properly or negatively impact the agency. Employees who are arrested, convicted or incarcerated for criminal activity, and are subsequently unavailable for work, are subject to termination. Additionally, when this or other off-duty conduct reflects negatively and substantially upon RPTA's reputation, the employee is subject to termination.

A. Absenteeism Due to Off-Duty Conduct:

1. Employees must follow the RPTA's policies and procedures relative to reporting absences. Employees must make complete and truthful statements when reporting absences and failure to do so may result in termination. An employee who is arrested or incarcerated due to criminal charges or conviction of a crime is subject to this procedure, as are any employees whose off-duty conduct prevents them from reporting to work.
2. Employees who are unable to perform their duties as a result of off-duty conduct may be subject to the disciplinary process up to and including termination.
3. Employees terminated as the result of unauthorized absence arising from off-duty conduct, arrest, or incarceration may reapply for employment with RPTA once they are available to report for work regularly. These individuals are subject to the provisions of RPTA's rehire policy.

B. Damage to RPTA Reputation

In the event that an employee's off-duty conduct leads to substantial adverse publicity concerning RPTA, the employee is subject to discharge. In such instances, RPTA may review all of the relevant circumstances prior to making a determination as to whether the employee should be discharged.

XIII. Dishonest Acts

Employee theft will not be tolerated from any employee of RPTA. Employee theft includes, but is not limited to, the following:

- Stealing, embezzling, pilfering, or fraud.
- Falsely reporting time worked.
- Improper use of agency assets.
- Removing RPTA property without prior approval of the Executive Director.
- Unauthorized vehicle use.

Dishonest acts are grounds for immediate termination. Any RPTA employee participating may be immediately terminated.

XIV. FTA Ethics Standards for Federally Funded Procurement Actions
(as detailed in FTA Circular 4220.1F Chapter III)

A. Written Standards of Conduct

RPTA will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No RPTA employee, officer, agent, or Board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.

The RPTA's officers, employees, agents or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. RPTA may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the recipient's officers, employees, agents, board members, or by contractors or subrecipients or their agents.

XV. Procedures

A. Where to Seek Advice

1. Any employee who observes unlawful or improper actions by any representative of the Agency is expected to discuss the improper actions with their supervisor or bring the improper action to the attention of the Chief Human Resources Officer.
2. It is frequently necessary to consult administrative regulations, personnel rules and departmental directives to determine whether a particular action is allowable. The Chief Human Resources Officer has the authority to clarify policy ambiguities and to investigate allegations of improper conduct.
3. The Chief Human Resources Officer will review all complaints received and will provide a response based on an independent investigation.

B. What to Do if You are Uncertain

If you are questioning if an issue is ethical, error on the side of caution. **"If in doubt, don't."**


Executive Director

6/16/11
Date

APPLICABILITY OF REQUIRED THIRD-PARTY CLAUSES
(excluding micro-purchases, except construction contracts over \$2,000)

TYPE OF PROCUREMENT

CLAUSE	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Termination Provisions	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Buy America			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, manufactured products)
Provisions for resolution of disputes, breaches, or other litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$2,500 (except transportation services)	>\$2,500	>\$2,000 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Bonding				>\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	

APPLICABILITY OF REQUIRED THIRD-PARTY CLAUSES
(excluding micro-purchases, except construction contracts over \$2,000)

TYPE OF PROCUREMENT

CLAUSE	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyrights requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	Architectural & Engineering	All	All	All	
Notification of Federal Participation	>\$500,000	>\$500,000	>\$500,000	>\$500,000	>\$500,000

**RPTA
Micro-Procurement Checklist/Small Purchase Checklist**

Procurement/Project: _____

Name of Selected Vendor: _____

Price: _____

The price(s) paid for items received under this Purchase Order are determined to be fair and reasonable, based on the following (as checked):

- Adequate competition (two or more quotes received and award made to lowest quoter)
- Current price lists
- Catalog price
- Prices found reasonable on recent previous purchases
- Advertisements
- Similar items in a related industry
- Independent price estimate (based on a good understanding of what the item should cost)
- Other (cite basis)

Name: _____

Date: _____