

AGENDA FOR THE MEETING OF THE  
NRTA ADVISORY BOARD  
March 16, 2016  
6:00 P.M.  
COMMUNITY ROOM, NANTUCKET POLICE STATION  
4 FAIRGROUNDS ROAD  
NANTUCKET, MASSACHUSETTS

- I. Approval of Minutes from the June 24, 2015 and January 6, 2016 Meetings.
- II. Report from Finance and Audit Committee on FY17 Preliminary Budget.
- III. Report on Federal Compliance Review.
- IV. Approval of Updated Title VI Rights to Beneficiaries.
- V. Approval of Contract Award to VTS of Massachusetts, Inc. for the Operations and Management of the NRTA's elderly and disabled van service, Your Island Ride.
- VI. Approval of NRTA Procurement Policies and Procedures
- VII. Other Business.

## DRAFT

### Advisory Board

Minutes of the Meeting of June 24, 2015. The meeting took place in the Community Room of the Nantucket Police Station, 4 Fairgrounds Road, Nantucket, MA 02554. Members of the Board present were: Robert DeCosta, Matt Fee, Rick Atherton, Tobias Glidden, Dawn Hill Holdgate and Karenlynn Williams. Chairman DeCosta opened the meeting at 5:57 p.m.

Public Comment. There was no public comment.

Approval of Minutes from the June 11, 2014 and March 28, 2015 Meetings. The minutes of the June 11, 2014 and March 28, 2015 meetings were approved by unanimous consent of the Board.

Approval of FY16 NRTA Administrator's Salary. Paula Leary, NRTA Administrator stated that at this time she is only seeking a 2 ½ % cost of living increase. The salary for FY16 being sought is \$86,849. Mr. Atherton moved approval; seconded by Ms. Williams. So voted.

Public Hearing – NRTA Regional Transit Plan. Ms. Leary provided the Board and public the information contained in the Regional Transit Plan through a power point presentation that highlighted the various chapters of the plan. Carol Langer, Cisco Area resident commented that she would like to see service down Hummock Pond Road. There were no other comments from the public. Board comments included: Mr. Glidden stated he would like to see year round service; Mr. Atherton asked if there was any way to measure auto use on the island and what impact NRTA services have in reducing cars. Chairman DeCosta commented that year round service should be a goal in the next year, GreenDOT should include noise pollution and quieter buses should be looked, and to Ms. Langer's comment if a Cisco Route is added it will get very busy in Cisco and they need to be prepared for that. Mr. Glidden moved to accept the NRTA's Regional Transit Plan, seconded by Ms. Holdgate Hill. So voted unanimously.

There being no other business before the Authority Mr. DeCosta moved adjournment at 6:15 p.m.; seconded by Mr. Fee. So voted and adjourned.

Approved: **DRAFT**

## **DRAFT**

### **Advisory Board**

Minutes of the Meeting of January 6, 2016. The meeting took place in the Community Room of the Nantucket Police Station, 4 Fairgrounds Road, Nantucket, MA 02554. Members of the Board present were: Robert DeCosta, Matt Fee, Rick Atherton, Tobias Glidden, Dawn Hill Holdgate and Karenlynn Williams. Chairman DeCosta opened the meeting at 6:11 p.m.

Announcement: Public Input and Participation to Determine Feasibility and Service Scenarios for Year-Round Fixed Route Public Transit Service. Paula Leary, NRTA Administrator announced the NRTA has embarked upon a year-round transit study with consultants AECOM. The first and most crucial step is public participation to demonstrate that year round service is needed and wanted by the community. Ms. Leary stated there is already excitement within the community about this and even before the public outreach campaign officially kicked off this week over 400 on-line surveys were completed. The public can participate through the on-line survey through January 15<sup>th</sup> or by attending the open house style interactive public meetings being held at the Boys and Girls Club on Monday, January 11<sup>th</sup> from 6:30-8:30 pm or Tuesday, January 12<sup>th</sup> from 11:00 a.m. to 1:00 p.m. Ms. Leary stated a final report would be presented in late February or early March. Tobias Glidden asked if this would be ready to go before Town Meeting next year. Ms. Leary stated that it was possible.

There being no other business before the Authority Mr. DeCosta moved adjournment at 6:14 p.m.; seconded by Mr. Fee. So voted and adjourned.

Approved: **DRAFT**

TO: NRTA ADVISORY BOARD  
FROM: PAULA LEARY, NRTA ADMINISTRATOR  
RE: REPORT ON FEDERAL COMPLIANCE REVIEW  
DATE: MARCH 7, 2016

The NRTA is a sub-recipient of MassDOT for its federal transit funding. MassDOT is required to conduct compliance reviews of its sub-recipients as a Federal requirement of their triennial review by the Federal Transit Administration.

This is the first time such a review has been conducted by MassDOT and a consultant was retained to assist in the writing, review and issuing a final report for the compliance review. A 58 page package containing 209 questions was provided to the NRTA. In addition to answering the questions, materials consisting of various policies and back up documentation were required to be provided in the following areas: project management/grant administration, procurement, disadvantaged business enterprise, equal employment opportunity, asset management, Americans with Disabilities Act, drug and alcohol program, charter bus service, school bus service, intercity bus, service eligibility, nondiscrimination in the delivery of service, and planning and coordination.

The compliance review consisted of a desk review of the answers and documents provided prior to the site visit. During the two-day site visit the information was reviewed and as well as various compliance documents at the bus garage pertaining to fixed route operations.

A final report will be issued sometime in the near future, the consultants have not indicated a date of its release.

Please do not hesitate to contact me if you have any questions.

Thank you.

TO: NRTA ADVISORY BOARD  
FROM: PAULA LEARY, NRTA ADMINISTRATOR  
RE: APPROVAL OF UPDATED TITLE VI RIGHTS OF BENEFICIARIES  
DATE: MARCH 7, 2016

As part of the Federal Compliance Review the NRTA's Title VI Rights of Beneficiaries required a minor revision.

## **Title VI – Rights of Beneficiaries**

Rights are guaranteed to members of the public under Title VI of the Civil Rights Act of 1964, which says in part: “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (42 U.S.C. Sec200d). The Nantucket Planning and Economic Development Commission (NP&EDC) and the Nantucket Regional Transit Authority (NRTA) pledge that you will have access to all our programs, services and benefits without regard to race, color, national origin, sex, age, disability or socioeconomic status. The NP&EDC and NRTA will not tolerate discrimination by its employees or by those who receive federal funds.

If you believe that you have been discriminated against because of your race, color, or national origin you may file a written complaint within 180 days at one or all of these addresses:

Title VI Specialist  
MassDOT, Office of Civil Rights  
10 Park Plaza, Boston, MA 02116  
Phone: (617) 973-7171  
Email: [MASSDOT.CivilRights@state.ma.us](mailto:MASSDOT.CivilRights@state.ma.us)

Andrew Vorce, Director of Planning  
Nantucket Planning Office  
2 Fairgrounds Road, Nantucket, MA 02554  
Phone: (508) 228-7237  
Email: [avorce@nantucket-ma.gov](mailto:avorce@nantucket-ma.gov)

Paula Leary, Administrator  
Nantucket Regional Transit Authority  
20 South Water Street, Nantucket, MA 02554  
Phone: (508) 325-9571  
Email: [nrta@nantucket-ma.gov](mailto:nrta@nantucket-ma.gov)

For more information on NRTA’s Title VI program visit [www.nrtawave.com](http://www.nrtawave.com); call 508-325-9571; email [nrta@nantucket-ma.gov](mailto:nrta@nantucket-ma.gov) or visit the NRTA Administrative Office at 20 South Water Street, Monday through Friday 8:00 a.m. to 4:00 p.m. The NP&EDC and NRTA programs are posted on the web at [www.nantucket-ma.gov](http://www.nantucket-ma.gov) and [www.nrtawave.com](http://www.nrtawave.com) and distributed to various organizations and publications throughout the Commonwealth of Massachusetts. A complete list is available on the website.

Approved by NRTA Advisory Board, January 25, 2012.

Revised:

Approved by NP&EDC, April 5, 2012

TO: NRTA ADVISORY BOARD  
FROM: PAULA LEARY, NRTA ADMINISTRATOR  
RE: CONTRACT AWARD – OPERATIONS AND MANAGEMENT OF  
NRTA’S ELDERLY AND DISABLED VAN SERVICE – YOUR  
ISLAND RIDE  
DATE: MARCH 10, 2016

The NRTA received one proposal to provide operation and management of the NRTA’s Elderly and Disabled Van Service, Your Island Ride. The NRTA began this service in July 2001 and provides advance reservation door to door and ADA transportation to persons 60 years of age and older and persons with disabilities. This service is provided Monday through Friday from 8:00 a.m. 4:00 p.m. on a year round basis.

The proposal was evaluated by the evaluation committee.

VTS of MA, Inc. has been operating and providing management for this service since 2011 and has provided a high quality professional service.

The contract will be for three years with two one year renewal options. The contract runs from July 1 through June 30 each year. Below please find the hourly rate per vehicle:

<b>Contract Year</b>	<b>VTS of MA, Inc.</b>
2016-2017	\$38.20
2017-2018	\$38.96
2018-2019	\$39.74
Option Years	
2019-2020	\$40.54
2020-2021	\$41.35

I recommend the Board vote to award the contract to VTS of MA, Inc. and authorize the chair to sign.

Please feel free to contact me if you have any questions or comments, I can be reached at (508) 325-9571 or [nrta@nantucket-ma.gov](mailto:nrta@nantucket-ma.gov). Thank you.

TO: NRTA ADVISORY BOARD  
FROM: PAULA LEARY, NRTA ADMINISTRATOR  
RE: APPROVAL OF NRTA PROCUREMENT POLICIES AND PROCEDURES  
DATE: MARCH 10, 2016

Attached for your approval is the NRTA's Procurement Policies and Procedures including appendices. The Procurement Policies and Procedures "passed" the recent federal compliance review process.

As a sub-recipient of Federal funding the NRTA's procurement processes are in compliance with Federal Transit Administration (FTA) Circular 4220.1F for Third Party Contracting Guidance.

I recommend the Board vote to approve the NRTA's Procurement Policies and Procedures.



# **NANTUCKET REGIONAL TRANSIT AUTHORITY**

## **PROCUREMENT POLICIES AND PROCEDURES**

**May 17, 2011  
October 2015**

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## SECTION I. ORGANIZATION AND RESPONSIBILITIES

The purchasing function at the NRTA is organized as follows:

### A. Micro-Purchases

Micro Purchases consist of property and services valued at less than \$3,000 that may be purchased without obtaining competitive quotations. These purchases will be made under the supervision of the Administrator.

### B. Small Purchases

The purchase of goods and services valued between \$3,000-\$150,000 fall within the definition of small purchase and the guidelines presented in this manual will be under the overall supervision of the Administrator. In general, the following responsibilities will apply and can be modified to fit the procurement process under consideration:

#### 1. Administrator

- a. Will undertake the procurement and set general guidelines as applicable
- b. Responsible for price research, obtaining quotes and related information
- c. Cross-check of procurement files to determine procurement is in accordance with small purchase procedures
- d. Review of Procurement Procedures and results
- e. Preparing Purchase Order
- f. Verify quantity and confirm delivery
- g. Final approval of the procurement results

### C. Other Purchases

All other purchases that exceed the \$150,000 small purchase limit and all goods and services purchased through capital grants will be the responsibility of the Administrator. Assistance from the NRTA's Management Company will be provided on an as needed basis. In general, the following responsibilities will apply and can be modified to fit the procurement process under consideration:

#### 1. NRTA

- a. Administrator

- (1) Will direct the procurement and set general guidelines as applicable.
- (2) Will prepare the RFP or bid documents as applicable.
- (3) Prepare proposal or bid evaluation analysis.
- (4) Complete the procurement with contract award and related documents.
- (5) Prepare purchase order or other payment documentation.
- (6) Prepare check for payment and maintain payment file.

2. Management Company

Provide staff assistance to NRTA as requested in the areas of specification preparation, evaluation of submitted proposals or bids and assistance in the completion of the procurement.

D. General Comment

1. It should be noted that this manual is a guide and special situations may require deviation from said manual.

**SECTION II. CODE OF ETHICS**

A. Policy Statement

It is the policy of the NRTA to adopt an arms length relationship with regard to all suppliers, vendors, service companies, passengers, etc., with whom we may have a relationship as part of our normal daily operations.

It is important that we not only remain free from all conflict of interest situations, but that we must also remain free from the appearance of a conflict of interest.

In all matter pertaining to the operation of the NRTA, no employee shall have any relationship or engage in any activity, which might:

- involve or lead to personal obligation which could impair the objectivity of such person's judgment, or
- imply to others that favoritism or obligations exist between the employee and any other party.

B. Statement on Gifts and gratuities

All gifts or other gratuities from any party having or seeking to establish a business relationship with the NRTA are discouraged and are contrary to this declared policy. This policy is not intended to prohibit the ordinary and accepted courtesies of business, such as promotional desk calendars, diaries, cigarette

lighters, pencils, and occasional meals, but is intended to prohibit receipt of valuable gifts and expensive hospitality. Proper personal conduct requires:

- Gifts or other gratuities, which might adversely affect the exercise of an employee's judgment in matters pertaining to the NRTA or tend to impair public confidence in NRTA, must never be accepted.
- Entertainment in any form must not be accepted if either party might feel an obligation or if a third party might infer that an obligation exists.
- The employees of the NRTA shall neither solicit nor accept gratuities, discounts, favors, or anything of monetary value from contractors or potential contractors.

C. Statement on Organizational Conflicts of Interest

Because situations involving conflicts or personal interest can also impair judgment:

No employee of the NRTA shall have a financial interest in any other organization that might profit either from the decisions they make in carrying out NRTA responsibilities, or from their knowledge of the NRTA's actions or future plans. This shall include serving as a director, officer, or consultant either in a paid or unpaid capacity.

No employee shall make investments or act for personal gain based upon special knowledge obtained, whether directly or inadvertently, as a result of their position as an employee of the NRTA.

D. Disciplinary Action

Employees that violate this code of ethics will be suspended without pay pending completion of an investigation into their actions. Employees found to be in violation of this code of ethics will be subject to continued suspension or termination from employment.

### **SECTION III. ADVANCE PROCUREMENT PLANNING**

Prior to conducting a procurement, research and analysis of the market will be conducted to determine what is available and to what extent competition exists for each planned procurement. This market research would collect and analyze information about the entire available market. This research should assist in arriving at the most suitable method of acquiring the goods or services. The extent of this market research will vary depending on such factors as urgency, estimated dollar value, complexity and past experience. The sources for obtaining this information will range from telephone



contacts, catalogs, internet, journals or other sources appropriate to the planned procurement.

## **SECTION IV. METHODS OF PROCUREMENT**

### **A. Micro-Purchases**

#### **1. Definition**

A method of procuring goods and services under \$3,000. A Micro-Purchase does not require obtaining competitive quotations if it is determined that the price to be paid is fair and reasonable.

### **B. Small Purchase Procedures**

#### **1. Direct Pay/Check Request Items**

These items are defined as purchases made under the NRTA's budget that are either repetitive in nature, available from only one source, or involve repetitive consumable supplies. Items under this category of purchases are: utility bills, postage, dues/subscriptions, letterhead/envelopes, licenses, fees, legal or other advertising, travel costs, parts, shop supplies, parking fees and office supplies.

#### **2. Emergency Purchases**

In the event of an emergency as determined by the Administrator, where there is an imminent threat to life, health or property, and there is insufficient time to conduct a procurement in accordance with the procedures described in this manual, any goods or service may be procured on an immediate basis.

An emergency is defined as a real and present threat to life and welfare of the public or an employee, to the NRTA property, or the provision of transit service, which can reasonably be expected to be alleviated by the purchase in question.

#### **3. Small Purchase Limitation**

For the purpose of implementing these procedures, a small purchase is any item or service that is under \$150,000 for each item or service or when several items or services will in the aggregate be under this dollar amount.

#### **4. Procedure for Small Purchase**

- a. For each purchase classified as a small purchase, at least three price quotes will be solicited.
- b. For each bidder, the following information will be obtained:
  - (1) Name, address, telephone number
  - (2) Pertinent details of the offered item(s)
  - (3) Unit price and total price
  - (4) Discount terms
  - (5) Delivery terms
  - (6) FOB point
  - (7) DBE information, if applicable
  - (8) Person who provided the quote
  - (9) Time and date of the quote
- c. The following will complete the small purchase procedure:
  - (1) Results of the solicitation
  - (2) Cost or price analysis
  - (3) Prospective contractor is responsible
  - (4) Confirmation of acceptance
  - (5) Confirmation of receipt of item(s)
  - (6) Copy of vendor invoice
  - (7) Copy of check
  - (8) Purchase closeout

C. Invitation For Bid (IFB)

1. Introduction

This section includes procedures for use in the issuance of Invitation for Bids (IFB), referred to by the FTA as Formal Advertising.

2. Definition of an IFB

An IFB is a method of procurement using competitive bids, public opening of bids, and awards. Sealed bids are publicly solicited and a fixed-price contract is awarded to the responsible bidder whose bid, conforming to the IFB, is most advantageous to the NRTA, price and other factors

considered. An IFB's other factors are only those factors that weigh on price, such as life cycle cost or transportation costs.

3. Conditions for an IFB

The following conditions should be present for the issuance of an IFB:

- a. Adequate time is available to accommodate the formal advertising method of procurement.
- b. Reasonable certainty that adequate competition exists.
- c. A complete, adequate, and realistic specification or purchase description can be made available.
- d. The procurement lends itself to a firm fixed-price contract, and selection of the successful bidder can be made principally on the basis of price.

4. Maintaining Integrity of Bid Systems

In order to preserve the integrity of the competitive bid system, after bids have been opened, award within 10 (ten) days to the responsible bidder whose bid conforms to the IFB and whoever will be the most advantageous to the NRTA, considering only price and price related factors included in the invitation, unless there is a compelling reason to reject all bids and cancel the invitation. The NRTA will make every effort to anticipate changes in the solicitation prior to the date of bid opening and to notify prospective bidders of any modification or cancellation through a formal written amendment to the solicitation, thereby permitting bidders to change their bids without the exposure of bid prices. The IFB generally should not be canceled after opening and re-advertised solely because of increased requirements for the items being procured. Award should be made on the initial invitation for bids and the additional quantity treated as a new procurement.

5. Guidelines for Invitation for Bids (IFB)

The IFB method of procurement includes:

a. Invitation for Bids

The term "invitation for bids" (IFB) means the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.

b. Contents

IFB's will be based on a clear and accurate description of the technical requirements for the material, product, or service to be

procured. The description will not contain, in competitive procurements, features that unduly restrict full and open competition.

c. Brand Name or Equal

The "brand name or equal" description may be used to define the performance or other necessary requirements of a procurement. When so used, the specific features of the brand name product which must be met by bidders must be clearly identified. Brand names that are known to meet the "or equal" requirements should be listed.

d. Publication of the IFB

The IFB will be publicized through distribution to prospective bidders, advertising in newspapers and/or trade journals, and such other means as may be appropriate, in sufficient time to enable bidders to prepare and submit their best bids before the time set for public opening of bids.

e. Contract Award

Contracts will be awarded to the lowest responsive and responsible bidder, determined on the basis of the evaluation criteria set forth in the IFB.

f. Competition

The IFB, including specifications and attachments, will permit full and open competition consistent with the requirement for the property or services to be procured. This requirement will represent the NRTA's minimum needs and be sufficiently described to promote full and open competition.

g. Bid Opening

All bids will be opened publicly at the time and place stated in the IFB.

6. Single Bid/Too Few Bids Situation

a. Single Bid

If only one bid is received for a standard commercial item generally sold to the general public and where substantial current price data exists, then a price analysis will suffice in this instance. If such is

not the case, then a cost analysis will be necessary. The IFB will reserve the right of the NRTA to conduct this analysis.

b. Too Few Bids

If too few bids are received and pressures in the market place on price are not present, the NRTA will perform a cost analysis to determine reasonableness of price. Where a cost analysis is necessary to determine reasonableness of price, the bidder will be required to furnish a detailed cost proposal for audit and possible subsequent award by negotiation. The IFB will reserve the right of the NRTA to require submission of cost data in the event too few bids are received.

7. Type of Contract to be Awarded

Any contract awarded as a result of an IFB will be fixed-price.

8. Contents of an IFB

a. Preparation of Invitations for Bid

For supply, service, and construction contracts, the IFB should contain the following information if applicable to the procurement involved:

- (1) Invitation number
- (2) Name and address of the NRTA
- (3) Date of issuance
- (4) Date, hour, and place of bid opening
- (5) Number of pages and numbered pages
- (6) A description of supplies or services to be furnished under each item, in sufficient detail to promote full and open competition.
- (7) The time of delivery of performance requirements
- (8) Permission to submit bids via email or fax machine.
- (9) Permission to submit alternative bids, including alternative material or design (the alternative bid should be in addition to the basic bid)
- (10) A statement in the invitation that "Bids must set forth full, accurate, and complete information as required by the IFB (including attachments)"
- (11) Bid guarantee, performance and payment bond requirements.
- (12) A requirement that all bidders must allow an acceptance period of not less than 60 (sixty) calendar days and that bids offering less than the minimum stipulated acceptance period

will be rejected. A paragraph substantially as follows will be included in the invitation for bids:

Bid Acceptance Period. Bids offering less than 60 days for acceptance by the buyer from the date set for opening will be considered nonresponsive and will be rejected.

- (13) Special technical qualifications due to the complexity of the equipment being procured, or for some other special reason.
- (14) Any authorized special provisions relating to such matters as progress payments, patents, liquidated damages, etc.
- (15) Any additional contract provisions or conditions required by State or by law or ordinance or by law.
- (16) A list of all factors to be considered in the evaluation of bids that weigh on price, such as shipping costs. The IFB must inform vendors of those factors that will be evaluated and exactly how each factor will be evaluated in order for bidders to properly construct their bid prices. This process must be followed to assure that any perception of arbitrary application of the evaluation factors by buyers is eliminated.
- (17) Directions for obtaining copies of any documents which have been incorporated by reference. If documents are incorporated in the IFB by reference, they must be readily available to all potential bidders.
- (18) Appropriate instructions regarding the receipt and handling of bids that are received after the exact time set for bid opening
- (19) The IFB must not include a ceiling or budget price. However, price ranges or options may be specified to effectively limit the amount of funds the buyer will spend.

b. Bidding Time

Consistent with the need for obtaining the supplies or services, the IFB should allow sufficient bidding time (i.e., the period of time between the date of distribution of the IFB and the date set for opening the bid) to permit prospective bidders to prepare and submit bids.

Generally, when procuring standard articles or services, not less than 20 calendar days will be used, and it will not be less than 30 calendar days when procuring other than standard articles or services. The exception is when the urgency of the need does not permit such delay. In the event of complex procurements such as buses, radios, fareboxes, construction project, a longer bidding time of at least 45 days will be used.

c. Place and Method of Delivery of Supplies

If the IFB specifies FOB origin, then it will state that bids will be evaluated on the basis of bid price plus transportation cost to the NRTA, from point of origin to one or more designated destinations.

d. Bid Samples

A "bid sample" may be required in the IFB in order to assist the NRTA in determining whether the bid is an offer to perform exactly as required in the invitation. Such samples, however, will be used solely for the purpose of determining responsiveness and will not be used to determine the bidder's ability to produce the required items. Bidders will not be required to furnish bid samples unless there will be certain characteristics of the product which cannot be described adequately in the specification or purchase description. This will then necessitate inspection of a sample to assure procurement of an acceptable product.

Submission of bid samples will be discouraged unless they are absolutely necessary.

e. Descriptive Literature

(1) Definition

The term "descriptive literature" means information, such as cuts, illustrations, drawings, and brochures, which describe or show the characteristics or construction of a product or explain its operation. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

(2) Use

Bidders will not be required to furnish descriptive literature, as a part of their bids unless the NRTA deems that such literature is needed to:

- (a) Enable it to determine whether the product(s) offered meet the specification requirements of the IFB, and
- (b) Establish exactly what the bidder proposes to furnish

Submission of descriptive literature will be discouraged in all other instances.

f. Final Review of IFB

The NRTA will ensure that adequate review of each IFB is made to correct any discrepancies or ambiguities which could limit competition unnecessarily.

g. Mailing or delivering to Prospective Bidders

The IFB will be mailed or otherwise delivered to the maximum number of prospective bidders to promote and ensure maximum full and open competition. Unnecessary restrictions on competition will be avoided.

h. Advertising

The IFB will be advertised in a manner that promotes participation in the bidding by all qualified and capable firms.

i. Records of Invitations for Bids and Records of Bids

The NRTA will retain a record of every IFB it issues and a copy of each abstract or record of bids. The information in the file will be utilized with any new procurement.

The IFB file will show the date of the IFB and the original distribution source list. Organizations that requested copies of the IFB but were not included on the original source list, for reasons other than not qualified, will be added and made a part of the record.

j. Amendment of the IFB

If after issuance of the IFB, but before the time set for bid opening, it becomes necessary to make changes or corrections in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, the changes will be accomplished by the issuance of an amendment to the IFB. Distribution of the amendment will be made to each concern to whom the invitation for bids has been furnished. Before amending the IFB, the period of time remaining to bid opening and the possible need to extend this period will be considered and, if necessary, confirmed in the amendment. Any information given to a prospective bidder concerning the IFB must be furnished promptly to all other prospective bidders as an amendment to the IFB. No award will be made unless the amendment has been



issued in sufficient time to permit all prospective bidders to consider the information in submitting or modifying their bids.

k. Responsiveness of Bids

To be considered for award, a bid must comply in all material aspects with the IFB. This applies to both the method and timeliness of submission and the substance of any resulting contract. All bidders will be afforded an equal opportunity so that the integrity of the bidding system is maintained.

Facsimile bids will not be considered unless permitted by the IFB. Bids will be completed, executed, and submitted in accordance with the instructions contained in the IFB. If a bidder uses its own bid forms or a letter to submit a bid, the bid will be considered only if:

- (1) The bid submittal clearly indicates the bidder accepts all the terms and conditions of the invitation; and
- (2) Award would result in a binding contract which does not vary from the terms and conditions of the IFB. To assure uniformity of bids, bidders will be urged to use the IFB form furnished by the IFB.

l. Time of Bid Submission

Bids will be submitted so as to be received in the place designated in the IFB not later than the exact time set for opening of bids.

When Facsimile or email bids are authorized, they may be received by fax machine or email provided:

- (1) The message if faxed or emailed from the sending office not later than the time set for bid opening; and
- (2) The bid is confirmed by receipt of the fax or email.

m. Late Bids

Bids received in the place designated in the IFB after the exact time set for bid opening are considered "late bids." Late bids will be considered only if it was sent by mail (or if authorized by the solicitation, was sent by facsimile or email) and it is determined by the NRTA that the late receipt was due solely to mishandling by the NRTA after receipt at the NRTA facility.

The only acceptable evidence to establish the time of receipt at the NRTA will be the time/date written on the bid wrapper.

n. Modification and Withdrawal of Bids

Bids may be modified or withdrawn by written or facsimile notice. The notice must be received in the place designated in the IFB not later than the exact time set for bid opening. A facsimile or email modification or withdrawal of a bid received by fax machine or email should be considered if the message is received by the NRTA not later than the time set for bid opening, and confirmed as being received.

Modifications received by facsimile or email will be sealed in an envelope with the following written thereon: the date, time of receipt and by whom, the IFB number, and his/her signature. Information contained therein should not be disclosed before the time set for bid opening.

A bid may be withdrawn, in person, by a bidder or his authorized representative provided:

- (1) His/her identity is made known
- (2) He/she signs a receipt for the bid
- (3) The withdrawal is prior to the exact time set for bid opening.

o. Late Modifications and Withdrawals

Modifications and requests for withdrawal of bids which are received after the exact time set for bid opening are considered "late modifications" and "late withdrawals," respectively. A late modification or late withdrawal is subject to the rules and procedures applicable to late bids. However, a late modification of the otherwise successful bid may be opened at any time it is received. If in the judgment of the NRTA, it makes the terms of the bid more favorable to the NRTA, it will be considered.

9. Opening of Bids and Award of Contracts

a. Opening of Bids

The official designated as the bid opening officer will decide when the time set for bid opening has arrived and so declare to those present. All bids received prior to the time set for opening will be publicly opened, read aloud to the persons present, when practicable, and be recorded. If it is impracticable to read the entire bid (i.e., as where many items are involved) the total amount of each bid should be read. The original copy of each bid will be carefully safeguarded, particularly until an abstract of the bids has been made and its accuracy verified.

b. Recording of Bids

An abstract or record will be prepared containing the following information:

- Bid invitation number
- Bid opening date
- General description of the procurement item
- Names of bidders
- Prices bid
- Other information required for evaluation

When the items are too numerous to warrant the complete recording of all bids, an entry should be made of the invitation number, opening date, general description of the procurement items, and the total price bid where definite quantities are involved. The record or abstract should be completed as soon as practicable after the bids have been opened and read. The NRTA's bid opening officer will certify the accuracy of the record or abstract. If the IFB is cancelled before the time set for bid opening, the cancellation should be recorded, together with a statement of the number of organizations invited to bid and the number of bids received.

c. Cancellation of Invitation after Opening

In order to preserve the integrity of the competitive bid system, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

Generally, after bid opening, an IFB should not be cancelled and readvertised due solely to increased requirements for the items being procured. Award should be made on the initial IFB and the additional quantity should be treated as a new procurement.

An IFB must be cancelled when:

- (1) All bids contained unreasonable prices
- (2) There is evidence of collusion or bad faith, or
- (3) Competition was not adequate to ensure a reasonable price

d. Rejection of Individual Bids

(1) Rejection Guidelines

Any bid which fails to conform to the essential requirements of the IFB, such as specifications, delivery schedule, or any alternatives to these or other requirements specifically provided for in the IFB, will be rejected as nonresponsive.

A low bidder, however, may be requested to delete objectionable conditions from its bid provided these conditions do not go to the substance, as distinguished from the form, of the bid.

A bid will be rejected if the NRTA determines that it is unreasonable as to price. This rejection will be supported by appropriate review and analysis.

If a bid guarantee or bond is required by the IFB and the bidder fails to furnish the guarantee or bond in accordance with the requirements of the IFB, then the bid will be rejected.

e. Notice to Bidders of Rejection of All Bids

If it is determined that all bids are to be rejected, the NRTA will notify each bidder that all bids have been rejected with a statement as to why that action was taken.

f. Award

Unless all bids are rejected, award will be made by written notice, within the time specified for acceptance in the bid or extension thereof. Award will be made to the lowest responsible and responsive bidder, price and other factors affecting price considered. Award will not be made until all required approvals have been obtained.

g. Responsible Bidder - Reasonableness of Price

Before awarding the contract, the NRTA will determine that a prospective contractor is responsible and that the prices offered are reasonable. These determinations will be made in the light of all prevailing circumstances.

h. Discounts

Prior to issuing an IFB (except one for construction) a determination will be made to establish the minimum period for prompt payment and discounts to be considered in the evaluation. The minimum period will be stated in the IFB.

i. Delay of Award

If, after bid opening, administrative problems threaten to delay the award beyond the bidder's acceptance period, bidders will be requested to extend the bid acceptance period. This request will be made and confirmed in writing prior to the expiration of bids (with consent of sureties, if any) to avoid the need for readvertisement.

j. Protests

The NRTA will consider all protests or objections regarding the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot be otherwise resolved, written confirmation of the protest will be requested. Written notice of the final decision will be provided to the protester. Protests will follow the guidelines presented in Appendix A.

(1) Protests Before Award

The NRTA will require written confirmation of an oral protest. The confirmation will be submitted in accordance with the NRTA's protest procedures. If written confirmation is not received by the time specified, the oral protest will be disregarded and award will be made in the normal manner. However, if the NRTA, upon investigation, finds that remedial action is required, such action will be taken.

Notice of a protest and its basis will be given to all involved or affected bidders. When the NRTA determines to withhold the award pending disposition of a protest, bidders whose bid might become eligible for award will be requested to extend the time for acceptance (with consent of sureties, if any). In order to avoid the need for readvertisement, the request for extension will be made prior to expiration of the acceptance period.

When a written protest against making an award is received, the award will not be made until five (5) days after the matter is resolved, unless the NRTA determines that one of the following applies:

- (a) The supplies or services to be procured are urgently required.
- (b) Delivery or performance will be unduly delayed by failure to make the award promptly.
- (c) Failure to make a prompt award will otherwise cause undue harm to the NRTA.

If the award is made, the file will be documented to explain the basis for the award and written notice of the decision to proceed with the award will be sent to the protester and all others concerned.

In the event that the NRTA determines that an award is to be made during the five day period or during the pending of a protest, the FTA *will* be notified prior to the making of the award. The FTA reserves the right not to participate in such a procurement.

(2) Protests After Award

If the NRTA has made an award, the contractor will be provided the notice of protest and the basis for the protest. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the NRTA's interest, the NRTA will consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

k. Information to Bidders

If an award is made to other than the apparent low bidder, the NRTA will promptly notify the unsuccessful lower bidders that their bids were rejected. This notification will state the reason for rejection. In addition, notification that an award has been made to another firm should be given immediately to all unsuccessful bidders.

D. Request For Proposal (RFP)

1. Introduction

This section describes guidelines for the use of negotiative procurements which involve the issuance of a Request for Proposal (RFP).

2. Competitive Negotiation

In this type of negotiation, the RFP is publicized and proposals are requested from a number of sources. In this type of negotiation, negotiations are conducted with all responsible offerers unless proposals clearly favor award to one vendor without negotiation with anyone and the RFP reserves the right to do so. Either a fixed price or cost reimbursement type contract will be awarded, as appropriate.

3. Guidelines for Competitive Negotiation

- a. The NRTA will develop an independent estimate of the proper price level or value of the product or service to be purchased.
- b. Both a technical and cost proposal will be solicited from an adequate number of qualified sources in order to permit reasonable competition consistent with the nature and requirements of the procurement.
- c. The RFP will be publicized and requests for the document will be honored to the maximum extent practicable.
- d. Providing any information to an offerer which would put him at a competitive advantage is prohibited.
- e. The RFP must be in writing.
- f. The RFP will not disclose a ceiling or budget price.
- g. Written or oral discussion will be conducted with responsible offerers who submit proposals within a competitive range, price and other factors considered. Discussion may be omitted when clearly inappropriate, unnecessary, or impracticable, provided the request for proposal notifies all offerers of the possibility that award may be made without negotiations.
- h. Each offerer with whom negotiations are conducted will be given reasonable opportunity (with a common cutoff date) to support, clarify, correct, improve, or revise its proposal.
- i. Unsuccessful offerers will be notified at the earliest practicable time that their offer is no longer being considered for award.
- j. Award will be made to the responsible offerer whose proposal will be most advantageous to the NRTA, price, technical, and other factors considered ("other factors" means factors other than price related factors such as, quality of proposal, experience, etc.). Upon written request, unsuccessful offerers will be informed (in general terms only) of the reasons for non-acceptance of their proposals. Care will be exercised so as to avoid disclosing other offerers' proprietary data.

4. Contents of the RFP

The RFP should contain at a minimum the following information as applicable:

- a. A description of the item or statement of work specifications
- b. Any property to be provided by the NRTA
- c. Required delivery schedule
- d. General provisions
- e. Special provisions
- f. Cost and pricing data requirements
- g. Standard and/or special contract clauses
- h. Date and time for submission of proposals
- i. Identify all significant evaluation factors that would be used in the evaluation of the response to the RFP listed in descending order of importance as indicated by the relative weights applied to each factor. Some examples of commonly used evaluation factors used are:
  - (1) Experience
  - (2) Qualifications
  - (3) Methodology of Final Design
  - (4) Quality of Presentation
  - (5) Responsiveness to Specs
  - (6) Prior Performance on Similar Projects
  - (7) Price
  - (8) Quality Control
  - (9) Training
  - (10) Tech. Support
  - (11) Field Serv. Support
  - (12) Parts Cost
  - (13) Material submission

5. Selection and Award Procedures

a. Summary of Process

- (1) The NRTA issues a Request for Proposals and Contract Documents and Specifications which include the Notice to Proposers, the Proposal Forms, the General Conditions, and the Technical Specifications. All significant evaluation factors are listed in this Request for Proposals.
- (2) NRTA management determines the Evaluation Committee membership consisting of representatives of the Authority, another bus system, contract management/operator, and/or outside consultants as appropriate.
- (3) By the specified date, proposers submit proposals.
- (4) The Contract Officer may be the Administrator. The Contract Officer receives the proposals.
- (5) The evaluation committee determines which proposals are in compliance with the specifications, and these are evaluated by the committee based on the pre-established criteria and



weights. Based on said criteria, the Committee submits a written recommendation to the Administrator.

- (6) A final evaluation of the proposal is made, incorporating the weights identified by the evaluation committee in Step 5 and pricing, with the weights appropriately assigned to pricing.
- (7) A decision is made to award immediately, to negotiate with proposers found to be within the competitive range, or to reject all proposals. The competitive range, needed, will include all proposals which have a reasonable chance of being selected for award.
- (8) If negotiation is used, all proposers within the competitive range are notified in writing. The Contract Officer will determine whether negotiations will be conducted by written correspondence or oral discussion. All meetings will be held individually with proposers under the direction of the Contract Officer.
- (9) Following the negotiations, offerers may modify their original proposals and submit their "best and final offer" by a common due date, to be established. Steps 3 through 6 are repeated.

b. Evaluation Committee

- (1) The Committee shall maintain strict confidentiality.
- (2) The Committee will first review the proposals to determine their compliance with the proposal documents. A unanimous committee recommendation is required to determine a proposal to be noncomplying. The final decision declaring a proposal to be noncomplying will be made by the Administrator after consultation with the Authority's General Counsel. The proposer will be notified on a non-compliance determination in writing, listing the reasons therefore.
- (3) The Committee will then evaluate the compliant proposals in accordance with the Evaluation Factors. The Committee's recommendations are formalized and forwarded to the Administrator. The proposals and evaluations are not public information until the final recommendation to the Administrator is made.

c. Contract Manager

- (1) The determinations and negotiations, if conducted, shall be strictly confidential.
- (2) The Administrator, acting as the Contract Manager, will analyze the proposals and determine if it is in the best interests of the NRTA to:

- Award a contract without negotiation, or
- Commence negotiations, or
- Reject all proposals

(3) The Administrator may be a part of the Evaluation Committee.

d. Negotiations Procedures

- (1) If negotiation is to be used, the Competitive Range of the compliant proposals will be determined by the Contract Manager on the basis of the price information and the Committee recommendation.
- (2) The competitive Range shall include all proposals which have a reasonable chance of being selected for award.
- (3) Proposers within the Competitive Range will be formally notified by the Contract Manager and invited to discuss their proposals. If oral discussions are used, all meetings will be held individually with each proposer. During negotiations, no comparisons will be allowed. Discussions will involve only the subject proposal.
- (4) Following negotiations, all proposers shall be advised that their Best and Final offer is due by a certain date and time. All proposal amendments must be received by said date and time. Final Offers shall be submitted in sealed envelopes to the Contract Manager.

e. Award

The Administrator shall make the award upon review of the evaluation committee's recommendations.

f. Responsible Bidder - Reasonableness of Price

Before awarding the contract, the NRTA will determine that a prospective contractor is responsible and that the prices offered are reasonable. These determinations will be made in the light of all prevailing circumstances.

g. Amendment of Process

The NRTA reserves the right to amend the Competitive Proposal Process as it may determine to be in its best interests.

6. Negotiation Memorandum

Each negotiation will be identified and supported by documentation including the following:

a. Background

Statements concerning the requirement, its purpose, relation to the grant, and special characteristics and interests. A statement of when and where negotiations were conducted, the principal participants, and the final record of any unusual aspects such as progress payments, changes in requirements, major subcontracts, etc.

b. Justification for Type of Contract

Justification summary for the type of contract used.

c. Technical Evaluation of Contractor's Technical Cost Elements

Technical or engineering analysis of reasonableness of contractor's estimates for the acceptable proposal.

d. Cost or Price Analysis/Audit Report

A summary of the cost or price analysis performed, including special costs or unusual features and reasonableness of profit or fee. Attach detailed cost/price analysis and audit report. If no cost/price analysis is available, give the basis on which reasonableness was determined.

e. Pre-Negotiation Position

A statement of the buyer's pre-negotiation objectives with regard to estimated cost elements, profit, price, delivery schedule, proprietary and other data.

f. Procurement History

The history should include as a minimum:

- (1) Procurement authority
- (2) Whether the action is a new procurement, sole source, change order, etc.
- (3) The number of RFPs issued
- (4) The number of proposals received
- (5) Discussion of the proposals received

g. Details of Negotiations

Explain how each final cost element was determined.

h. Procurement Official's Signature and Title

i. Date

E. Sole Source Procurement (Non Competitive Negotiation)

1. Definition

This type of procurement is accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

In addition, a contract amendment or change order that is not within the scope of the original contract is a sole source procurement that will comply with the cost analysis requirements of this section.

2. Guidelines

Sole Source procurements may be used when the following applies:

a. When an award of a contract is infeasible under small purchase procedures, IFB or RFP, and at least one of the following circumstances applies:

- (1) The item is available only from a single source
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- (3) FTA authorizes noncompetitive negotiations
- (4) Authorized or required by statute
- (5) After solicitation of a number of source, competition is determined inadequate, or
- (6) The item is an associated capital maintenance item as defined in Section 9(j) of the FTA Act that is procured directly from the original manufacturer or supplier of the item to be replaced. The Authority must first certify in writing to the FTA (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is no higher than the price paid for such item by like customers.

b. Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

3. Additional Requirements
  - a. Written justification for a sole-source procurement will be documented in the contract file.
  - b. Negotiations must be conducted.
  - c. Preparation of a negotiation memorandum is required for the contract file.

## **SECTION V. CONTRACT ADMINISTRATION**

### Responsibility for Settlement of Contract Issues/Disputes

NRTA alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve any contractual responsibility under its contracts. Neither MassDOT nor FTA will substitute its judgment for that of NRTA, unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction. The agency will attempt to settle disputes through a process of mutual negotiations between the procurement officer and the vendor. If the dispute cannot be settled in this manner, the Administrator will be provided with an analysis of the dispute and the negotiations. The Administrator will make a final settlement determination after consultation with and approval from the governing board. Any litigation by the vendor of the Administrator determination must be pursued in a court of the agency's local jurisdiction.

### A. Contract Amendments and Change Orders

1. Definition

A contract modification is any written change in the terms of a contract.
2. Bilateral Changes

A bilateral modification is a contract modification that is signed by the Authority and a contractor. This type of modification is used to:

  - a. Make negotiated equitable adjustments resulting from the issuance of a change order
  - b. Define a letter contract
  - c. Reflect other agreements of the parties modifying the terms of a contract.
3. Unilateral Changes

A unilateral modification is a contract modification resulting from the exercise of a contract provision that is signed by the NRTA. This type of modification is used to:

- a. Make administrative changes
- b. Issue a change order except when final agreement on price for the change order is included
- c. Make changes authorized by clauses other than the change clause
- d. Exercise a termination provision

4. Cost and/or Price Analysis

Contract modifications as described above are subject to the requirements of a cost and/or price analysis as appropriate for the modifications under consideration.

B. Contract Documentation: Contract Files

1. General Guidelines

The purpose of this section is to include the requirements for establishing, maintaining and when necessary disposing of contract files for all contractual actions. The documentation in the contract files shall be sufficient to constitute a complete history of the transaction for the purpose of achieving the following:

- a. Providing a complete background as a basis for informed decisions at each step in the acquisition process
- b. Supporting actions taken
- c. Providing information for reviews and investigations
- d. Furnishing essential facts in the event of contractual disputes.

2. Definition of Contract Files

There are three types of contract files as defined below, and normally, each file should be kept separately. However, if appropriate, due to organizational size and staffing available, any and all files may be combined.

- a. The contracting office contract file, which shall document the basis for the acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office.
- b. The contract administration office contract file, which shall document actions reflecting the basis for and the performance of contract administration responsibilities, and
- c. The paying office contract file, which shall document actions prerequisite to, substantiating, and reflecting contract payments.

### 3. Contents of Contract Files

The following are examples of the records normally contained in contract files.

The content of the contract files is pertinent as applicable to the type of procurement undertaken and the information required to document the procurement.

#### a. Contracting Office Contract File

- (1) Purchase request, acquisition planning information, and other pre-solicitation documents.
- (2) Justification and approvals, determinations and findings, and associated documents.
- (3) Evidence of availability of funds.
- (4) Synopsis of proposed acquisition as published in the Commerce Business Daily or reference thereto.
- (5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.
- (6) Set-aside decision.
- (7) Government estimate of contract price.
- (8) A copy of the solicitation and all amendments thereto.
- (9) Security requirements and evidence of required clearances.
- (10) A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are --
  - (a) Completed solicitation sections A, B and K
  - (b) Technical and management proposals
  - (c) Cost/price proposals
  - (d) Any other pages of the solicitation that the offerer or quoter has altered or annotated

- (11) Contractor's contingent fee representation and other certifications and representations
- (12) Pre-award survey reports or reference to previous pre-award survey reports relied upon
- (13) Source selection documentation
- (14) Contracting officer's determination of the contractor's responsibility
- (15) Small Business Administration Certificate of Competency
- (16) Records of contractor's compliance with labor policies including equal employment opportunity policies
- (17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver
- (18) Packaging and transportation data
- (19) Cost or price analysis
- (20) Audit reports or reasons for waiver
- (21) Record of negotiation
- (22) Justification for type of contract
- (23) Authority for deviations from this regulation, statutory requirements, or other restrictions
- (24) Required approvals of award and evidence of legal review
- (25) Notice of award
- (26) The original of the signed contract or award, all contract modifications, and documents supporting modifications executed by the contracting office.
- (27) Synopsis of award or reference thereto
- (28) Notice to unsuccessful quoters or offerers and record of any debriefing
- (29) Acquisition management reports
- (30) Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties
- (31) Report of post-award conference
- (32) Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award
- (33) Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility
- (34) Approvals or disapprovals of requests for waivers or deviations from contract requirements
- (35) Rejected engineering change proposals. These proposals may be filed separately for early disposal
- (36) Royalty, invention, and copyright reports (including invention disclosures) or reference thereto
- (37) Contract completion documents
- (38) Documentation regarding termination actions for which the contracting office is responsible
- (39) Cross-references to pertinent documents that are filed elsewhere



- (40) Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract
- (41) A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility
- (42) All certifications required by 3.104-9(e)(1)
- (43) For contracts and contract modifications in excess of \$150,000, a record of all persons or classes of persons authorized to have access to proprietary or source selection information and, to the maximum extent practicable, the names of all individuals within the class.

b. Contract Administration Office Contract File

- (1) Copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office
- (2) Any document modifying the normal assignment of contract administration functions and responsibility
- (3) Security requirements
- (4) Cost and pricing data, Certificates of Current Cost or Pricing Data, cost or price analysis, and other documentation supporting contractual actions executed by the contract administration office
- (5) Pre-award survey information
- (6) Purchasing system information
- (7) Consent to subcontract or purchase
- (8) Performance and payment bonds and surety information
- (9) Postaward conference records
- (10) Orders issued under the contract
- (11) Notice to proceed and stop orders
- (12) Insurance policies or certificates of insurance or references to them
- (13) Documents supporting advance or progress payments
- (14) Progressing, expediting, and production surveillance records
- (15) Quality assurance records
- (16) Property administration records
- (17) Documentation regarding termination actions for which the contract administration office is responsible
- (18) Cross reference to other pertinent documents that are filed elsewhere
- (19) Any additional documents on which action was taken or that reflect actions by the contract administration office pertinent to the contract
- (20) Contract completion documents

c. Paying Office Contract File

- (1) Copy of the contract and any modifications
- (2) Bills, invoices, vouchers, and supporting documents
- (3) Record of payments or receipts
- (4) Other pertinent documents

C. Contract Closeout Procedures

The following are examples of procedures for the closeout of contract files. This content of the closeout procedures is pertinent as applicable to the type of procurement undertaken and the information required to document the procurement.

1. Definition of Closeout

a. Closeout by the Office Administering the Contract

- (1) Except as provided in paragraph (3) below, fair time standards for closing out contract files are as follows:
  - (a) Small purchase files will be considered closed when the contracting officer receives evidence of receipt of property and final payment.
  - (b) Files for all firm-fixed-price contracts other than small purchases will be closed within 6 months of the month in which the contracting officer receives evidence of physical completion.
  - (c) Files for contracts requiring settlement of indirect cost rates will be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.
  - (d) Files for all other contracts will be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.
- (2) When closing out the contract files, the contracting officer shall use the closeout procedures given below
- (3) A contract file shall not be closed if (1) the contract is in litigation or under appeal or (2) in the case of a termination, all termination actions have not been completed.

b. Closeout of the Contracting Office Files if Another Office Administers the Contract

- (1) Small purchase files will be considered closed when the contracting officer receives evidence of receipt of property and final payment.
- (2) All other contract files shall be closed as soon as practicable after the contracting officer receives a contract completion statement from the contract administration office. The contracting officer shall ensure that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

c. Closeout of Paying Office Contract Files

The paying office shall close the contract file upon issuance of the final payment voucher.

2. Definition of Physical Completion

- a. Except as provided in paragraph (b) below, a contract is considered to be physically completed when
  - (1) The contractor has completed the required deliveries and the NRTA has inspected and accepted the supplies, and  
  
The contractor has performed all services and the NRTA has accepted these services, and  
  
All option provisions, if any, have expired; or
  - (2) The NRTA has given the contractor a notice of complete contract termination
- b. Facilities contracts and rental, use, and storage agreements are considered to be physically completed when
  - (1) The NRTA has given the contractor a notice of complete contract termination, or
  - (2) The contract period has expired.

3. Procedures for Closing Out Contract Files

- a. The office administering the contract is responsible for initiating administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, and initial contract funds status review shall be accomplished and, where

appropriate, excess funds identified. When complete, the administrative closeout procedures, as applicable, shall ensure that

- (1) Disposition of classified material is completed
- (2) Final patent report is cleared
- (3) Final royalty report is cleared
- (4) There is no outstanding value engineering change proposal
- (5) Plant clearance report is received
- (6) Property clearance is received
- (7) All interim or disallowed costs are settled
- (8) Price revision is completed
- (9) Subcontracts are settled by the prime contractor
- (10) Prior year indirect cost rates are settled
- (11) Termination docket is completed
- (12) Contract audit is completed
- (13) Contractor's closing statement is completed
- (14) Contractor's final invoice has been submitted, and
- (15) Contract funds review is completed and deobligation of any excess funds is recommended.

b. When the actions in paragraph (a) above have been verified, the contracting officer administering the contract shall ensure that a contract completion statement, containing the following information, is prepared:

- (1) Contract administration office name and address (if different from the contracting office)
- (2) Contracting office name and address
- (3) Contract number
- (4) Last modifications number
- (5) Last call or order number
- (6) Contractor name and address
- (7) Dollar amount of excess funds, if any
- (8) Voucher number and date, if final payment has been made
- (9) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown
- (10) A statement that all required contract administration actions have been fully and satisfactorily accomplished
- (11) Name and signature of the contracting officer
- (12) Date

c. When the statement is completed, the contracting officer shall ensure that:

- (1) The signed original is placed in the contract administration file.

D. Contract Termination Provisions

1. Guidelines

- a. The termination clauses authorize the NRTA to terminate contracts for convenience, or for default, and to enter into settlement agreements.
- b. The NRTA will terminate contracts, whether for default or convenience, only when it is in the NRTA's interest. The NRTA will consider effecting a no-cost settlement instead of issuing a termination notice when:
  - (1) It is known that the contractor will accept one
  - (2) The NRTA's property was not furnished, and
  - (3) There are no outstanding payments, debts due the NRTA, or other contractor obligations.
- b. It is noted that contractors should not have the right to terminate a contract.

2. Notice Procedures

Contracts will be terminated only by a written notice to the contractor. When the notice is mailed, it will be sent by certified mail, return receipt requested. Or if the written notice is hand delivered, a written acknowledgment will be obtained from the contractor. When possible, the NRTA will negotiate a fair and prompt settlement with the contractor. When settlement cannot be reached by agreement, the Authority will reserve the right to issue a determination of the amount due consistent with the termination clause, including any cost principles incorporated by reference, subject to appeal under the disputes provisions of the contract.

**Note: Termination of a contract, especially for default, is a most serious contract action. Careful consideration of such action will be made before initiation of such action. The right of the NRTA to terminate a contract does not automatically relieve the NRTA of financial liability.**

E. Liquidated Damages

1. Definition

Liquidated damages is a provision included in a contract that fixes a reasonable compensation for probable actual damages payable to the NRTA for unsuccessful performance of a contract, generally construction, by a contractor. Liquidated damages must not be punitive in nature.

2. Guidelines

- a. The NRTA will be responsible for judicious use of the liquidated damages clause and will be used only when appropriated. Liquidated damages provisions will not be included in a contract unless:
  - (1) The time of delivery or performance is such an important factor that it is reasonable to expect to suffer damage if the delivery or performance is delinquent, and
  - (2) The extent or amount of damages would be difficult or impossible to ascertain or prove.
- b. When using the liquidated damages provision, it must be determined, at the time of award, that the delivery schedule is reasonable.
- c. The rate of liquidated damages must be reasonable and compensate the NRTA for probable actual damages caused by the breach, but not be so large as to be construed as a penalty.
- d. In addition, the contract may include an overall maximum dollar amount or period of time or both, during which the liquidated damages provision may be assessed, to assure the result is not an unreasonable assessment.
- e. When the NRTA determines a liquidated damages clause is necessary, it will document how the rate of assessment was determined to ensure it is reasonable and
- f. When a basis for termination for default exists under a contract containing a liquidated damages provision, expeditious action should be taken to obtain performance or to exercise the right to terminate. If contract performance is desired after termination of default, effort should be made to obtain it elsewhere. Contracts containing liquidated damages provisions should be administered to prevent undue loss to defaulting contractors and to protect the interests of the NRTA and the government.
- g. In deciding whether to include the provision in the contract the NRTA will consider the probable effect on pricing and competition, as well as the cost and difficulties of contract administration.
- h. Absent a finding of excusable delay, the NRTA may not waive the liquidated damages. When the required tests are met, liquidated damages are assessed even though the buyer suffers no actual damages due to the contractor's breach.

Note: To the extent FTA funds are involved, the Federal Government has a vested interest in liquidated damages accrued. Only the Regional Administrator of FTA may waive liquidated damages after they have accrued.

## **SECTION VI. GENERAL GUIDELINES**

These additional guidelines should be followed in the procurement process.

### **A. Required Clauses**

The NRTA will include certain required clauses as listed in the Statutory Provisions Checklist located in Appendix B; of particular importance are the following:

#### **1. Buy America**

Each third party contract utilizing FTA assistance must conform with Section 165 of the Surface Transportation Assistance Act of 1982, as amended by Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and Section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991, and FTR regulations, "Buy America Requirements - Surface Transportation Assistance Act of 1982," 49 C.F.R. Part 661 and applicable revisions thereto.

#### **2. Debarment and Suspension**

The Recipient agrees to obtain certifications on debarment and suspension from its third party contractors and subrecipients and otherwise comply with U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 29.

### **B. Bonding Requirements**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the Authority, provided that FTA determines that its interest is adequately protected.

#### **1. If FTA has not made such a determination, the minimum requirements for construction contracts shall be as follows:**

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
  - c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.
2. For non-construction contracts, FTA discourages performance bonding requirements except where applicable law or regulation provides for such bonding and the NRTA determines that such a requirement is necessary and documents its procurement records regarding such necessity.

C. Options

1. Definition

An option means a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.

2. Guidelines

The use of options shall conform to the following requirements:

- a. Options should not be used when a requirement or indefinite-quantity contract is appropriate.
- b. Options should not be exercised without conducting an examination of the market or issuing a new solicitation unless the time between award of the contract 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.
- c. Options may not be exercised after they have expired.
- d. Options may not be exercised when not evaluated as part of the initial competition.
- e. Terms of the options may not be renegotiated without issuing a new solicitation.
- f. The combined contract and option periods cannot exceed five years.

D. Cost and Price Analysis



The NRTA will perform cost or price analysis in connection with every negotiated procurement including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation. The preparation of a cost or price analysis will be performed according to the following general guidelines:

1. Price Analysis

The contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. At least two of the following techniques must be used in price analysis:

- a. Comparison of proposed prices received in response to the solicitation.
- b. Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items. To provide a suitable basis for comparison, the contracting officer should consider differences in specifications, quantities ordered, time for delivery, Government-furnished materials, experienced trends of improvement in production efficiency, and when prior acquisitions occurred. Any comparison will not be valid unless the reasonableness of the prior price was established. The comparison may not detect an unreasonable proposed price unless changes in the general level of business in the industry which may impact prices are taken into account.
- c. Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- d. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- e. Comparison of proposed prices with independent Government cost estimates.

2. Cost Analysis

The contracting officer shall, as appropriate, use the techniques and procedures outlined in paragraphs (a) through (d) below to perform cost analysis:

- a. Verification of cost or pricing data and evaluation of cost elements, including:
  - (1) The necessity for and reasonableness of proposed costs, including allowances for contingencies

- (2) Projection of the offerer's cost trends, on the basis of current and historical cost or pricing data
  - (3) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors, and
  - (4) The application of audited or negotiated indirect cost rates (see Subpar 42.7), labor rates, and cost of money or other factors.
- b. Evaluating the effect of the offerer's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the contracting officer should make a trend analysis of basic labor and materials even in periods of relative price stability.
- c. Comparison of costs proposed by the offerer for individual cost elements with:
- (1) Actual costs previously incurred by the same offerer
  - (2) Previous cost estimates from the offerer or from other offerers for the same or similar items
  - (3) Other cost estimates received in response to the Government's request
  - (4) Independent Government cost estimates by technical personnel
  - (5) Forecasts or planned expenditures.
- d. Verification that the offerer's cost submissions are in accordance with the contract cost principles and procedures in Part 31 and, when applicable, the requirements and procedures in 48 CFR (Chapter 99).
- e. Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them or make satisfactory allowance for the incomplete data.

- f. Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

E. Clarifications/Discussions

In conducting negotiated procurements, the NRTA will be aware of the distinction between negotiations and discussions and the requirements for their use.

F. Contracting with Disadvantaged Business Enterprises

1. The NRTA will take all necessary affirmative steps to assure that disadvantaged business enterprises are used when possible.
2. Affirmative steps shall include:
  - a. Placing qualified disadvantaged business enterprises on solicitation lists.
  - b. Assuring that disadvantaged business enterprises are solicited whenever they are potential sources.
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged business enterprises.
  - d. Establishing delivery schedules, where the requirement permits, that encourage participation by disadvantaged business enterprises.
  - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
  - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs a. through e., above.
3. Use and place the Disadvantaged Business Requirements presented in Appendix C in all IFB and RFP solicitations.

G. Property Management and Disposal

The NRTA will follow the procedures presented in Appendix E.

H. General Contract Requirements

The following guidelines will be used in the preparation of a contract for goods or services. These guidelines include the minimum requirements and may be augmented by other contract clauses that are required for the particular procurement:

1. Statement of Work (SOW)

Refers to that portion of the procurement package that clearly describes the requirements supplies or services to be procured. It will state only the minimum needs of the NRTA so that it promotes full and open competition. Requirements that unduly restrict competition should be eliminated. The SOW should include:

- a. Contract Objectives  
The specific objectives (as opposed to the broader program objectives) of the proposed contract are stated here. Contract objectives must be consistent with each task performed by the contractor as specified later in the statement of work.
  - b. Contract Scope  
This part describes the required work in brief form. The scope should outline the various tasks or phases and define the limits of the procurement. It must be consistent with the detailed requirements.
  - c. Specification(s)/Purchase Description(s)  
One or the other of these will be included in the SOW.
  - d. Progress Reports  
Periodic reporting of progress should be a part of all consultant/professional services contracts. Progress reports may also be beneficial in other types of contracts which contain specific special provisions such as progress payments. In consultant/professional services contracts, incremental payments are often scheduled to be made upon receipt of specified progress reports.
2. Delivery Schedule  
Agreement on the delivery schedule should be clearly established in the contract. When establishing the delivery schedule the needs of the Authority will be considered and then weighted by the capabilities of the supplier(s). Unreasonably short delivery schedules may result in poor quality and high prices.
  3. Contract Period  
The effective date of the contract through the completion date of the contract will be clearly defined.
  4. Pricing Schedule  
The pricing schedule will contain a description of each line item and state the quantity, unit of measure, unit price and total price for the item. The total dollar value of the contract will also be clearly stated.
  5. Payment Schedule

The payment schedule should set forth a clear understanding of all payment terms including when payments are due and what each payment is for. When cost type contracts are involved, the fee must be identified separately, by line item. The schedule should also recognize and specify any special payment terms such as progress payments and authorities to withhold payments.

6. Inspection and Acceptance

The frequency, types, and methods of inspection required before, during, and after delivery should be stated in the contract. The acceptance criteria should also be specified. (All inspection and acceptance criteria should be set forth in the solicitation document so that vendors can apply proper costs to the requirements in their bids/cost proposals.)

7. FOB Point and Delivery Instructions

Specific delivery instructions must include place of delivery, method of transportation, packaging instructions, markings on packages, and who is responsible for payment of the freight.

8. Other Requirements To Consider for a Sound Contract

The buyer must ensure that contracts in excess of \$25,000 define a sound and complete agreement, including, to the extent appropriate:

- a. Identification of key personnel and facilities necessary to accomplish the work within the required time
- b. Extent of subcontracting and consulting agreements
- c. Provision for changes by the buyer within the general scope of the contract
- d. Provision for termination for default and for the convenience of the buyer and, where appropriate, for suspension of the contractor's performance of work under the contract
- e. Provision for resolution of protests (required in solicitations), contract claims and disputes
- f. Sanctions or remedies, such as liquidated damages, or performance bonds, for nonperformance of the contractor
- g. Notice of the NRTA regulations and other Federal requirements applicable to the performance of the contract
- h. All other provisions considered necessary to ensure contractor conformance with terms, conditions and specifications.

9. Special Procedures for Soliciting Architect or Engineer Contracts

"FTA Circular 4220.1F, Chapter VI, page 11 incorporates requirements of 40 U.S.C. Sections 1101 through 1104, known as the Brooks Act, which requires selection of architect and engineering firms as well as based upon their technical qualifications. Price cannot be considered an evaluation factor in determining the most qualified offeror. The most qualified competitor is selected for award of a contract, subject to negotiation of a fair and reasonable contract price. Negotiation is conducted only with the most qualified offeror, rather than all qualified offerors. These rules apply to related services including construction management, feasibility studies, preliminary engineering, design, mapping, and similar services commonly performed by architect and engineering firms. These services are the only services which may be procured in such a manner by the NRTA.