

PROCUREMENT, BIDS AND CONTRACT ADMINISTRATION RULES AND REGULATIONS

ATI-0013-2015



**PUERTO RICO INTEGRATED TRANSPORTATION
AUTHORITY (PRITA)**



Table of Contents

1	ARTICLE I. INTRODUCTION AND LEGAL BASIS	8
2	ARTICLE II. PURPOSE AND APPLICATION	8
3	PREFACE	9
4	Definition of Terms and Applicability.....	10
5	Applicable Laws and Regulations.....	17
6	Compliance and Management Control	18
7	PROCUREMENT METHODS OVERVIEW.....	19
7.1	Competitive Bidding:.....	19
7.2	Negotiated Procurement:	19
7.3	Micro Purchase:.....	19
7.4	Small Purchase:.....	19
7.5	Sole Source Procurement (including Proprietary Procurements):.....	20
7.6	Two-Step Procurement:	20
7.7	Piggybacking:.....	20
7.8	Qualification-based Procurement:.....	20
7.9	PR General Services Contracts:	20
7.10	Joint Procurement:.....	20
8	CONTRACT TYPES.....	21
8.1	Fixed Price Contracts:.....	21
8.2	Firm Fixed Price Contracts:	21
8.3	Cost reimbursable contracts:.....	21
8.4	Cost-plus-fixed-fee:.....	22
8.5	Time and material contracts:.....	22
9	POLICY AND GENERAL REQUIREMENTS	22
9.1	Policy:.....	22
9.2	Implementation:	22
9.3	Mandatory requirements:.....	23
	9.3.1 Written record of procurement history:	23
	9.3.2 Period of Performance:.....	23
	9.3.3 Geographic Preferences:	23
9.4	Options:.....	24
	9.4.1 Review of Options:	24

9.4.2	<i>Evaluation of Options:</i>	24
9.4.3	<i>Exercise of Options:</i>	24
9.4.4	<i>Negotiating a Lower Option Price:</i>	24
9.4.5	<i>Prohibition:</i>	25
9.4.6	<i>Advance Payments:</i>	25
9.4.7	<i>Progress Payments:</i>	25
9.4.8	<i>Liquidated damages:</i>	25
9.4.9	<i>Bonding for public works or construction contracts:</i>	25
9.4.10	<i>Bid Guarantee:</i>	26
9.4.11	<i>Performance Bond:</i>	26
9.4.12	<i>Payment Bond:</i>	26
9.4.13	<i>Pursuant on all public works:</i>	26
9.4.14	<i>Retainer for public works or construction contracts:</i>	26
9.4.15	<i>Duplicative or unnecessary purchases:</i>	27
9.4.16	<i>Sound and Complete Agreement:</i>	27
9.5	Cost/Price Analysis:	27
9.5.1	<i>Cost Analysis:</i>	27
9.5.2	<i>Cost Analysis for Competitive Proposal:</i>	28
9.5.3	<i>Cost Analysis for Noncompetitive Proposals:</i>	28
9.5.4	<i>Cost Analysis for construction and construction Management Contracts:</i>	28
9.5.5	<i>Price Analysis:</i>	29
9.5.6	<i>Price Analysis for Micro-Purchases:</i>	29
9.5.7	<i>Price Analysis for Sealed Bidding or Competitive Quotes:</i>	29
9.5.8	<i>Analysis of Indirect Cost Rates:</i>	29
9.5.9	<i>Profit:</i>	29
9.5.10	<i>Audits and Indirect Costs:</i>	29
9.5.11	<i>Buy America:</i>	30
9.6	AUTHORIZATION AND REPORTING LEVELS	31
9.7	CONFLICT OF INTEREST	32
9.7.1	<i>Purpose:</i>	32
9.8	Conflict of Interest Definitions	32



9.8.1	<i>Personal Conflicts of Interest:</i>	32
9.8.2	<i>Organizational Conflicts of Interest</i>	33
9.9	Procedure	33
9.9.1	<i>Personal Conflict of Interest</i>	33
9.10	INDEPENDENT COST ESTIMATE	34
9.10.1	<i>Purpose</i>	34
9.10.2	<i>Implementation</i>	34
9.10.3	<i>Procedure</i>	35
9.11	DISSEMINATING INFORMATION	35
9.11.1	<i>Purpose</i>	35
9.11.2	<i>Procedure</i>	35
9.12	DEBRIEFING PROCEDURES	36
9.12.1	<i>Purpose</i>	36
9.12.2	<i>Procedure</i>	36
9.13	PROTESTS:	37
9.13.1	PURPOSE	37
9.13.2	PROCEDURE	37
9.13.3	<i>Response to protest:</i>	38
9.14	EJECTION OR ACCEPTANCE OF OFFERS	38
9.14.1	<i>Purpose</i>	38
9.14.2	<i>Procedure</i>	39
9.15	WITHDRAWAL OF OFFERS	40
9.15.1	<i>Purpose</i>	40
9.15.2	<i>Claim of Error Guidance</i>	40
9.15.3	<i>Procedure</i>	40
9.15.4	<i>Discovery of Error</i>	40
9.15.5	<i>Identify and Document the Error</i>	40
10	Procurement Methods Instructions	42
11	MICRO PURCHASES	43
11.1	Purpose	43
11.2	Minimum Procurement Lead Time: 2 days	43
11.3	Procedure	43
11.3.1	<i>Determine Need:</i>	43

11.3.2	Identify Potential Vendor(s):.....	43
11.3.3	Determine Method of Procurement:.....	43
11.3.4	Order:	43
11.3.5	Documentation:	44
11.3.6	Exception:	44
12	DIVISION PURCHASE ORDER.....	44
12.1	Purpose:.....	44
12.2	Minimum Procurement Lead Time: 3 days.....	44
12.3	Procedure:	44
13	SMALL PURCHASES.....	45
13.1	Purpose:.....	45
13.2	Minimum Procurement Lead Time: 3 weeks.....	45
13.3	Procedure:	45
14	COMPETITIVE BIDS.....	46
14.1	Purpose.....	46
14.2	Minimum Procurement Lead Time: 14-18 weeks.....	47
14.3	Procedure:	47
14.4	Preparing the IFB:	47
14.5	Advertising the IFB:.....	48
14.6	Amending the IFB:.....	48
14.7	Pre-bid Conference:.....	48
14.8	Submission of Bids:.....	49
14.9	Bid Opening:.....	49
14.10	Evaluation of Bids.....	50
14.11	Contract Award.....	51
15	NEGOTIATED PROCUREMENT OVER \$100K.....	52
15.1	Purpose:.....	52
15.2	Minimum Procurement Lead Time: 9 to 12 weeks.....	52
15.3	Procedure:	52
16	A&E NEGOTIATED PROCUREMENTS	55
16.1	Purpose.....	55
16.2	Minimum Procurement Lead Time: 17 to 24 weeks.....	56
16.3	Procedure.....	56
17	A&E SMALL PURCHASE NEGOTIATED PROCUREMENTS.....	60
17.1	Applicability.....	60

17.2 Minimum Procurement Lead Time: 5 to 10 days 60

 17.2.1 Special Requirements 60

 17.2.2 Procedure 61

18 TWO STEP PROCUREMENT 62

 18.1 Purpose: 62

 18.2 Implementation: 63

 18.3 Definition: 63

 18.4 Minimum Procurement Lead Time: 9 to 24 weeks 63

 18.5 Procedure 63

19 EMERGENCY PROCUREMENT 65

 19.1 Policy: 65

 19.2 References 65

 19.3 Definition 65

 19.4 Approval Authority: 66

 19.5 Procedure 66

20 DESIGN-BUILD PROCUREMENT 67

 20.1 FTA Requirement: 67

 20.2 The Authority’s Requirement: 68

 20.3 Procedure: 68

21 SOLE SOURCE 68

 21.1 Purpose: 68

 21.2 Minimum Procurement Lead Time: 9 to 12 weeks 68

 21.3 Procedure: 68

 21.3.1 Unique Capability or Availability 69

22 BLANKET AGREEMENTS (Indefinite Delivery, Indefinite Quantity Type Contracts) 71

 22.1 Purpose: 71

 22.2 Minimum Procurement Lead Time: 72

 22.3 Procedure: 72

23 PIGGYBACKING 72

 23.1 Purpose: 72

 23.2 Minimum Procurement Lead Time: 72

 23.3 Procedure: 72

24 CONTRACTING OPPORTUNITIES FOR THE AUTHORITY 74

 24.1 Purpose 74

 24.2 Procedure 74

25	Contract Administration.....	75
26	SCOPE.....	76
27	ROLES AND RESPONSIBILITIES.....	76
28	Contract Administration System.....	78
29	CONTRACT ADMINISTRATION TERMS	79
30	CONTRACT ADMINISTRATION QUALIFICATION	81
31	CONTRACT ADMINISTRATION TASKS.....	82
32	STANDARDS OF CONDUCT	82
33	CHANGE ORDER ADMINISTRATION.....	82
33.1	Independent Cost Estimate	83
33.2	Change Order Don'ts	83
33.3	Change Order Cost/Price Analysis	84
33.4	Termination Cost Analysis.....	84
33.5	Exercising Option.....	84
33.6	Invoice and Payment.....	85
33.7	Advanced Payment.....	86
33.8	Progress Payment.....	86
33.9	Record Retention.....	86
33.10	Contract Documentation.....	87
33.11	Disputes, Claims, Litigation, and Settlement.....	88
33.12	File Documentation Checklist.....	88
34	Appendix.....	89
35	ANALYSIS GUIDELINES	95
35.1	DIRECT MATERIAL	95
35.2	MATERIAL OVERHEAD	96
35.3	DIRECT LABOR	96
35.4	LABOR OVERHEAD	96
35.5	OTHER DIRECT COSTS	96
35.6	GENERAL AND ADMINISTRATIVE EXPENSE.....	96
35.7	ROYALTIES	96
35.8	SUBTOTAL ESTIMATED COST.....	96
35.9	CONTRACT FACILITIES CAPITAL AND COST OF MONEY	96
35.10	SUBTOTAL ESTIMATED COST.....	96
35.11	FEE OR PROFIT	97
35.12	TOTAL ESTIMATED COST AND FEE OR PROFIT	97

35.13 DISCOUNTS97
36 ADOPTED & VALIDATED BY: 137
37 EFFECTIVENESS AND REPEAL 137





		Regulation Number or Procedure: ATI-0013-2015	
		DEPARTAMENTO DE TRANSPORTACIÓN Y OBRAS PÚBLICAS PUERTO RICO INTEGRATED TRANSIT AUTHORITY (PRITA)	
Title regulation or procedure: PROCUREMENT, BIDS AND CONTRACT ADMINISTRATION RULES AND REGULATIONS		Approved by: Dr. Alberto Figueroa Medina	
Work Unit:	Administration and Finance	Date of approval or Revision:	December 17, 2015

1 ARTICLE I. INTRODUCTION AND LEGAL BASIS

These rules shall be known as the Regulation for Bids and Requests for Proposals of the Authority. The same are set in accordance with the provisions of the Authority’s enabling Act, The Puerto Rico Integrated Transit Authority Act (123-2014 as amended), the Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico, (Law 170 of August 12 of 1988, as amended) all applicable Puerto Rico and Federal laws and regulations, including Federal Transit Administration (FTA) Circulars

2 ARTICLE II. PURPOSE AND APPLICATION

This regulation aims to establish the responsibility and jurisdiction of the Bids Board and the Office of Purchasing & Bids of the Authority as to the administrative policy to be followed in the bids for materials, equipment, furniture, supplies of non-professional services, contracting construction projects or maintenance, sale of surplus or abandoned property, in order to promote better administrative efficiency and ensuring a fair process.

Another objective of this regulation is to establish the composition of the Bids Board and the Proposal Evaluation Committees, the procedures and general and specific rules to follow in purchasing transactions in the Authority as well as procedures for reviewing decisions of the Authority on the above purchasing transactions.

3 PREFACE

These Rules and Regulations is a guide to policies and procedures for purchasing and contracting for materials, supplies, equipment, services, architect-engineer services, and construction services through a public procurement and contracting process. It applies to all acquisitions by the Authority except for real property acquisitions. The Rules and regulations is consistent with the Authority's procurement and contracting policies; all applicable Puerto Rico and Federal laws and regulations; including Federal Transit Administration (FTA) Circulars and the Best Procurement Practices Manual (BPPM) published by the FTA.

Our goal is to procure materials, supplies, equipment, services, general and professional services including architect-engineer services, and construction services in a timely, efficient, and cost-effective manner while ensuring full and open competition. It will provide transparency of decisions to the public regarding the Authority procurement and contracting actions, while constantly delivering value added services to customers and to maximize the use of taxpayer funds.

This Rules and regulations describes the functions of the Procurement and Contracts Division in an endeavor to assess the process through time and its value added to the Authority. The Manual's scope covers the overall responsibilities, accountability, and managerial activities of the acquisition and contracting process currently adopted and utilized by the Authority. Pertinent functions, roles, and responsibilities of various of the Authority's departments and divisions providing support to or receiving support from the Procurement and Contracts Division is covered along with relevant federal and local regulations, guidelines, and procedures.

The Authority has invested in strong internal procurement and contracting discipline in order to have the professional expertise available to assist the Authority Staff in complying with procurement rules and regulations and optimizing value for tax funded dollars. Accordingly, adherence to these processes and procedures will assure the judicious use of the limited resources of the Authority.

The Authority may periodically update this Rules and regulations to reflect the changes to procurement and contracting policies, procedures, and processes. Every effort is made to ensure that the information contained in this Rules and regulations is current, accurate, and useful, but no legal responsibility or claims of negligence or other legal injuries, is accepted for any errors, omissions or misleading Statements in the information contained herein. The Rules and regulations does not claim to offer definitive procurement or contracting or legislative authority, or to act as a substitute for any Federal, or Puerto Rico procurement regulations. Readers of the Rules and regulations who are not officers or employees of the Authority are advised to obtain their own professional advice on matters covered or arising from the guidance contained in this Manual.

Executive Director

4 Definition of Terms and Applicability

This section briefly defines the terms and words frequently used in this Manual. For more precise definitions and compliance requirements, readers should rely on applicable Puerto Rico and Federal procurement laws and regulations including 49 U.S.C. Section 5302.

Addenda/Addendum: Written modifications issued by the Authority that includes changes to the solicitation document.

Advance Payments: A payment made before performance of work under the contract. No advanced payments shall be made except for customary payments for FTA-funded projects described in FTA Circular 4220.1F IV.2.b.(5)(b).

Agreement: Written agreement executed by the Authority and another legal entity that sets forth the rights and obligations of the parties in connection with the Work.

Architectural vs. Architectural Engineering: As distinguished from architecture as a design art that focuses on the aesthetics or the functional or spatial layout or design of buildings; architectural engineering incorporates engineering principles to the design and construction of buildings and light rail systems that integrates various disciplines, including architecture, environmental, structural engineering, mechanical engineering and electrical engineering.

Bid: A formal offer, tendered by an individual, firm, partnership, corporation, joint venture, or combination thereof, to provide goods or services at a specified price.

Bidder: An individual, firm, partnership, corporation, joint venture, or combination thereof, includes all entities submitting a bid/proposal.

Cardinal Change Order: A contract change which is outside the scope of the original contract, and thus not within the authority of the changes clause. Such changes are "sole source procurements" and must be processed accordingly.

Change Order: A written document signed by an authorized member of the Authority that directs the Contractor to make a change pursuant to the Changes clause. The change order authorizes the Authority to exercise its contractual right to issue a change order with or without the Contractor's consent (i.e. option or administrative change). A modification (always bilateral) is issued when a change requires a Contractor's signature or the nature of work is outside the scope of contract (i.e. unforeseen subsurface conditions, acts of god, emergency, errors, or omissions, constructive change). The Procurement Specialist or Senior Procurement Specialist (CS) is responsible for ensuring that appropriate change clause is included in all third-party solicitations and contracts.

Cooperative Agreement: An instrument by which FTA awards Federal Assistance to a specific recipient to support a particular project in which FTA takes an active role or retains substantial control, as described in 31 U.S.C. Section 6305.

Common Grant Rules: Federal grants rules of DOT that is based on regulation 49 CFR Part 18 and referred to as Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local governments and Non-Profit Organizations.

Consultant/Contractor/Vendor/Supplier: The person(s), partnership, joint venture, or firm entering into a Contract for the performance of services or delivery of goods or equipment to the Authority.

Contract Documents: The documents and plans expressly incorporated by reference into an executed agreement between the Authority and the Contractor, it sets forth the legally binding obligations between the Authority and the Contractor for performance and completion of the Contract.

Contract Administration: Is the post-award administration of Contracts to ensure that Contract deliverables are fulfilled by the Contractor pursuant to contract terms and conditions. These responsibilities are normally delegated to a Project Manager (PM) serving as the point of contact with the Contractor, but depending on contract type, complexity, and resource availability, some of these functions may be retained by a CS. The CS is responsible for the authority contract oversight and has the ability to intervene and advise the PM or project owners in all aspects of contract administration and compliance (e.g. cardinal change, modification, invoice, claims, partnering, and contract closeout).

Contract Amount or Contract Price: The amount payable to the Contractor under the terms and conditions of the Contract and identified in the Contract, as may be adjusted by Contract Modification/Change Order for successful completion of the work under the contract.

Contract Manager (CM): The individual responsible for the Goods and Services Procurement section or the Engineering and Construction Contracting section of the Procurement and Contract Division of the Executive Department. The Contract Manager reports to the Director of Procurement and Contracts.

Contract Specialist (CS) or Procurement Specialist or Senior Procurement Specialist (CS): The person responsible for ensuring that assigned procurements and contracts are properly solicited, formed, and administered in partnership with stakeholders, pursuant to all applicable Authority policies and procedures, Puerto Rico and Federal procurement laws and regulations. A Contracts Manager reviews and approves the work performed by the CS.

Cost Analysis: A cost analysis entails the review and evaluation of each cost element and the proposed profit or markup of a bidder's or Contractor's cost or pricing data and the judgmental factors applied in estimating the costs.

Design-Build: A contract between the Authority and a vendor, consultant or contractor in which the vendor, consultant or contractor agrees to design and build the equipment, facility, portion of the facility, or other item specified in the contract subject to the procedure and requirements stipulated in both FTA Circular 4220.1F page I-3 (I) or 49 U.S.C., Sec. 5309(e) and 5325(d)(1).

Director of Procurement and Contracts: The position responsible for the functions of Procurement and Contracts. The Director supervises the Contract Managers and other Staff of the division. The Director reports to the Deputy Chief Executive Officer.

DPO: Means Division Purchase Order.

The website: www.ati.pr.gov: The Authority’s public website for contracting opportunities. All formal procurements are posted at this webpage. This webpage enables vendors to register with the Authority for business opportunities whereby they receive e-mail or fax notification of procurement activity and they can download solicitations and documents. The site is located at www.ati.pr.gov

Equitable Adjustment: An equitable adjustment is the difference between the reasonable cost of contract performance without the change or changes and the reasonable cost, actual or estimated, of contract performance with the change or changes. It is not the difference between the proposed or negotiated cost of contract performance and the actual or reasonable cost of contract performance with the change or changes. The purpose of an equitable adjustment is to fairly compensate a contractor for the change order. It is not a vehicle for increasing a contractor’s profit or reducing its loss for reasons unrelated to a change.

Emergency Contract: Emergency means unforeseen circumstances beyond the control of the Authority that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. A letter contract, a Notice to Proceed, or Purchase Order may be issued as a written preliminary contract instrument pending the formation of a fully defined Contract.

Executive Director: The Chief Executive Officer of the Authority appointed by the governor to manage the day-to-day functioning of the organization.

Federal Acquisition Regulation (FAR): The Federal Acquisition Regulation does not apply to federally assisted procurements, absent Federal laws or regulations to the contrary. In the case of FTA and other federal programs, FAR cost principles Part 31 apply to grants and cooperative agreements with private for-profit entities. Audits of A&E services listed in 49 U.S.C. Section 5325 must be carried out under FAR Part 31 cost principles. Nevertheless, in the absence of other guidance, FAR Standards may prove useful if the Authority’s circumstances are suitable for application of the specific FAR provision under consideration (i.e., procurement planning, method and type).

Final Acceptance: Written notice by the Authority acknowledging that Contractor has fulfilled all of its obligations under the Contract and that the Authority has accepted the Work or goods as of the date Stated in the Notice. Final Acceptance is a condition precedent to Final Payment.

Final Inspection: Inspection performed by the Authority to determine the actual Status of the Work in accordance with the terms of the Contract.

Final Pay: Following Final Acceptance of Work, including Punch List items and release of claims, the Authority makes final payment.

General Contractor/Construction Manager (GC/CM): A firm with which the Authority has negotiated a maximum allowable construction PRPA to provide services during the design phase and to act as construction manager and general contractor during the construction phase subject to the procedure and requirements manipulated in either FTA 4220.1 or CFR 49 Part 18 as amended.

Grantee: A government or public organization including the Authority receiving the FTA or any federal agency funding subject to the Common Grant Rule or Master Agreement.

IFB: Stands for Invitation for Bids

Independent Cost Estimate (ICE): ICE is the Authority’s independent and initial estimate of the cost of the Scope of Work (“SOW”) for a project or services.

Integrated Procurement Team (IPT): A cross-functional procurement team formed for the specific purpose of delivering a product or service. An IPT is intended to plan, integrate, and manage all essential procurement and contract administration activities through the use of multi-disciplined teams to focus on overall project performance rather than the performance of individual functional areas.

Liquidated Damages: Is the amount the Contractor will pay to the Authority for each and every day that any portion of work remains incomplete after the contract period ends and/or that any designated milestone is not met.

Local Governmental Authority: As defined in 49 U.S.C. Chapter 53, the term “Local Governmental Authority” includes the Authority for the purpose of Federal Transit Administration (FTA) assistance.

DBE: Stands for Disadvantaged Business Enterprise

Manufacturer: The builder or producer supplying materials, equipment, or apparatus for installation or use.

Materials: Materials, equipment, products, and articles incorporated or to be incorporated into the Work.

Micro-Purchases: A method of procurement without obtaining competitive quotations for goods and services valued up to \$3,000 or less, if federally funded, and up to \$4,999 or less if no federal funds are used. For FTA funded projects, the Micro-Purchases are exempt from FTA’s Third Party Contract clauses except for construction contracts exceeding \$3,000.

Notice: Whenever provision is made to provide or issue any notice, instruction, consent, approval, certificate, or determination by any person or party to the Contract, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed.

Notice of Award (NOA): A written notice by the Authority to the successful Bidder that it will sign and deliver the Contract subject to the conditions reproduced in the bid document and Notice of Award.

Notice to Proceed (NTP): A written notice issued by the Authority to a Contractor directing the start or continuation of Work. Any Work performed prior to Notice to Proceed shall be at Contractor’s own expense and risk.

Offeror: The term “offeror” includes “quote”, “bidder”, and “proposer” in response to a RFP, IFB, or RFQ, as used in this Manual.

Option: A unilateral right in the Contract by which the Authority may elect to purchase, at a predetermined price, additional equipment, supplies, or services called for by the Contract.

Payment Bond: A payment bond or “labor and material payment bond” executed in connection with a contract to assure payment, as required by law, to all persons supplying labor and material in the execution of the work provided for in the contract.

Performance Bond: A surety or bond required of a consultant, vendor, or contractors, which secures their obligation to properly complete the work.

Plans: Includes the drawings, Standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details that show the locations, character, dimensions, and details of the Work. The Plans include the Contract Drawings.

Prevailing Wage: The government mandated minimum hourly wage, benefits, and overtime, paid to the workers, laborers, and mechanics in a public works contract. Prevailing wages are established by the Washington Department of Labor and Industries, for each trade and occupation employed in the performance of public work. It is established separately for each county, and is reflective of local wage conditions. For FTA funded construction contracts, 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to workers, laborers and mechanics.

Price Analysis: A price analysis involves examining and evaluating a proposed price without evaluating its costs and profit elements. At the Authority, every award must include a determination that the price is fair and reasonable. The extent of the analysis depends on the value and nature of the contract.

Procurement Activity / PAL: The Authority’s primary procurement checklists which identifies the processes and provides instructions and references in acquiring goods and services pursuant to local and Federal procurement laws and regulations.

Procurement of Architectural Engineering (A&E) Services: 49 U.S.C. Section 5325(b)(1) require the use of the qualifications-based procurement procedures. The “Brooks Act” 40 U.S.C. Sections 1101 through 1104 is applicable to A&E services that covers program management, construction management, feasibility Studies, preliminary engineering, design, architectural, engineering, architectural engineering, surveying, mapping and related services.

Procurement by Competitive Proposals/Request for Proposals: The use of competitive proposals is a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and more than one source is expected, willing, and able to submit an offer or proposal.

Procurement Lead Time (PLT): The time taken to award a contract or purchase order. It usually begins with the submission of a purchase requisition and ends with awarding a purchase order or contract. Depending on dollar value and complexity, typical PLT activities may include development or conduct of: Statement of work, independent cost estimate, market research, insurance requirements, diversity goal, contracting method and type, sole source justification, selection of solicitation and contract clauses, advertisement, solicitation issuance, pre-bid conference, cost and technical proposal review, evaluation team, negotiation, cost/price analysis, organizational review, legal review, contractor’s acceptance and signature, and the Authority’s approval, and contract award documentation, See “Procurement Lead Time” for detail and guidance.

Purchase Agent: The person who makes the purchases for the Authority.

Progress Payment: Partial payment requested for acceptable work performed and materials received.

Project Manager (PM): The individual designated by the Authority to manage the project on a day-to-day basis.

Proposal: A formal plan for the provision of goods or services, tendered by an individual, firm, partnership, corporation, joint venture, or combination thereof. Proposals are evaluated on qualitative technical factors in addition to price. For Architecture and Engineering project proposals, price is not a competitive factor.

Protest: It allows any actual or prospective proposer, bidder, offeror, or contractor (“Interested Party”) who is aggrieved in connection with a solicitation, evaluation, or award of a contract, an opportunity to make their dispute and have a right to seek resolution of any concerns, issues, or perceived wrongs associated with the procurement process. All of the Authority’s administrative procedures must be exhausted and followed prior to raising the issue to the Federal Transit Administration (FTA) or the pertinent Puerto Rico forum.

Quality Assurance (QA): All those planned and systematic actions necessary to provide confidence that all Work complies with the Contract and that all materials incorporated in the Work, all equipment and all elements of the Work will perform satisfactorily for the purpose(s) intended.

Resident Engineer (RE): Reports to a third party Construction Management Consultant and the Authority’s Construction Manager and is charged with the professional administration of the construction contract as the Authority’s authorized representative.

Recipient: The Recipient for this Rules and regulations is the Authority. The term is used for any public entity to which FTA awards Federal assistance through a grant, cooperative agreement, or other agreement. A recipient must comply with Common Grant Rules 49 CFR Part 18 and 19.

Request for Information (RFI): Is a written request by a vendor, consultant or contractor requesting clarification or additional information concerning the solicitation and/or contract documents.

Revenue Contract: A contract in which the Authority provides access to vendor, consultant or contractor to public transportation assets for the primary purpose of either producing revenues in connection with a public transportation related activity, or creating business opportunities involving the use of its property or other assets.

RFP: Stands for Requests for Proposals.

RFQ: Is a Requests for Qualifications or Requests for Quotes or Quotations.

Selection Committee/Selection Panel: Group of individuals that evaluate Proposals received and recommends the Proposer(s) to whom the contract(s) should be awarded. Contract Specialist leads and facilitates this group to ensure evaluation process is compliant with the process included in the solicitation document and this Manual.

Solicitation Document: The document sent out or posted by the Authority requesting quotes, proposals, or bids for needed goods or services.

Specifications: Part of the Contract containing written directions and requirements for completing the Work and/or providing the goods or services. Standards or portions thereof cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.

Subcontractor: Any person, firm, partnership, corporation, or other entity, other than employees of the Contractor, that contracts with the prime Contractor to furnish labor, or labor and Materials, or goods or services, under a specific Contract.

Substantial Completion: Completion of the Work, or a designated portion thereof, to a point where the Authority certifies that the work or the designated portions can be used for the purpose for which it was intended.

Third Party Contract: Refers to a contract with a third party such as a vendor, supplier, consultant, or contractor, where the first party is the federal government and the second party is the Authority.



5 Applicable Laws and Regulations

This Rules and regulations provides an overview of the procurement and contracting process with emphasis on important Puerto Rico and Federal requirements relating to the procurement of goods and services including public works, professional services, and construction projects. This Rules and regulations is not intended to be an “all-inclusive” source of information or a detailed limit of mandatory procurement and contracting steps. Procurement and Contracts Division’s Staff shall utilize business skills and judgment in their decisions and actions. For procurement activities or contract administration situations not addressed in this Manual, readers should review the following:

- 49 CFR Part 18 and Part 19 (Common Grant Rules)
- FTA Master Agreement (MA 15) 10-1-2008
- 49 U.S.C. § 5302 : US Code - Section 5302: Definitions
- FTA “Circular 4220.1F (Third Party Contracting Guidelines) and revisions”
- FTA “Circular 5010.1D (Grant Management Requirements) and revisions”
- FTA “Circular 5200.1A (Full Funding Grant Agreement and matter Grant Agreements) and revisions”
- FTA, “49 CFR Part 611 – Major Capital Investment Projects”
- FTA, “Project and construction Management Guidelines – 2003 Update”
- FTA “construction Project Management Handbook (Revision 1 – April 2007)”
- The Authority’s Procurement contract Procedure

Best practices:

- FTA’s “Best Practices Procurement Manual”
- Applicable Federal Acquisition Regulations

6 Compliance and Management Control

Contract Specialists (CS) are required to conduct procurements in accordance with applicable local and federal requirements, and the Authority’s procurement policies and procedures, utilizing best business and purchasing and contracting practices and the highest standard of ethics.

A system of procurement checklists has been instituted to provide built-in quality control to substantiate and validate the quality of all procurement and contracting actions at the Authority. This management control procedure is designed to substantiate how each procurement or contracting process is conducted, and to ensure that each file contains appropriate documentation to support the process. The primary management control system is the “Procurement Activity Limit’s” (PAL).

The PAL establishes procurement and contracting process Standards, ensures consistency of decisions and actions, and provides general direction to Procurement and Contracts Division (PCD) staff to negotiate steps and complete activities of the procurement and contracting process consistent with the Authority requirements as well as any applicable local and federal procurement laws and regulations. Not all items of the PAL are required in each procurement action, but the rules and procedures contained therein shall be observed. Any deviation that significantly alters the PAL requirements shall be approved in advance by the Contract Manager (CM) or Director, Procurement and Contracts (Director).

CMs shall supervise PAL activities in all procurement actions and approve the completed PAL. The CM’s signature indicates that all the contents of the procurement document and supporting file documentation are accurate, conforming, and complete.

The PAL includes a checklist titled “Compliance of Document to FTA” that mirrors the contents of FTA Circular 4220.1F “Appendix C”, “Third Party Contracting Checklist”. This checklist shall be completed by CS for all FTA-funded procurements. The Director shall ensure that the PAL’s comply with all applicable Federal requirements including the latest edition of FTA’s Master Agreement.

This Rules and regulations is written to:

- Satisfy Procurement and Contracts Division’s internal terms of costs, quality, and timeliness of the delivered products and services;
- Minimize administrative operating cost;
- Conduct business with consistency, integrity, fairness, and openness;
- Lay the framework of necessary flexibility for the Authority to manage risks and opportunities in a business transaction;
- Facilitate management of integrated procurement team; and
- Fulfill public policy objectives of the Authority.

7 PROCUREMENT METHODS OVERVIEW

The Authority utilizes several different procurement and contracting methods to procure materials, supplies, equipment, services, general and professional services including architect-engineer services, and construction services and enter into agreements in accordance with applicable local and Federal laws and regulations. The Contract Specialist shall use the Method of Procurement Decision Matrix to document the chosen procurement method. (See Appendix A.)

7.1 Competitive Bidding:

A formal procurement method that maximizes price competition by basing contractor selection among responsive and responsible bidders on price alone, without use of subjective evaluation criteria. This process includes the following elements:

- Defines the conditions for competitive bidding;
- Requires public advertising;
- Allows sufficient time to prepare bids prior to bid opening;
- Requires awards to be made to the lowest, responsive and responsible bidder;
- Documents sound business reasons if any bid(s) are rejected.

This is the preferred procurement method and is employed unless certain conditions make it not feasible or impractical. It is also referred to as sealed bidding or Invitation for Bid (IFB) method. This is best suited to lump sum and unit-price contracts rather than cost reimbursement contracts.

7.2 Negotiated Procurement:

A formal procurement method involving the evaluation of proposals and negotiation of a contract. It is intended to permit competition on quality and other qualitative factors, and price (excluded when Brooks Act applies). It is also referred to as the competitive proposal process, best value procurement, or request for Proposal (RFP) method.

7.3 Micro Purchase:

An expedited method of procuring goods and services valued up to \$3,000, if federally funded, and up to \$4,999 if no federal funds are used. A micro purchase does not require obtaining competitive quotations if the purchaser documents and makes a determination that the price is fair and reasonable. Micro purchase authority is widely delegated due to extremely low risk.

7.4 Small Purchase:

A simplified method of procuring services, supplies or other items that cost less than \$50,000. At least three Competitive quotes must be obtained from qualified offerors prior to making a purchase. Small purchase authority is partially delegated due to low risk.

7.5 Sole Source Procurement (including Proprietary Procurements):

A method of procurement by a noncompetitive process. Sole source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Sole source is typically used when the goods or services are proprietary to one company and not easily obtained elsewhere. A sole source justification must be made in writing and a cost analysis must be completed verifying that the proposed costs and profit are fair and reasonable. Change orders outside the scope of the contract are considered sole source procurements.

FTA permits sole source procurements meeting the sole source justification criteria stipulated in FTA 4220.1F.

7.6 Two-Step Procurement:

The first Step of a Two-Step procurement method consists of a technical or pre-qualification phase in which bidders submit un-priced technical or qualification proposals that is evaluated; and the second Step is when those bidders whose technical offers or qualifications are determined to be acceptable during the first Step have their priced bids considered.

7.7 Piggybacking:

Public agencies that have executed an Intergovernmental Cooperative Purchasing Agreement (ICPA) with each other may make purchases from each other’s contract awards, if the Vendor has agreed to such participation. The awarding agency does not accept any responsibility for orders placed by other public agencies. FTA terms and conditions, minimum and maximum quantities, and an assignability clause must be included in the contract. Market analysis of contract prices must be conducted prior to contract use.

7.8 Qualification-based Procurement:

Unlike the two-Step bidding methods in which price is an evaluation factor, in a qualifications based method of procurement only an offeror’s qualifications are evaluated to determine contract award. Price is always excluded as an evaluation factor under this procurement method. The Authority shall use this method when contracting for Architecture and Engineering (A&E) services, and also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. However, if the A&E services described above are not directly related to, or lead to construction, the use of this procurement method is prohibited.

7.9 PR General Services Contracts:

Local law authorizes the Authority to use Puerto Rico General Services to acquire products and services. The Contract Specialist shall ensure that these contracts meet the requirements of FTA Circular 4220.1F.

7.10 Joint Procurement:

It allows two or more government purchasers to agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum.

8 CONTRACT TYPES

Procurements can be developed utilizing a variety of contract types. A contract type reflects the level and timing of the responsibility and risk assumed by the contractor for the cost of performance. The Authority will consider all relevant factors and ensure the right type of contract is utilized. Detailed guidance is provided in FAR Part 16. Contract Specialist (CS) shall document the rationale for the contract type in the procurement file. The following table provides an overview and a point of reference for this subject.

Contract Category Characteristics		
Characteristics	Cost-Reimbursement	Fixed-Price
Promise	Best effort	Shall deliver
Risk to contractors	Low	High
Risk to the Authority	High	Low
Payment	As incurred	On delivery
Progress payment	None	% of actual
Administration	Max for the Authority	Least for the Authority
Fee or profit	Up to 10%	Up to 15%

The CS should use the Method of Procurement and Contract Matrix Form. (See Appendix A.)

8.1 **Fixed Price Contracts:**

A Fixed Price Contract provides for performance of specified work or **supply** of goods in consideration of a fixed price, and the contractor bears the risks of uncertainty. Such contracts provide maximum incentive for the contractor to control costs and perform effectively and imposes minimum administrative burden upon contracting parties. A fixed price contract type is recommended for materials, equipment, and construction.

8.2 **Firm Fixed Price Contracts:**

A Firm Fixed Price Contract provides for performance of specified work or supply of goods in consideration of a firm and fixed price, and the contractor bears all risks of uncertainty. Such contracts do not permit for price adjustments under normal business circumstances.

8.3 **Cost reimbursable contracts:**

This type of contract provides for the payment of allowable costs incurred in the performance of the contract and establishes a ceiling on cost that the contractor cannot exceed. These are best when uncertainties exist which prevent the preparation of precise work scope and cost estimate. This type is also appropriate for professional service contracts. In all cases, the cost reimbursable contract type requires the contractor to have an acceptable cost accounting system.

8.4 Cost-plus-fixed-fee:

This cost-reimbursement type contract provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted because of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs.

8.5 Time and material contracts:

This type of contract includes fixed hourly rates for designated labor classifications that include all costs and profit factors and associated materials costs (including travel). This method of procurement requires the Authority’s approval that there is no other appropriate type of contract. A contract ceiling price must be included.

9 POLICY AND GENERAL REQUIREMENTS

9.1 Policy:

The Authority will endeavor to conduct all procurement transactions in a manner that provides for full and open competition. When conducting procurements that are funded with FTA grants, the Authority will manage the entire procurement and contract administration process in compliance with FTA Circular 4220.1F and Puerto Rico regulations.

9.2 Implementation:

The Procurement and Contracts Division will maintain Procurement Activity Limit’s (PAL) that provide systematic instructions for acquisition planning, solicitation preparation, source selection, negotiations and contract award including the specific third party contract provisions and requirements to form a sound, complete, and compliant agreement consistent with applicable Authority and federal and local laws and regulations. Each activity item in the limits covers specific guidelines and procedures in detail.

Procurement activities commence with development of project plans or annual procurement plans, and end at project closeout. The Authority will use the FTA Best Procurement Practices Manual as its guiding procurement document and applicable local and federal procurement laws and regulations. Some of the situations that are considered restrictive of competition include:

- Unreasonable requirements placed on firms in order for them to qualify
- Unnecessary experience and excessive bonding and/or insurance requirements
- Noncompetitive bidding practices between firms or between affiliated companies
- Noncompetitive awards to any person or firm on retained contracts
- 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 Authority; a contractor’s objectivity in performing the contract work is or might be otherwise

- impaired; or a contractor has an unfair competitive advantage
- The specification of only a “brand name” product without limiting its salient characteristics and not allowing an equal product to be offered
- Contract modifications or change order actions outside the original contract scope
- Any arbitrary action in the procurement process

9.3 Mandatory requirements:

The following procurement requirements shall apply to all procurement and contracting actions at the Authority:

9.3.1 Written record of procurement history:

A written record of procurement history for purchases shall be included with the documentation for all procurements. The extent of documentation shall vary depending on the complexity of the procurement. At a minimum, the following information shall be included:

1. Rationale for the method of procurement
2. Selection of contract type
3. Reasons for contractor selection or rejection (small purchase)
4. Basis for the contract price (small purchase)

Small purchases only require items #3 and #4, while procurements over \$50,000 require all four components. The Procurement memorandum (as noted in Appendix B.) can be used to summarize the steps completed and how the award was determined.

9.3.2 Period of Performance:

The time of delivery or performance is an essential contract element and shall be clearly stated in solicitations. The CS shall ensure that delivery or performance schedules are realistic and meet the requirements of the procurement. Periodic re-competition of contracts preserves competition and keeps prices competitive. Without periodic competition, the vendor or supplier will not have the pressures of a competitive market to keep prices reasonable or an incentive to maintain satisfactory performance.

The Authority may sign contract for goods and services for a period based on business need and consistent with the intent of the “full and open competition” principle, as indicated in FTA Circular 4220.1.F. The Authority will contract only for its current and reasonably expected business needs.

For rolling stock and replacement parts funded by FTA, the Authority will not enter into contracts with a period of performance exceeding five years inclusive of options without prior written FTA approval.

9.3.3 Geographic Preferences:

49 U.S.C. Section 5325(i) prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in cases where applicable federal Statutes expressly mandate or encourage geographic preference. This

prohibition does not preempt state licensing laws. Geographic location may be a selection criterion on procurements for architectural and engineering services if its application leaves an appropriate number of qualified firms to compete for the contract.

9.4 Options:

The Authority may include options in its contracts to ensure future availability of equipment, property, or services, when business purpose exits. An option is an unilateral right in a contract where the Authority may, within a specified period of time, elect to purchase additional equipment, supplies or services called for by the contract or may elect to extend the term of the contract. CS shall document the determination of the need to exercise contract option and that the option price is fair and reasonable based on cost and price analysis.

Options will be priced, evaluated, negotiated, and documented as part of original contract award. The Authority must have unilateral right to exercise the option. If a contract contains options, the following shall apply:

9.4.1 Review of Options:

The CS shall review the options in the solicitation documents to ensure that proposers or bidders are required to provide prices for required options or that the contract provisions identify an index and procedures for pricing and exercising the options in future years before authorizing, advertising or issuance of solicitation.

9.4.2 Evaluation of Options:

The option quantities or periods contained in the offer must be evaluated in order to determine contract award. The CS shall ensure that prices for options included in the offers are evaluated before the CS makes a determination on award of a contract. The Authority need not evaluate bids or offers for any option quantities if there is a determination that evaluation would not be in the Authority’s best interests.

9.4.3 Exercise of Options:

The CS must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the original contract award. An option may not be exercised unless it has been determined that the option price is fair and reasonable and in the Authority’s best interest. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award. The CS shall use the Option Analysis Form to document the evaluation of options. (See Appendix C.)

9.4.4 Negotiating a Lower Option Price:

Prior to exercising the option, the Authority shall perform a market survey and evaluate the option. The Authority may offer a price reduction due to changes in market conditions and execute a bilateral modification to the contract reflecting lower pricing before the options are exercised. Caution: Exercising an option after the Authority has negotiated a lower or higher price will result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates.

9.4.5 Prohibition:

Use of cost plus a percentage of cost and cost plus a percentage of construction cost methods of contracting is expressly prohibited by the federal common grant rules 49 CFR part 18.

9.4.6 Advance Payments:

As a principle, the Authority will not make advance payments. The FTA does not authorize and will not participate in funding payments to a contractor for FTA funded projects prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. However, FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions.

9.4.7 Progress Payments:

The Authority may use progress payments if progress payments are only made to the contractor for costs incurred in the performance of the contract and that the Authority obtains adequate security for progress payments. Adequate security may include taking title, letter of credit, or equivalent means to protect the Authority's interest in the progress payment. See FTA Circular 4220.1.F for more information. Adequate security should reflect the practical realities of different procurement scenarios and actual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The Authority should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made. The common grant rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

9.4.8 Liquidated damages:

Liquidated damages may be used if the Authority reasonably expects to suffer damages through delayed contract completion, and the extent or amount of such damages would be difficult or impossible to determine. The rate of the liquidated damages must be specified in the contract and must be stated as a per-day damage assessment. If federally funded, any liquidated damages recovered shall be credited to the project account involved unless FTA or any federal agency permits otherwise. The procurement file shall include documentation as to the methodology used to calculate liquidated damages. The CS shall use the Liquidated Damages Checklist to document how liquidated damages are determined. (See Appendix D.)

9.4.9 Bonding for public works or construction contracts:

The Federal Common Grant Rules require bonds for all construction contracts with FTA assistance, exceeding the small purchase threshold (currently \$100,000) unless FTA determines that other arrangements adequately protect the federal interest. FTA's bonding policies are as follows:

9.4.10 Bid Guarantee:

FTA and the Common Grant Rule generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

9.4.11 Performance Bond:

FTA and the Common Grant Rule require the third party contractor to obtain a performance bond for 100 percent of the contract price. A “performance bond” is obtained to ensure completion of the obligations under the third party contract. FTA does not require performance bond or bonding for non-construction contract, including rolling stock.

9.4.12 Payment Bond:

The Common Grant Rule requires the Authority’s contractor to obtain a standard payment bond for 100 percent of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all subcontractors supplying labor and material. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:

- **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million,
- **More Than \$1 Million but Less Than \$5 Million.** Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or
- **More Than \$5 Million.** Minimum \$2.5 million dollars if the contract price is more than \$5 million.

The Contractor shall provide a Performance Bond and a Labor and Material Payment Bond for all public works or construction contracts, each in the amount of 100 percent of the Contract Price (plus any increases thereto) in a form acceptable to the Authority and in compliance with FTA and local laws. These bonds shall serve as security for the faithful performance of the Work and as security for the faithful payment and satisfaction of the persons furnishing materials and performing labor on the Work. These bonds shall be issued by a corporation duly and legally licensed to transact surety business in Puerto Rico. The scope of these bonds shall be prescribed in each solicitation and contract documents.

9.4.13 Pursuant on all public works:

or construction contracts of \$35,000 or less, at the option of the contractor the respective public entity may, in lieu of the bond for 100 percent of the contract price, retain 50 percent of the contract amount for a period of 30 days after date of final acceptance, or until receipt of all necessary releases.

9.4.14 Retainer for public works or construction contracts:

The Authority will retain 10 percent of all progress payments, excluding retail sales tax, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor, or material provider who performs labor upon the contract or work hereunder, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for

carrying on such work may be due from the contractor. Such funds (“retention”) shall be deemed as public. In the event that during the performance of the contract and prior to the expiration of the claim period as provided in the amount retained is reduced to an amount below 10 percent, then the Authority may retain additional sums from monies earned by the contractor so as to maintain at all times a 10 percent retained trust fund, unless otherwise reduced or excused.

9.4.15 Duplicative or unnecessary purchases:

The Procurement and Contracts Division will conduct regular reviews of procurement actions to identify duplicative or unnecessary purchases. Small and micro purchases will be reviewed to determine if and how purchases can be consolidated to obtain purchases that are more economical for the Authority. A lease versus buy analysis must be performed for the purchase of capital equipment.

9.4.15.1 Breaking Out Purchases:

For procurements with large scopes of work, the Authority will review the scope to determine if the procurement would be more beneficial to the Authority if it were to be broken out into two or more separate contracts. The ability to provide more contracting opportunities to small businesses shall be a part of this consideration.

9.4.16 Sound and Complete Agreement:

Contract specialists shall ensure that precise language is used in describing the Order of Precedence or Contents of the Contract. All agreements, attachments, forms, and documents shall be identified by dates and reference numbers. To the extent that there are different provisions in Contract Documents that address the same matter or subject and these different provisions conflict, the document listed a firm that addresses the matter or subject shall control. If additional conflicting provisions exist within the same level of Contract Document, the Authority’s decision shall be binding.

9.5 Cost/Price Analysis:

A cost or price analysis must be performed for every procurement action. The degree of analysis is dependent on the facts of the particular procurement but as a starting point, the initiating department must prepare an independent cost estimate before receiving bids or cost proposals. The Project Manager (PM), Project Control, and CS may use the following resources as guidance in performing cost or price analysis:

- FTA’s “Best Practices Procurement Manual”
- The National Transit Institute Course, “Cost or Price Analysis and Risk Assessment”
- Pricing Guide for FTA Grantee, FTA Website:
http://www.fta.dot.gov/documents/Helpine_Price_Guide.doc
- FAR Part 31, Contract Cost Principles and Procedures

9.5.1 Cost Analysis:

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements including contract modifications or change orders, unless price reasonableness

can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost (i.e., professional consulting and architectural and engineering services contracts). A cost analysis includes verifying the proposed cost data, the projections of the data and the evaluation of specific elements of cost and profit. The CS shall complete the Cost Analysis Form when documenting the required cost analysis. (See Appendix E.)

9.5.2 Cost Analysis for Competitive Proposal:

This method is most often used to contract for professional, consulting, and architect/engineering(A&E) services. (See FTA Third Party Procurement FAQ's) To determine the reasonableness of proposed costs, CS shall obtain cost breakdowns from the offerors showing all the elements of their proposed total costs and perform a cost analysis of each proposal.

When awarding a contract using the competitive proposal method, the type of contract (e.g., firm fixed-price or cost-reimbursement) the CS proposes to award does not affect the requirement for a cost analysis. For example, if a firm fixed-price contract via the competitive proposal method is intended, CS must analyze all of the proposed costs and profit contained in each offeror's price. However, the CS is not required to negotiate each individual cost element in arriving at an agreement on total price. The final price CS negotiates with the contractor on a fixed-price contract normally reflects agreement only on the total price. Therefore, the overall objective should be to negotiate total prices that are fair and reasonable.

In certain cases, the contract may specify separately priced items. This is commonly done in indefinite-delivery (e.g., indefinite-quantity, sometimes called job order, or "open ended") contracts. Under these contracts, the CS orders pre-priced items on an as-needed basis, up to a stated maximum quantity. For these contracts, an agreement must be reached on each item's price before award and the prices must be included in the final contract document.

9.5.3 Cost Analysis for Noncompetitive Proposals:

These are sometimes called sole source contracts and are different from single bids. No competition is present, and usually, there is no market to help set the price or estimated cost. Since there is no price competition to indicate if the price or estimated cost is reasonable, CS must obtain a breakdown of the proposed costs and perform a cost analysis. The cost analysis shall be performed for all change order situations, as each change order likely will be unique (i.e. differing subsurface or site conditions, design errors and omissions, etc.). For single bids, a cost analysis must be completed unless the Authority can demonstrate that competitive offers were reasonably anticipated. (See FTA Circular 4220.1F for more detail.)

9.5.4 Cost Analysis for construction and construction Management Contracts:

This includes all contracts and contract modifications negotiated based on cost for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It does not include contracts for equipment, or other kinds of personal property. Construction contracts awarded using sealed bidding do not require cost analysis (see FTA Cost Price Analysis and Third Party Procurement), but construction contracts awarded using any method other than sealed bidding, and all modifications to construction contracts

require cost analysis.

9.5.5 Price Analysis:

A price analysis must be completed in all other instances over \$3,000 to determine the reasonableness of the proposed contract price. The CS shall annotate a finding of fair and reasonable pricing and state the most common reasons why this was so, such as catalog or market price offered in substantial quantities to the general public, regulated price, or a comparison with recent prices for similar goods and services. The CS shall complete the Price Analysis Form when completing price analysis activities. (See Appendix F.)

9.5.6 Price Analysis for Micro-Purchases:

For purchases of \$3,000 (FTA funded), \$4,999 (locally funded), or less, CS will simply annotate how the CS made its price fairness and reasonableness determination (e.g. professional market experience, market trend, previous purchase, and catalog price). FTA does not require the rationale for the procurement method used, selection of contract type, or reasons for contractor selection or reject, required of the purchase exceeding the Micro- Purchase threshold. The CS shall complete the Fair and Reasonable Price Determination Form when completing this analysis. (See Appendix G.)

9.5.7 Price Analysis for Sealed Bidding or Competitive Quotes:

As the preferred method for contracting for supplies, equipment and construction, the competitive pricing forces of the marketplace determine the reasonableness of the low price obtained through sealed bidding. Nevertheless, the CS should always compare the independent cost estimate to the low competitive bid received. In the event the difference is greater than 10%, the CS will need to examine to verify that either the estimate or the market price is valid. Otherwise, no further price or cost analysis is required under sealed bidding.

9.5.8 Analysis of Indirect Cost Rates:

For contracts other than A&E contracts, if a contractor does not have a current approved audit report or agreement, CS may use the report prepared by the contractor’s public accountant, or indirect cost information if contained in the contractor’s annual statement to their Stockholders, shareholders, or owners, or examples of acceptance of their rates by other government agencies within the last six months for contracts of \$5 million or less. For contracts exceeding \$5 million, the Authority, another Federal audit agency, or an accounting firm approved by the Federal Government, must verify the contractor’s rates.

9.5.9 Profit:

FTA expects the Authority to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all contracting situations in which the recipient performs or acquires a cost analysis. The CS will use techniques such as weighted guidelines in developing ranges of potential fee or profit rates.

9.5.10 Audits and Indirect Costs:

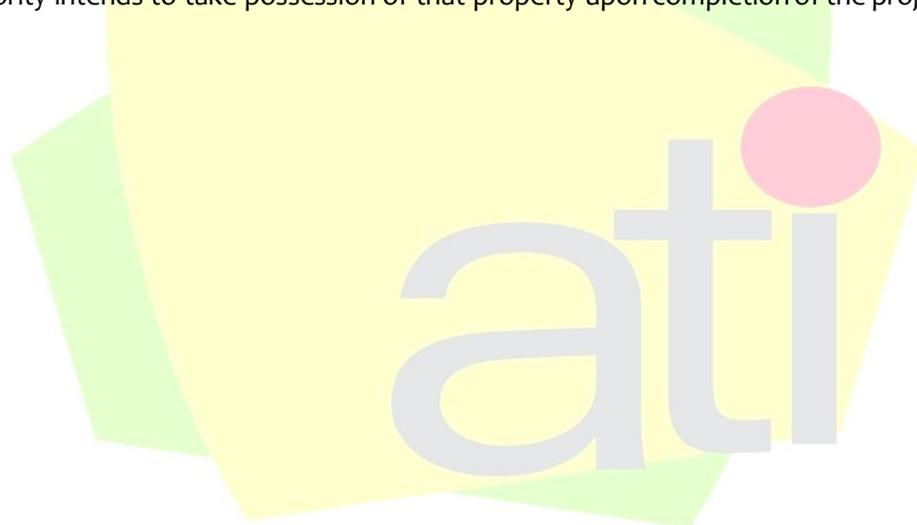
As required by 49 U.S.C. Section 5325(b)(3), all FTA assisted contracts and subcontracts including program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services must be performed (i.e. a contractor cannot incur and invoice the Authority any

unallowable, , or unreasonable costs prohibited by the FAR and/or the contract terms and conditions) and audited in accordance with FAR Part 31 cost principles. The recipient and the third party contractor, its subcontractors and sub-recipients must use Indirect Cost Rates approved by the cognizant U.S. Government Auditor for one-year applicable accounting periods established by a cognizant Federal or state government agency, if those rates are not currently under dispute, and these established rates will apply for purposes of contract estimation, negotiation, administration, reporting, change order, options, and payments, and not be limited by administrative or de facto ceilings.

9.5.11 Buy America:

Buy America regulations apply to FTA assisted procurements exceeding \$100,000, Buy America regulations require the contractor to provide goods produced or manufactured in the US, unless FTA has granted a waiver authorized by those regulations.

Goods that the contractor acquires to perform its construction activities for the Authority, such as tools, machinery, and other equipment or facilities, is not covered by Buy America Act unless the Authority intends to take possession of that property upon completion of the project.



9.6 AUTHORIZATION AND REPORTING LEVELS

This section documents the approved authorization and reporting levels needed for various procurement types. The following table shows the procurement threshold currently approved for the Authority employees and Board Committees.

AWARD APPROVAL LEVELS		
Contract Threshold	Required Approval	Note
Up to \$3,000 (FTA) or \$4,999 (local funds)	Administrative Support staff	With signed authorization form.
Up to \$25,000	Executive Director	With signed authorization form.
Up to \$50,000, not within current budget authorization	Deputy Executive Director	Can sign purchases not included in current budget authorizations.
Up to \$250,000	Executive Director	Can approve purchases included in current budget authorizations.
Up to \$5,000,000	Board of Directors	
\$5,000,000 or greater	Board of Directors	
Sole Sources up to \$25,000	Executive Director	
Sole Sources up to \$250,000	Executive Director	
Sole Sources greater than \$250,000	Board of Directors	Sole Source Justification must be pre-approved by Director Procurement and Contracts, using FTA guidelines.

The following table shows the reporting levels required for all procurements. The notifications cited below (reports) are to be reported no less than quarterly.

Reporting Levels		
Price Threshold	Who is notified	Notes
Contracts greater than 250,000	Board of Directors / Executive Director	MUST be reported no less frequently than quarterly.
Sole Sources greater than 250,000	Board of Directors / Executive Director	MUST be reported no less frequently than quarterly.

The following table shows the procurement process required at various dollar levels. These requirements must be followed before a contract can be awarded or a Notice to Proceed issued.

PROCUREMENT LEVELS		
Price Threshold	Method of Procurement	Notes
Up to \$3,000	Micro purchase (federal funds)	May be purchased by Division Purchase Order or purchase order
Up to \$4,999	Micro purchase (if no federal funds are used)	
\$5,000-\$50,000 Local funds \$3,001-\$50,000 FTA funds	Small Purchase	Competitive quotes required.
Greater than \$50,000	Competitively procured	Must be formally advertised or by invitation.

9.7 CONFLICT OF INTEREST

9.7.1 Purpose:

The Authority's business shall be conducted in a manner above reproach and, except as authorized by Statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The Authority is responsible to guard against an actual, potential, or appearance of a conflict of interest in its procurement and contracting practices. In order to protect the integrity of the procurement process, the Contract specialist will ensure that members of the project team, technical review committee, or Selection Panel, as well as any proposer or bidder do not have a conflict of interest, or even the appearance of a conflict of interest, which may compromise the integrity of a solicitation or contract or related work. While laws and regulations may place restrictions on the actions of personnel, their official conduct must, in addition, be such that they would have no reluctance to make full public disclosure of their actions. The CS can use a version of the Conflict of Interest Form as a way to receive attestations of agreement. These should be signed annually by staff involved in procurement and for staff assigned to evaluation committees. (See Appendix H.)

The Federal Common Grant Rules require the Authority to be aware of conflict of interest issues a prospective contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage, as discussed more fully in FTA Circular 4220.1.F Chapter VI, paragraph 2.a(4)(h). For additional information including penalties and disciplinary action for violation of such standards, see Puerto Rico Government Ethics Act of 2011.(1-2012)

9.8 Conflict of Interest Definitions

9.8.1 Personal Conflicts of Interest:

A personal conflict of interest arises when the Authority's employee (including contractor employees), officers, board members, or agents (including outside consultants) involved in the selection, award or administration of a contract or sub-agreement - or a member of his or her immediate family, partner, or outside employer or prospective employer has a financial interest in the entity selected, or competing, for the contract. A personal conflict of interest also arises where any employee, officer, board member, or agent solicits or accepts gifts, gratuities, favors, or anything of monetary value from a contractor, potential contractor, or party to a sub-agreement. In addition, a personal conflict of interest arises where any such person uses his position, or non-public information gained during his work for the Authority, for personal gain, including gain inuring to an immediate family member, partner, or current or potential employer. These scenarios can result in potential organizational conflicts for employers or personal conflicts of interest for the individual.

An employee, officer, or Board member shall not be deemed to have an interest in conflict with his or her official duties for purposes of this Rules and regulations if the interest is remote. A remote interest means:

1. that of a non-salaried officer of a nonprofit corporation;

2. that of a landlord or tenant of a contracting party; and
3. a creditor, debtor or ownership interest of less than \$1,500 in a business entity which is a contracting party or as a holder of less than 1 percent of the shares of a corporation or cooperative which is a contracting party, whichever is less.

9.8.2 Organizational Conflicts of Interest

Organizational conflicts occur when because of other activities, relationships, or contracts, a consultant or contractor is unable or potentially unable, to render impartial assistance or advice to the Authority; a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.

9.9 Procedure

9.9.1 Personal Conflict of Interest

- The CS will instruct and secure agreement from the Project Manager, to disclose any real, potential, or appearance of a Personal Conflict of Interest, which may exist at the beginning of the procurement process. The Project Manager will also agree to immediately notify the CS of any real, potential or appearance of a Personal Conflict of interest, which may arise during the procurement process.
- Selection Panel members and the Project Manager will sign a “Declaration of Confidentiality and No Conflict of interest Form” prior to receiving proposals to evaluate.
- Statements and Declarations will be placed in the procurement file.
- If a real, potential or appearance of a Personal Conflict of interest arises the CS will notify the CM and/or the Director. The CS will record and place in the file all correspondence regarding the Personal Conflict of interest.
- The CM and/or Director will determine whether the Project Manager or Selection Panel member will be excused from further participation in the procurement process.

9.9.1.1 Organizational Conflict of interest

- The CS will secure agreement from the Project Manager, to report any concerns that a real, potential or the appearance of an Organizational Conflict of interest exists at the beginning of the procurement process. The Project Manager will immediately notify the CS of any real, potential or appearance of an Organizational Conflict of interest that may be identified during the procurement process.
- If a real, potential or appearance of an Organizational Conflict of interest is identified; the CS will notify the CM and the Director. The CS will record and place in the file all correspondence regarding the real, potential or the appearance of the Organizational Conflict of interest.
- The CM and/or Director will issue a determination as to the impact of the real, potential or the appearance of an Organizational Conflict of interest on the procurement, and provide guidance to the CS on the Steps to take to mitigate the real, potential, or appearance of an Organizational Conflict of interest.
- Contractors/Consultants may describe Organizational Conflict of interest determinations or address mitigation measures by following the procedures set forth in the underlying

procurement document.

9.10 INDEPENDENT COST ESTIMATE

9.10.1 Purpose

Before the Authority receives a bid, or a proposal that includes price, or a cost proposal either as a submittal or for negotiating a contract, contract amendment, or sole source contract; the initiating department shall prepare an Independent Cost Estimate (ICE). The ICE is an estimate of the cost of performing the work. This estimate will be used as a basis of comparison for evaluating the proposed price received. An Independent Cost estimate (ICE) is required for every procurement action that requires a price or cost analysis. A Micro Purchase is exempt from the ICE requirement. The CS shall use the ICE template. (See Appendix I.)

9.10.2 Implementation

The establishment of an ICE in advance of receiving a bid or proposal is necessary for the following reasons:

- ensures a clear basis for determining the benefits of the procurement;
- provides essential procurement and financial planning information;
- provides a basis for cost/price analysis

Although it may seem self-evident that the Authority has at least implicitly prepared a cost estimate in deciding to proceed with procurement, many projects can change in scope without clear communication among the individuals responsible. An ICE prepared when the Authority firms undertakes a project could alert all involved that the project had grown beyond the scope originally intended. A deliberate decision to reduce the scope or revise the cost estimate can be made at each Step of the project's development.

An ICE is essential information for procurement planning. It gives the project owners and CS some indication of the complexity of the project and the degree of investment that offers will want to make in the procurement process, thus allowing planning of procurement time and personnel. It is also a key factor in determining which procurement method will apply to the procurement. If the cost estimate exceeds \$25,000 for a construction project with federal funding, for example, sealed bids are required in addition to a more complex bid package. Similarly, certification and bonding requirements are triggered based on the value of the contract. (See FTA Circular 4220.1F, FTA Master Agreement)

However, the application of these and most other requirements depends finally not on the ICE, but on the contract amount. Therefore, if, for example, the estimate for a construction contract is \$80,000, unless everyone involved agrees otherwise, the CS should employ procurement practices that will result in a valid contract in case all bids exceed \$100,000. Otherwise, the Authority may have to cancel the procurement and begin again with sealed bids, because the bids exceeded the ICE.

Another purpose of the ICE is for cost/price analysis. Either a cost or a price analysis is

required for every contract and every change order so that a fair and reasonable price is assured. The adequacy of the price or cost analysis is a critical responsibility of the CS. In many contract awards, multiple bids alone may not be adequate to assure a fair and reasonable price. In these circumstances, the independence of the estimate from any of the bids is essential. An ICE prepared before the receipt of the offers cannot raise the question of whether the particular data and analysis was consciously or otherwise intended to justify the bid received.

9.10.3 Procedure

The independent cost estimate does not have to be complicated, but it should be reasonably accurate. The ICE should be broken down for each bidding schedule item. Sources of information for putting together the ICE are: prior bids or contracts for similar scopes of services; published price limit’s; hourly rates from similar service providers; prior bids or rates received from other agencies; and industry standards such as design as a percentage of construction. Background information used to develop the Authority budget may also be used when appropriate.

A requesting department shall develop an ICE for all purchases **BEFORE** the procurement process begins and submitted with the requisition. A CS should request source information used for developing the ICE to validate its currency, accuracy, completeness, and relevancy when the ICE appears “inadequate”. Disciplined cost estimating ensures that the ICE is credible, dependable, and complete, as it is used as input to the budget planning process, future procurement, and cost saving measurement. Merely comparing the ICE with the bid or proposal price will not be considered an acceptable cost/price analysis, if the difference is large. If the ICE is not immediately available such as in certain construction projects, the CS shall ensure that the requestor provides the **ICE BEFORE** bids are opened.

9.11 DISSEMINATING INFORMATION

9.11.1 Purpose

The CS shall ensure information is provided to all potential competitors at the same time. Knowing in advance when procurement is being issued or that an addendum will be issued, can give a firm a competitive advantage.

9.11.2 Procedure

To maintain the integrity and fairness of the procurement process, it is imperative that the Authority not give out information about a procurement to a potential Bidder/Proposer before the solicitation document is advertised OR during the solicitation period unless the Authority makes the information available to all interested Parties.

“**Same** information” means the Authority shares with all potential Bidders/Proposers the same information at the same time.

At the “**same time**” means within hours, not days. This sounds very simple, but it is very easy to make mistakes that can jeopardize the procurement and could lead to protests or the

need to re- issue the solicitation.

It may be in the Authority’s best interest to prohibit some information from being issued prior to final selection of a contractor or contract award. This includes the number of proposals received, the names of Proposers, any proprietary information contained in a bid or proposal, copies of other Proposer’s proposals, and usually any monetary information. By releasing this information prior to final selection of a firm, the Authority’s negotiating position may be jeopardized. In the situation of bids, all non- proprietary information contained in the bid submittals is public information after the bid opening.

9.12 DEBRIEFING PROCEDURES

9.12.1 Purpose

Debriefing of successful and unsuccessful offerors provides reassurance to solicitation participants that the solicitation and evaluation were conducted in a fair and equitable manner consistent with applicable laws, procedures, and best practices. It also provides education to offerors that should result in better competition in the future. Debriefing of unsuccessful offerors can be valuable to both the offerors and the Authority. A debriefing can be helpful for a number of reasons:

1. It communicates a sense of fairness and appreciation to offerors who have made sizeable investments of time and resources in preparing bids or proposals.
2. It may avoid a protest by convincing a disappointed offeror that the Authority’s decision was carefully made, factually well supported, and best for the Authority.
3. It assists offerors in improving their future proposals, which supports competition.

9.12.2 Procedure

Offerors not selected for award may request a debriefing or the CS may offer to provide a debriefing. A candid explanation of the process can serve the purposes of defusing any potential dispute by the disappointed offerors and encouraging future bids or proposals. If a dispute is already probable, there is no requirement to notify or debrief unsuccessful offerors, but the litigation and other risks must be carefully weighed.

Debriefings of both successful and unsuccessful proposers may be conducted orally, in writing, or by any other method mutually acceptable to the proposer and CS. Debriefings conducted in person should be chaired by the CS familiar with the rationale for the selection decision or contract award. The Project Manager or individuals who participated in the evaluations will provide support if requested by the CS.

Debriefings shall typically occur after award of contract. In the event that there is likelihood of substantial delay between rejection of a proposal and award of contract, as may occur with “best and final offer”, limited debriefing may be provided to firms not included in the competitive range. CS shall prepare minutes of the debriefing session and maintain records of the event in the procurement file.

Debriefings **should** include:

- The overall ranking of the debriefed Offeror.
- A description of the Strengths and weaknesses of the debriefed Offeror’s proposal.
- Reasonable responses to relevant questions about the selection process.
- Competitive range determination and reasons why the offeror was not included in the range.

Debriefings **should not** include:

- A point-by-point comparison of the debriefed Offeror’s Proposal and other proposals.
- Scores given to any or all of the Offerors.
- Copies of other Offerors’ proposals.
- Trade secrets, other proprietary or confidential information if identified on the proposal.

Copies of score sheets and other Offeror’s proposals, absent a protest process, can only be provided if requested through the public disclosure request process and only provided after contract execution.

In conclusion, the information provided to the Offeror must be of value to the Offeror. The information must enable the offeror to understand why its proposal was not selected. This type of discussion may require some general comparison of the offeror's proposal with the winning proposal in order to communicate the basis on which the selection decision was made, and to meaningfully communicate the weaknesses in the offeror's proposal.

9.13 PROTESTS:

9.13.1 PURPOSE

The purpose of a protest procedure is to allow an actual or prospective proposer, bidder, offeror, or contractor (“interested Party”) who is aggrieved in connection with a solicitation, evaluation, or award of a contract, an opportunity to state their dispute, pursuant to “protest”. At the Authority, the CS ensures that all solicitations contain appropriate instruction for interested parties to access the Authority “Protects Procedure”.

Because the Authority’s response to a protest establishes a precedent, it is important that the Authority’s responses to protests be consistent and takes into consideration the best interests of the Authority on a long-term basis. Protests are only permissible for contract award amounts exceeding the small purchase threshold.

9.13.2 PROCEDURE

A protest must be submitted by an interested Party no later than 10 business days after the allegedly aggrieved person or party is notified of contract award. All protest must be in writing and shall include 3 copies containing the following:

- the procurement title and/or number under which the protest is made;
- the name and address of the allegedly aggrieved party;
- a detailed description of the specific grounds for the protest and all supporting documentation;
- the specific ruling or relief requested; and
- the written protest shall be addressed to Director, Procurement and Contracts Division, of the Authority.

9.13.3 Response to protest:

- Upon receipt of a timely written protest, the Director will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the Executive Director.
- The decision made by the Director shall be final and conclusive unless appealed in writing to the Executive Director within 5 business days of receipt by the Protestor. The Chief Executive Officer will consider the appeal and promptly issue a written decision, which shall be final and conclusive.
- A Protestor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the protestor's right, if any, to commence litigation.
- Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and will result in its rejection by the Authority.
- After the exhaustion of all administrative remedies, the protestor shall have 10 calendar days to commence litigation. Failure to commence litigation within this limitation shall constitute an absolute waiver of the protectors' right. State laws permit the Authority to award and execute the Contract during this 10-day period.
- **Protest at the Federal Transit Administration level:** protests made to the FTA will be limited to the Authority's failure to have or follow its protest procedures, the Authority's failure to review a complaint or protest, or violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:
 - A protest must be filed with the FTA no later than 5 business days after the protester learns or should have learned of an adverse decision by the Authority or other basis of appeal to FTA;
 - A protest to FTA must be filed in accordance with FTA Circular 4220.1F, Chapter VII, as amended.
 - The CS shall submit to the FTA Regional Office a copy of all protests and the Authority's response.

9.14 EJECTION OR ACCEPTANCE OF OFFERS

9.14.1 Purpose

The Authority may reject individual or all bids or proposals if such action is in the Authority's best interest or when there is a compelling reason to reject all bids or proposals consistent

with Federal and state procurement regulations. The Authority may reject individual bids/proposals for several reasons including submission errors, conflicts of interest, non-responsiveness, other changes in conditions, or for its convenience. After bids have been opened, award should be made to the low responsive, responsible bidder unless there is a compelling reason to reject all bids and cancel the solicitation. In all cases, the decision to reject bids or proposals must be approved by the CM.

The Authority may also accept bids or proposals that have minor error or irregularity. A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some defect in a bid or variation of a bid from the exact requirements of the solicitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contracted with the total cost or scope of the supplies or services being acquired. The CS should give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Authority.

Should delays be encountered after bid opening that may delay award beyond bidders' acceptance periods, bidders should be requested, before expiration of their bids, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-soliciting

9.14.2 Procedure

CS notifies the CM about the nature of the error, irregularity, or mistake in the bid or proposal.

1. CS prepares documentation either to reject one or all bids or to accept the error, irregularity, or mistake in the bid/proposal as minor informality.
2. CM approves the documentation for rejection or acceptance prepared by the CS for compliance and completeness.
3. The CS notifies the individual or all bidders/proposers that their submittals have been rejected or require the bidder/proposer to correct any minor error. The letter shall contain the reasons for the action.

Compelling reasons to reject a bid or proposal may include the following:

- Materially unbalanced bid/proposal that poses an unacceptable risk to the Authority.
- Incorrect, inadequate or ambiguous specifications were cited in the solicitation;
- Specifications have been revised or changed;
- Supplies or services being contracted for are no longer needed;
- Bids indicate that the needs of the Authority can be satisfied by a less expensive article/method differing from that for which the solicitation was issued;
- All otherwise acceptable bids/proposals received are at unreasonable prices, or only one bid is received and the CS cannot determine the reasonableness of the bid or proposed price;
- The bids were not independently arrived at in open competition, were collusive,

- or were submitted in bad faith;
- No responsive bid has been received;
- A cost comparison shows that performance by the Authority is more economical; or
- For other reasons, cancellation is clearly in the public’s interest.

9.15 WITHDRAWAL OF OFFERS

9.15.1 Purpose

Vendors may withdraw their bids or proposals before their offer is accepted, per the conditions provided in the solicitation documents. Some solicitation documents may permit or remain silent on the opportunity to withdraw while others may call for a bid surety to protect the Authority’s interest. Withdrawal of bids or proposals is not a matter of convenience for the vendor. The CM shall evaluate such events to ensure the best interest of the Authority is maintained.

9.15.2 Claim of Error Guidance

An error in the solicitation documents may be discovered before or after a contract has been awarded. Actions that may be taken in response to the error will depend on the nature and the time of discovery. However, regardless of when or who discovered the error, the situation must be handled immediately and properly to ensure that the integrity of the procurement process is maintained.

9.15.3 Procedure

9.15.4 Discovery of Error

- i. When an error is discovered, before award, the Bidder may request to withdraw its bid by submitting a written Claim of Error notice to the CS. The Claim of Error notice must include supporting documentation, including cost breakdown sheets. A solicitation may provide a timeline within which a Claim of Error may be accepted by the Authority.
- ii. CS may require the Bidder to submit additional information, as necessary, to evaluate the Claim of Error.
- iii. Immediately after a Claim of Error is submitted, CS shall notify the CM of the Error.

9.15.5 Identify and Document the Error

- i. CS shall review the Claim of Error to determine the appropriate action
- ii. Error Category (see table below) and the proper course of action.
- iii. CS shall prepare documentation attaching a copy of the Bid and a Memorandum or Correspondence describing the error.



BID ERROR CATEGORIES		
Below are the 4 generally accepted categories of Bid Errors and permitted actions:		
Discovered Before Contract Award		
1.	Minor Informalities or Irregularities	Errors that are discovered before Contract Award may be: <ul style="list-style-type: none"> • Corrected by the firm; or • Recognized by the Authority and the bid allowed to be withdrawn; or • Not recognized and the bid not allowed to be withdrawn. • In compliance with a low bidder on a public works project that claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.
2.	Obvious or Apparent Clerical Errors	
3.	Errors Other than 1 and 2 above	

Discovered After Contract Award		
4.	Any Error Discovered After Contract Award	Errors that are discovered after Contract Award, will only be corrected if the Director determines the following: <ul style="list-style-type: none"> • It would be unconscionable not to allow the correction; • The error can be corrected by a Contract Modification or Change Order, without changing the essential requirements of the specifications. The Director may also make the following determinations: <ul style="list-style-type: none"> • Rescind the contract; or • Reform the contract, deleting the items involved in the error or increase the contract price, as long as the total corrected contract price does not exceed the next lowest acceptable bid; or • Disallow changes to contract.

- i. Based on the documentation provided by the offering Bidder/Proposer, the CS will make a determination on whether:
 - a. The error can be corrected;
 - b. The error will be recognized and the bid allowed to be withdrawn; or
 - c. The error will not be recognized and the bid not be allowed to be withdrawn.
- ii. The CS sends a letter that notifies the Bidder/Proposer of the Authority’s decision including a notification of the Bidder/Proposer’s right to appeal and citations to the appeal procedures in the Solicitation document.
- iii. The CS assembles the Claim of Error documentation that will go into the file, as follows:
 1. The original Bid/Proposal

2. The written notice of Claim of Error
3. All supporting documentation to the Claim of Error
4. Documentation of the Error
5. Copies of all internal correspondences regarding the discussion of the Bid/Proposal.
6. A copy of the letter to the Bidder/Proposer of the final decision.

10 Procurement Methods Instructions

This section provides instructions on various procurement methods and detailed procedures that must be complied with to maintain a consistent, reliable, and transparent procurement and contract action. The procurement action must be in the best interest of the Authority while providing firms with full and open competitive environment. Its goal is to meet or exceed the needs of the Authority departments with a value added customer friendly process.

CS is required to conduct procurements in accordance with applicable local and federal requirements, and the Authority procurement policies and procedures, utilizing best business and purchasing & contracting practices and the highest Standard of ethics.

A system of procurement checklist has been instituted to provide built-in quality control to substantiate and validate the quality of all procurement and contracting actions at the Authority. This management control procedure is designed to substantiate how each procurement or contracting process is conducted, and to ensure that each file contains appropriate documentation to support the process. The primary management control system is Procurement Activity Limits (PAL).

The PAL establishes procurement and contracting process Standards, ensures consistency of decisions and actions, and provides general direction to Procurement and Contracts Division (PCD) Staff to negotiate Steps and complete activities of the procurement and contracting process consistent with the Authority's requirements as well as any applicable local, State, and federal procurement laws and regulations. Not all items of the PAL are required in each procurement action, but the rules and procedures contained therein shall be observed. Any deviation that significantly alters the PAL requirements shall be approved in advance by the CM or Director.

CMs shall supervise the PAL activities through completion and approve the completed PAL. The CMs signature indicates that all the contents of the Procurement Document and supporting Procurement file documentation are accurate, compliant, and complete.

The PAL includes a checklist titled "Compliance of Document to FTA", which mirrors the contents of FTA Circular 4220.1F Appendix C, "Third Party Contracting Checklist". This checklist shall be completed by CS for all FTA-funded procurements. The Director shall ensure that the PAL's comply with all applicable Federal requirements including the latest edition of FTA's Master Agreement.

This Rules and regulations is written to:

- Satisfy Procurement and Contracts Division’s internal customers in terms of cost, quality, and timeliness of the delivered products and services;
- Minimize administrative operating costs;
- Conduct business with consistency, integrity, fairness, and openness;
- Lay the framework of necessary flexibility for the Authority to manage risks and opportunities in a business transaction;
 - Facilitate management of integrated procurement team; and
 - Fulfill public policy objectives.

11 MICRO PURCHASES

11.1 Purpose

To define and establish purchasing requirements for Goods or Services costing less than \$3,000 where FTA funds are involved, or less than \$4,999 if no FTA funds are involved.

11.2 Minimum Procurement Lead Time: 2 days

11.3 Procedure

11.3.1 Determine Need:

This procedure applies to all micro purchase needs of the Authority departments, except for construction. These purchases are exempt from competition requirements, although the requestor or Purchase Agent (PA) should make a determination prior to purchase that the price is fair and reasonable.

11.3.2 Identify Potential Vendor(s):

The Authority’s departments are generally responsible for identification of vendors. PA is responsible for assisting the departments. Typical resources are catalogues, yellow books and other publications etc. Even for this micro dollar amount, the Authority’s departments must seek Small Businesses or DBEs. Purchaser should avoid splitting larger dollar amount purchases into micro purchases to avoid competition. Purchaser should equitably distribute repeated micro purchases among as many qualified local suppliers as is reasonable.

11.3.3 Determine Method of Procurement:

All Micro Purchases can be made by check, Department Purchase Order, or the Authority’s purchase order up to \$3,000, or the purchaser can pay with petty cash funds and seek reimbursement up to \$200. For any purchase over \$3,000, a Purchase Order is required prior to placing the order for goods or services.

11.3.4 Order:

Determine that appropriate authorization has been received to make the purchase. Prior approval to make the purchase is mandatory.

11.3.5 Documentation:

The minimum documentation required is a Statement that the price is fair and reasonable. (See Appendix G. Fair and Reasonable Price Determination Form.) Purchasers must obtain a receipt or other documentation of the purchase. A record of the transaction must be maintained to match to an expenditures report for credit card purchases, or to match to an invoice for a purchase order.

11.3.6 Exception:

The Micro purchases under \$3,000 are exempt from FTA’s Required Third Party Clauses including Buy America requirements. However, Davis-Bacon Act that requires contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the U.S. Secretary of Labor will apply to all FTA-funded construction contracts exceeding \$2,000.

12 DIVISION PURCHASE ORDER

12.1 Purpose:

To provide the Authority’s departments a mechanism to directly place their own purchase orders for non- repetitive purchases that are \$3,000 or less. *Division Purchase Order is limited to \$3,000 or less.

12.2 Minimum Procurement Lead Time: 3 days

12.3 Procedure:

Purchases up to \$3,000 that are not performed by use of a Purchase Order or the Purchase Card process may be made using the Division Purchase Order process. Purchases that may be made utilizing the Division Purchase Order include:

- Debt or other mandatory payments.
- Recurring payments, e.g., utilities, rent and credit cards, warranty claims, account manager expenses, and fiscal agent settlements.
- Exceptions as approved by the Executive Director - FIT, relating to claims, real estate transactions, tax payments, and invoice payment discrepancies.

Purchase Orders are entered in Purchase Software and properly coded and approved within the Delegations of Authority. The Division Purchase Order number shall be given to the vendor at the time the order is placed for goods and services and the vendor shall include the PO number on their invoice.

The Vendor must be in the Purchase Software Address Book in order for the Division Purchase Order to be issued.

13 SMALL PURCHASES

13.1 Purpose:

Small Purchase procedures are used to purchase equipment, materials, supplies, and services. These procedures cannot be used for construction-related work or facilities maintenance purchases since Statutes of the Commonwealth of Puerto Rico requires such work to be procured via a publicly advertised competitive bid or a small works roster bid.

Small procurements provide greater opportunities for DBEs and small business enterprises to participate. Absent efforts to foster greater opportunities for DBE and Small Businesses, the Authority should not split a larger procurement merely to gain the advantages of the simplified acquisition process. See Appendix J. Small Purchases for a flow chart of activities required to be compliant with the FTA procurement requirements.

13.2 Minimum Procurement Lead Time: 3 weeks

13.3 Procedure:

Small purchases are defined as federally funded purchases exceeding \$3,000 or non-federally funded purchases that exceed \$4,999, but not exceeding \$50,000. However, all procedures, rules, and regulations must be followed and the PA will review all quotes prior to issuance of a Purchase Order (PO) number. PROCUREMENT AND CONTRACTS DIVISION Staff is available to obtain the quotes or provide other assistance on small purchases. For purchases up to \$25,000, verbal quotes are acceptable in emergency situations. Small Purchases valued between \$25,000 and \$100,000 requires the purchaser to obtain at least 3 written quotes. Detailed procedures are provided below:

- The PM and/or PA review the Scope of Work, deliverables or equipment/product specifications and identify at least three qualified suppliers/vendors to provide competition. One of the firms selected to quote shall be a Disadvantaged Business Enterprise (DBE) or Small Business. In the event a DBE or Small Business is unavailable to quote, PM or PA shall document efforts made to locate DBE's and Small Businesses.
- PA may review a procurement request to determine if it can be fulfilled by using either an existing State contract or "piggybacking" onto another public agency contract before soliciting quotes. If none exists, the Requestor can either solicit the quotes or have the PA complete this action. PA will include the appropriate State and federal terms, conditions, forms, and certifications to the PO.
- After quotes or proposals are received but prior to award, PM/ PA will identify the firm that provided the lowest priced responsive offer. The PM/CS will concurrently determine if the offeror is responsible and eligible for contract award. The CS will use the Price/Rate quotation Form. (See Appendix K.)

A responsible offer for a small purchase is an offer that meets the following Standards:

- Able to meet the proposed delivery or performance schedule
- Not deficient in current or recent contract performance with the Authority
- Has the requisite organization, experience, quality controls, technical skills or the ability to obtain them
- Has the requisite human resources, equipment and facilities or is able to obtain them for construction or public works
- Able to meet the required bonding requirements for construction or public works.
- Is qualified to receive an award under applicable State and federal laws and regulations (i.e. current business and professional licenses and permits)
- Not listed on any State and Federal limits of debarred, suspended, or ineligible firms or individual

The Responsibility Determination Checklist (see Appendix L) shall be used and a check of the debarred and suspended list at www.epls.gov must be documented.

For A&E purchases under the Small Purchase threshold, PM/ PA shall comply with Brooks Act by ensuring that price is NOT, an evaluation factor and that only qualification are evaluated. Detailed instructions are provided in the A&E Negotiation Process section.

- The PA will contact the successful firm and request applicable insurance certificates and other mandatory documents.
- Upon receipt of such documents, the PA may issue a PO. The PO must State all applicable commercial, technical, and legal terms and conditions, including delivery and contract end dates.
- Upon receipt of the products or services, the requestor inspects and accepts the deliverables, approves the invoice for payment and submits it to Accounts Payable for payment. The requestor shall notify the CS if items are not received in the time and manner indicated on the PO, if the wrong items are received or any other concerns.
- The PA is responsible for ensuring the vendor abides by the terms of the contract, and to assist the requestor to ensure a value added service.

14 COMPETITIVE BIDS

14.1 Purpose

This method will be used to procure goods, services, equipment, materials, non-professional services, and construction contracts when the value of the contract is over \$100,000. Award will be made to lowest priced bidder that submits a responsive offer and the bidder has demonstrated capacity to perform the work to be generally considered a responsible bidder. This procurement method does not permit consideration of qualitative factors in a

competitive environment or negotiations with bidders. An Invitation for Bids (IFB), also called “Sealed Bids” is the solicitation method. The typical resultant contract type is a firm fixed price, fixed price variation, lump sum, or unit price.

14.2 Minimum Procurement Lead Time: 14-18 weeks

14.3 Procedure:

Detailed systematic instructions for the PA are included on the IFB Activity List that can be found at “Procurement Activity Forms” See Appendix M: IFB / Sealed Bid Flow Chart for the activities required to be compliant with FTA procurement requirements.

14.4 Preparing the IFB:

The IFB must describe the requirements of the Authority clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for bidding.

- The PM submits an approved requisition, Statement of Work or Scope. The CS should ensure that either the specification or statements of work templates are used. (See Appendices N and O.) SOW Template, and ICE to PROCUREMENT AND CONTRACTS DIVISION. This initiates the process within the PROCUREMENT AND CONTRACTS DIVISION and a PA is assigned to lead and facilitate the procurement process, and to deliver a value added service to the PM involving a cradle to grave contract management approach.

Depending on the complexity of the requirement, the PM and PA should collaborate at the earliest Stages of requisition and scope development (cradle). For extremely complex procurements the partnership should be formed from the time the need is identified by the PM’s team or for simpler items a minimal relationship between the PM and PA will be needed. For construction contracts, shortly after 30% design the PM and PA should form a team that is collectively responsible for providing Procurement Strategy that identifies long lead items, owner furnished items, subcontracting opportunities and, other Strategies.

- The PA and PM discuss procurement requirements such as procurement schedule; risk; insurance; subcontracting opportunities; scope and delivery schedule; bid pricing schedule; funding source requirements (e.g. FTA 5309, FHWA, FAA etc.); whether a pre-bid conference is needed and other items of critical nature. These items are recorded in the Purchase Requisitioning and Acceptance Checklist.
- The PM and Diversity develop a social equity plan by conducting a joint review of subcontracting opportunities. A SB/DBE goal may be established at this time.

- The PA drafts an IFB, including the clauses required by law or by regulation and any additional clauses expected to apply to any resulting contract including FTA clauses, and prevailing wage determinations. See the Clauses Matrix (Appendix P) for the clauses required for each type of contract. The PA conducts a Bid Readiness Review (BRR) with all key procurement Stakeholders to encourage formation of a cohesive contracting team with clear roles and responsibilities. The BRR results in a cross functional review of the contract. The solicitation shall be thoroughly reviewed and approved by the CM before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids, or result in contract performance issues.

14.5 Advertising the IFB:

The PA shall prepare advertisement synopsis for the principal circulating Newspaper and full IFB packages to publish on the Authority's and the Office of Management and Budget (OMB) web portal. PA routes "Approval to Advertise" form with IFB packages to stakeholders for approval. The PA should ensure the advertisement attracts competition. The PA must ensure the advertisement meets any Statutory or regulatory requirements, provides adequate time for bidders to submit an offer, and provides clear instruction on how to obtain the full solicitation packet and the due date for submission of offers.

14.6 Amending the IFB:

All requests for information / questions must be routed directly to the CS; written clarification and addendum will be issued by PA when necessary. The CM shall review and approve all clarifications and addenda prior to issuance.

- If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous item of the solicitation, such changes shall be accomplished by amendment of the invitation for bids via addenda. The fact that a change was mentioned at a pre-bid conference does not relieve the necessity for issuing an addendum. Addendums shall be sent, before the time for bid opening, to everyone to whom the IFBs have been furnished.
- Before amending an IFB, the time remaining until bid opening and the need to extend this period shall be considered. When only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telephone. Such extension must be confirmed in the addenda.
- Any information given to a prospective bidder concerning an IFB shall be furnished promptly to all other prospective bidders as an addendum to the invitation (1) if such information is necessary for bidders to submit bids or (2) if the lack of such information would be prejudicial to uninformed bidders. The information shall be furnished even though a pre-bid conference is held.

14.7 Pre-bid Conference:

A pre-bid conference may be conducted, generally in a complex procurement, as a means of

briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. It should not be used as a substitute for amending a defective or ambiguous IFB.

14.8 Submission of Bids:

Bidders must submit sealed bids to be opened at the time and place Stated in the solicitation for the public opening of bids. Bids shall be submitted so that they will be received at the location designated in the IFB and not later than the exact time set for opening of bids.

14.9 Bid Opening:

Bidders must submit sealed bids to be opened at the time and place Stated in the solicitation for the public opening of bids in accordance with the IFB instructions to be considered “responsive”. Bids shall be submitted so that they will be received as designated in the IFB not later than the exact time set for opening of bids.

- All bids (including modifications) received before the time set for the opening of bids shall be kept sealed and secure. Except as otherwise provided herein, bids shall not be opened or viewed, and shall remain in a safe and secured area. If an invitation for bids is cancelled, bids shall be returned unopened to the bidders. Before bid opening, information concerning the identity and number of bids received shall be made available only to the Authority’s employees. Such disclosure shall be only on a “need to know” basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.
- Envelopes marked as bids but not identifying the bidder or the solicitation may be opened by the PA solely for the purpose of identification. If a sealed bid is opened by mistake (e.g., because it is not marked as being a bid), the envelope shall be signed by the opener, whose position shall also be written thereon, and delivered to the designated PA. The PA shall immediately write on the envelope (1) an explanation of the opening, (2) the date and time opened, and (3) the invitation for bids number, and shall sign the envelope. The PA shall then immediately reseal the envelope.
- The PA shall announce when the time set for opening bids has arrived. The PA shall then (1) personally and publicly open all bids received before that time, (2) read the bids and the ICE aloud to the persons present, and (3) have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids required has been made and its accuracy verified.
- Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of the Authority’s business. Original bids shall not be allowed to pass out of the hands of an Authority official unless a duplicate bid is not available for public inspection. The original bid may be examined by the public only under the supervision of the PA and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.

- A bid opening may be postponed when:
 - The PA has reason to believe that the bids of an important segment of bidders have been delayed in the mail, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes); or
 - Emergency or unanticipated events interrupt normal Authority processes so that the conduct of bid opening as scheduled is impractical.
 - At the time of a determination to postpone a bid opening, an announcement of the determination shall be publicly posted. If practical before issuance of a formal amendment of the IFB, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.
 - Bid abstracts shall be available for public inspection and posted on the Authority web site as soon as practicable after the bid opening. Such abstracts shall not contain information regarding failure to meet minimum Standards of responsibility, apparent collusion of bidders, or other notations properly exempt from disclosure to the public.

14.10 Evaluation of Bids

- To be considered for award, a bid must comply with all requirements stipulated in IFB. Such compliance enables bidders to Stand on an equal footing and maintains the integrity of the sealed bidding system. The Bid Opening Form and Responsiveness Form documents this information. Alternatively, a form solely focused on responsiveness can be used. (See Appendix S.)
- Facsimile or bids submitted by electronic commerce bids shall not be considered unless permitted explicitly in the solicitation.
- Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation.
- If a single bid is received or if competition is inadequate, the PA shall examine the situation to determine the reasons for the inadequate number of responses. The CS shall complete the Single Bid Analysis Form (see Appendix S) documenting decisions to accept the bid or resolicit. Award may be made notwithstanding the limited number of bids. However, the PA shall initiate, if appropriate, corrective action to increase competition in future solicitations for the same or similar items. If only one bid has been received, the PA and PM have an option to follow the sole source procurement procedure discussed in this Rules and regulations or consider the bid as a competitive bid. A single bid can be considered a competitive bid if there were reasonable expectations that more than one bid would be received.

- The PA shall determine that a prospective contractor is responsible and that the prices offered are reasonable before awarding the contract. A price analysis shall be performed in all cases. The price analysis should reveal whether the bids are materially unbalanced. In evaluating the bids for responsiveness, the PA shall create an abstract of bids, verifying pricing and summarizing the Bidder’s compliance with responsiveness issues and the bid prices. The record of the information on the epls.com site will be checked and a copy printed for the file. For construction bids, PA shall verify that the Contractor was licensed by an appropriate and applicable public licensing board prior to submitting its bid.
- If applicable, the PA shall issue the Standard bid evaluation letter to the apparent low bidder requesting material to be submitted prior to Bid Evaluation Conference.
- Diversity reviews the apparent low bid for compliance with Diversity Program requirements. If applicable, they work with the low bidder in finalizing its Apprentice Utilization Plan.

14.11 Contract Award

- The PA shall make a contract award by written or electronic notice within the time for acceptance specified in the bid or an extension to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Authority, considering only price and the price-related factors included in the IFB. The Award Recommendation Form (Appendix T) will be used to document the proposed award of the contract to a specific contractor. Award shall not be made until all required approvals have been obtained on the Approval to Issue Notice of Intent to Award.
- When signed contract and required documents are returned, the PA routes “Approval to Execute Contract” form to CM, Diversity, PM, Legal, and then to PM’s Approval Authority or designee.
- Upon contract execution, the PA confirms with PM the date work is to begin. The PA issues the Notice to Proceed. The CS then issues the Purchase Order and provides the number to the contractor and PM.
- If this is a construction contract, the PA forwards original bonds and retainage agreement, if applicable, to Finance Division of the Finance and Information Technology Department for safekeeping. A copy of these documents is placed in the contract file. Upon contract execution, the CS returns bid bonds to unsuccessful bidders.

15 NEGOTIATED PROCUREMENT OVER \$100K

15.1 Purpose:

This process may be used to procure all goods and services, professional services, equipment, materials where competitive bidding method is not appropriate. Separate procedures are provided for the procurement of A&E services or public works services. The steps in the flow chart for RFP (see Appendix U) must be followed by the CS.

15.2 Minimum Procurement Lead Time: 9 to 12 weeks

15.3 Procedure:

- A PM drafts a Pre-Procurement strategy Plan, which identifies subcontracting opportunities, budget and schedule implications, and potential conflicts of interest. The PM also begins drafting a Scope of Work, which includes all requisite analysis, deliverables, skills, Standards of performance and performance milestones. PA provides procurement assistance as needed.
- The PM prepares requisition with dollar estimate for contract and obtains appropriate approvals before forwarding to the Procurement and Contracts Division with the independent cost estimate, estimated schedule, and draft scope of work. The PA receives an independent cost estimate from the Project Manager before receiving Proposals. The PA shall not permit Proposals to be evaluated or considered if the independent cost estimate was not submitted before Proposals were received.
- The PM and PA discuss needed services so that the PA has the information needed to put together the solicitation document. Topics for discussion include: procurement schedule, inherent risk for determining insurance requirements, and all contractual and performance risks; where to advertise; subcontracting opportunities; appropriate evaluation criteria categories (price shall be one of the evaluation criteria); weight or points given to the evaluation criteria to determine their relative importance; submittals needed to evaluate based on those criteria; scope and schedule; federal or non-federal monies; selection panel members; legal or other issues that may affect the procurement.
- The PA discusses with the PM any anticipated changes to the contract to ensure that they fall within the original scope. The PM needs to know that he/she will have to carry out a separate procurement for changes that lie outside the original scope or work.
- The PA drafts a procurement schedule for review by the PM. The schedule is negotiated between and agreed upon by both the PA and the PM.
- The PA initiates preparation of the draft solicitation document. The PM continues to develop the Scope of Work. The PA forwards a copy of the solicitation document to the PM. The PA shall include technical and price evaluation factors, such as technical capability of the item

offered to meet the Authority’s requirements: e.g. past performance; management; key people; delivery terms; QA/QC and safety; project management; and evaluation points or the relative order of importance of the evaluation factors in the solicitation document.

- The PA discusses project with Legal, Risk, and Diversity and other stakeholders as needed in order to draft the solicitation document.
- The PM provides the final Scope of Work and cost estimate to PA.
- The PM and PA finalize the Pre-Procurement strategy Plan, including the procurement schedule, subcontracting opportunities, outreach plan, and conflict of interest mitigation plan. The Diversity Analysis Worksheet is completed by the PM, PA and Diversity. The PA incorporates the information provided in the Worksheet into the Solicitation Document. The PA forwards the procurement schedule to all stakeholders (e.g. Project Management, Diversity, Legal, Risk, etc.). The PM provides an internal distribution limit to the PA.
- The PA prepares the entire solicitation package and routes it to the PM to review.
- The PM and PA incorporate any comments into their respective portions of the document to arrive at a “final” solicitation document. PM and PA conduct a Proposal Readiness Review conference with all stakeholders, if appropriate, to discuss changes to the document.
- If necessary, the PA sends out advance notice to potential proposers and/or interested parties letting them know of the upcoming solicitation.
- The PA prepares the final solicitation for review. The PM reviews the Scope of Work for quality assurance (the PM may have others review the Scope of Work to ensure the appropriate quality assurance check has been done). A CM reviews the entire document for quality assurance. The Procurement and Contracts Division shall ensure that all solicitations include a clear, accurate, and complete scope before soliciting or advertising for Proposals, evidence such review by receiving a signed form or checklist from the PM, and include the Approval to Advertise form or checklist in the procurement file for the contract.
- The PA prepares Solicitation Document for distribution (prints hard copies, make CDs, make PDF files). PA places advertisement in the appropriate publications (including the Authority’s and OMB external website), places documents on the Authority web site system, notifies interested parties of the document’s availability, and distributes copies of solicitation to the PM, Diversity, and those on the internal document distribution list.
- The PA will make certain that appropriate advertising (at a minimum once a week for two consecutive weeks with the firms publication not less than ten days before the due date established for proposals) occurred before receiving Proposals, evidence such actions with an affidavit of publication or other proof of advertisement, and include the proof of advertisement in the Procurement file for the contract.

- The PA develops an evaluation procedure for the selection panel to follow when evaluating Proposals and conducting interviews (if held). The procedure is completed prior to receiving proposals and should be fully described in the solicitation.
- At the Pre-Proposal Conference, the CS, PM, Diversity and the Authority Staff present to prospective Proposers, material regarding the solicitation. The CS coordinates with Diversity to determine whether or not a Networking Session and/or a Diversity Training Session will be conducted after the Pre-Proposal Conference. The CS ensures that the pre-proposal conference is recorded (i.e. take notes of the pre-proposal conference) for distribution to all document holders. The CS records any questions that cannot be answered by referencing the solicitation document or with information that is generally known. These questions are answered in clarification document issued after the Conference.
- The CS receives RFIs from prospective Proposers and distributes to appropriate parties for answers. CS incorporates answers into a written clarification document and/or addendum and issues to document holders. The Authority web site (www.ati.pr.gov) is the preferred method of receiving RFIs. The Authority web site RFI system is more accurate than receiving RFIs via FAX, which should be discouraged. All addenda and clarification documents should also be distributed via the Authority web site.
- The CS receives the proposals, reviews them for completeness (use the Responsiveness Form in Appendix R), and distributes to the selection panel members along with the Evaluation and Selection Procedures Manual to be used in evaluating the proposals. An example of the Proposal Evaluation Form is included as Appendix V.
- Selection panel evaluates the proposals against the Stated evaluation criteria using the guidelines provided in the Evaluation and Selection Procedures Manual. If necessary, the Selection Panel may decide to interview one or more of the proposing firms/teams in person prior to making a decision. The final ranking of firms will be based upon the evaluation process described in the Evaluation and Selection Procedures Manual. PA notifies firms if they are no longer being considered, and arranges interviews with firms if interviews are requested by the Selection Panel. “Best and Final Offers (BAFO)” or multiple interviews may be held if deemed necessary to make a final selection. At least one member of the selection panel should be from a department different from the Project Manager’s department.
- The PA may provide debriefings to those proposers that do not qualify for BAFO.
- Upon determination of the top ranked firm, the PA and PM evaluates price or cost proposal to determine whether proposed level of effort and prices are fair and reasonable. The PA and PM will jointly determine if the price or cost proposal is acceptable or needs negotiation. PA shall ensure an appropriate cost or price analysis is conducted before the PA makes a determination on award of contract.
- The PA and PM will jointly develop a written negotiation position. PA will create an initial draft Contract for use as the starting point for negotiations. PM and PA negotiate a Contract with the top ranked firm. Before or during negotiations, PM shall confirm certification of DBE firms

(Upon request, Diversity will assist with this.). If a satisfactory Contract cannot be negotiated, negotiations maybe conducted with the next ranked firm. A Memorandum of Negotiations following the format in Appendix W should be completed by the CS.

- The PA continues to follow the procedures in the Activity List by drafting a Procurement Summary Memorandum.
- The PA routes final Contract to Legal for approval if there are material modifications to important provisions.
- Once terms are satisfactorily negotiated, the PM and PA obtain approval per award authority. The PA obtains a copy of the motion and includes it in the Procurement file for the Contract, where a Board approval is received.
- The PA will obtain signatures on the contracts from the Consultant, and any other required certification (such as federal forms) or documents. Appropriate Authority execution of contract will only occur after all required documents are obtained.
- The PA ensures that Consultant is signed onto the OCIP program, if applicable, reviews Certificates of Insurance, and forwards originals of Certificates to Risk Management Division.
- Once the Contract and certificates of insurance are approved, PA will obtain appropriate signature on Contract.
- The PA will return one copy of the Contract along with Notice to Proceed (NTP), or Limited Notice to Proceed (LNTP) as applicable, to Consultant. The PA will send one copy of the executed Contract to the PM, and to Project Control as requested.
- PA issues a purchase order and provides the PO number to the Consultant and PM.
- The PA reviews procurement and contract files to ensure all necessary documents are included.
- The CM reviews files for compliance with all requirements per the Procurement Activity List. (PAL)

16 A&E NEGOTIATED PROCUREMENTS

16.1 Purpose

The Authority shall use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services as defined in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. A&E procurements are subject to the

"Brooks Act" provisions contained in chapter 11 of 40 U.S.C. All engineering and design, and related services are described in 23 U.S.C. §112 (b)(2)(A) and 23 C.F.R. §172.3 and include program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or other related services. These other services may include professional engineering related services, or incidental services that may be performed by a professional engineer, or individuals working under their direction, who may logically or justifiably perform these services.

16.2 Minimum Procurement Lead Time: 17 to 24 weeks

16.3 Procedure

- The PM drafts a Pre-Procurement strategy Plan, which identifies subcontracting opportunities, budget and schedule implications, and potential conflicts of interest. The PM also begins drafting a Scope of Work (SOW), which includes all requisite analysis, deliverables, skills (including the various types of people the A&E Consultant will need to work with or address at public meetings), Standards of performance and performance milestones. The PM Drafts Kick-Off Requisition: The PM drafts a requisition with budget estimate for contract and obtains appropriate signatures before forwarding to the Procurement and Contracts Division with the ICE, estimated schedule, and draft scope of work. A Kick-Off Requisition is a paper document, a template of which can be obtained from the Procurement and Contracts Division.
- CS receives an ICE from the PM before receiving Proposals. The CS shall not permit Proposals to be evaluated or considered if the independent cost estimate was not submitted before Proposals were received.
- The CS and PM discuss needed services so that the CS has the information needed to put together the solicitation document. Discussion topics may include: procurement schedule, inherent risk (for determining insurance requirements); where to advertise; subcontracting opportunities; appropriate evaluation criteria categories (price cannot be a consideration for A&E); weight or points given to the evaluation criteria to determine their relative importance; submittals needed to evaluate based on those criteria; scope and schedule; federal or non-federal monies; selection panel members; legal or other issues that may affect the procurement.
- Funding Source: If the procured good or service is in support of capital projects and is paid for completely without FTA funds, then the federal boilerplate language in the procurement documents may not apply; however, the Authority A&E procurement rules will apply. However, because almost every capital project may have federal funding in the future, specific instructions and approval from the CM is required to omit or customize any required Federal clauses.
- The CS discusses with the PM to identify any anticipated changes to the contract to ensure that they fall within the original scope. The PM needs to know that he/she will have to

carry out a separate procurement for changes that is outside the original scope or work (i.e., a “cardinal change”).

- The CS drafts a procurement schedule and delivers it to the PM. The schedule is negotiated between and agreed upon by both the CS and the PM.
- The CA starts drafting the Solicitation Document. The PM continues to work on Scope of Work. The CS then forwards a copy of the Solicitation Document to the PM if needed.
- The CS discusses project with Legal, Risk, and Diversity and other stakeholders as needed in order to draft and assemble the Solicitation Document.
- The PM provides the final Scope of Work and ICE to the CS.
- The PM and CS finalize the Pre-Procurement strategy Plan, including the procurement schedule, subcontracting opportunities, outreach plan, and conflict of interest mitigation plan. The Diversity Analysis Worksheet is completed by the PM, CS and Diversity. The CS incorporates the information provided in the Worksheet into the Solicitation Document. The CS forwards the procurement schedule to all stakeholders (e.g., Project Management, Diversity, Legal, Risk, etc.). The PM provides an internal document distribution list to the CS.
- The CS assembles entire Solicitation Document and routes it to the PM for review.
- The PM and CS incorporate any changes into their respective portions of the document to arrive at a “final” Solicitation Document. PM and CS conduct a Proposal Readiness Review conference with all stakeholders, if appropriate, to discuss changes to the document.
- CS sends out “Advanced Notice”, if applicable, to potential proposers and/or interested parties letting them know of the pending solicitation.
- The PM enters the “official” purchase requisition into the master intergovernmental contract system. The PM or a Project Control ensures the account codes are approved by Finance Division of Finance and Information Technology Department and that the requisition is approved and forwarded to the Procurement and Contracts Division. At the same time, the PM or the Project Control forwards any changes to the cost estimate to the CS.
- The CS completes the Solicitation Document for final review. The PM and the Authority Staff review the Scope of Work for quality assurance. The CM also reviews the entire document for management control. The CM shall ensure that all solicitations include a clear, accurate, and complete scope before soliciting or advertising for Proposals, and evidence such review by receiving a signed form or checklist from the PM, and include the form or checklist in the Procurement file for the contract.

Note: The CS includes evaluation factors, such as technical capability of the item offered to meet the Authority requirements: e.g. past performance; management; key people; and evaluation points or the relative order of importance of the evaluation factors in the solicitation document.

- When it is necessary, the CS and PM schedule the Pre-Proposal Meeting Room and administrative support.
- The CS prepares Solicitation Document for distribution (prints hard copies, makes CD, makes PDF files, etc.). The CS places advertisement in the appropriate publications (i.e. DJC), places documents on E-Bid system, notifies interested parties of the documents' availability, and distributes copies of solicitation to the PM, Diversity, and those on the internal document distribution limit.
- The CS will make certain that appropriate advertising (at a minimum once a week for two consecutive weeks with the firms publication not less than ten days before the due date established for proposals) occurred before receiving Proposals, evidence such actions with an affidavit of publication or other proof of advertisement, and include the proof of advertisement in the Procurement file.
- The CS drafts an Evaluation Procedure Manual for the selection panel to follow when evaluating Proposals and conducting interviews (if held). The Procedure Manual shall be completed prior to receiving proposals.
- At the Pre-Proposal Conference, the CS, PM, Diversity and other Authority staff present material regarding the solicitation to prospective Proposers. The CS coordinates with Diversity to determine whether or not a Networking Session and/or a Diversity Training Session will be conducted immediately after the Pre-Proposal Conference. The CS ensures that the pre-proposal conference is recorded (i.e., takes notes of the pre-proposal conference) for distribution to all document holders. The CS records all questions including issues that cannot be answered by referencing the solicitation document or with information that is generally known. These questions are answered in clarification document issued after the Conference.
- The CS may receive requests for Information (RFIs) from prospective Proposers and distributes to appropriate parties for answers. The CS then incorporates answers into a written clarification document and/or addendum and issues to document holders. The Authority's web site is the preferred method of receiving and sending RFIs. The Authority's web site system ensures consistency and accuracy than receiving the RFIs via FAX. All addenda and clarification documents should also be distributed via the Authority's web site (www.ati.pr.gov).
- The CS receives the proposals, reviews them for completeness, and distributes to the selection panel members along with the Evaluation and Selection Procedures Manual to be used in evaluating the proposals.

- Selection panel members evaluate the proposals against the established evaluation criteria using the guidelines provided in the Evaluation and Selection Procedures Manual. The Panel may decide to interview one or more of the proposing firms/teams in person prior to making a decision. The final ranking of firms will be determined based upon the evaluation process described in the Evaluation and Selection Procedures Manual and in the Solicitation Document. The CS notifies firms if they are no longer being considered, and arranges interviews with firms if the Selection Panel requests interviews. Multiple interviews may be held if necessary to make a final selection.
- At least one member of the selection panel should be from a department different from the PM's department.
- The CS conducts debriefings based upon the guidelines provided in the Solicitation Document.
- The CS requests a cost proposal from the top ranked firm.
- The CS and PM evaluate the cost proposal to determine whether the proposed level of effort and prices proposed are fair and reasonable. The CS and PM will jointly determine if the cost proposal is acceptable or needs negotiation. Negotiation – Cost Proposal: The CS and PM will jointly develop a written negotiation position. CS will create an initial draft Contract for use as the starting point for negotiations. The CS negotiates prices and contract terms with the top ranked firm. The PM focuses on scope and the CS focuses on general terms and conditions, legal issues and the cost proposal. Before or during negotiations, PM shall confirm certification of DBE firms (Diversity will assist with this upon request). If a satisfactory Contract cannot be negotiated, terminate negotiations with the firm and go to the next ranked firm.
- The CS drafts a Procurement Summary Memorandum, which shall include all applicable items listed in the Procurement Summary template. (See Appendix W.)
- The CS routes final Contract to Legal for approval if there are material modifications to important provisions.
- Once the terms are satisfactorily negotiated, PM prepares materials for the Authority's Agenda Committee meetings and proceeds to obtain appropriate level of approval. The CS obtains a copy of the motion and includes it in the Procurement file.
- The CS will obtain signatures on 2 original copies of the contract from the Consultant, and any other required certification (such as federal forms) or documents. Appropriate Authority execution of contract will only occur after all required documents are obtained.
- The CS reviews Certificates of Insurance and forwards originals to Risk Management. If the procurement is covered by OCIP, the CS also ensures that Consultant is signed on to the OCIP program.

- Once the Contract and certificates of insurance are approved, the CS will obtain authorized Authority signature to execute the Contract.
- The CS will return one original of the Contract along with Notice to Proceed (NTP), or Limited Notice to Proceed (LNTP) as applicable, to Consultant. The CS will send one copy of the executed Contract and NTP or LNTP to the PM and other Authority stakeholders.
- CS issues a purchase order and provide the PO number to the Contractor and PM. The PO number is required for invoice processing and other E1 activities.
- The CS reviews procurement and contract files to ensure all necessary documents are included.
- CM reviews files for accuracy, completeness, compliance with all requirements per the Procurement Activity Limit are contained in the Appendices.

17 A&E SMALL PURCHASE NEGOTIATED PROCUREMENTS

17.1 Applicability

This procedure is only applicable to A&E and related services valued less than \$100,000, subject to the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (Brooks Act) and RCW 39.80 and additional related services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, architectural engineering, engineering, surveying, mapping, or related A&E services.

17.2 Minimum Procurement Lead Time: 5 to 10 days

17.2.1 Special Requirements

- Guidance for Small Purchase procedure not subject to Brooks Act is provided separately in this Procurement Manual. This procedure provides additional instructions and requirements for A&E and other related services under the Small Purchase threshold. The CS and PM shall ensure that the Brooks Act is adhered to, that price is not an evaluation factor, and that the offeror's qualifications are evaluated to select the most qualified firm when procuring A&E services.
- Unless FTA determines otherwise in writing, the Authority may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Even if a contractor has performed services listed herein

in support of a construction, alteration, or repair project involving real property, selection of that contractor to perform similar services not relating to construction may not be made through the use of qualifications-based procurement procedures.

- The PM should establish evaluation criteria and the relative importance assigned to evaluation factors and sub-factors.
- The PM and CS may consider a firm-fixed-price or fixed-price-with-escalation, fixed-price-level-of-effort or time-and-materials (T&M) contract type before or during negotiation when a cost reimbursement type would be inappropriate due to either relatively high administrative costs and/or the lack of an adequate accounting system on the part of a consultant to accumulate costs, but where it is possible to reasonably estimate the level of effort or performance risk is predicted to be minimal. No T&M shall be awarded unless the CS determines and documents that no other contract type is suitable and the Contract specifies a ceiling price that the consultant may not exceed except at its own risk.

17.2.2 Procedure

- The PM submits an approved requisition including a technical Statement of Work (SOW) and an Independent Cost estimate (ICE) to CS. The requisition should identify pertinent 7-digit NAICS-based code and Company name. If an ICE is close to \$100,000 and/or the actual negotiated price will likely exceed \$100,000, the Authority shall not use A&E Small Purchase but a formal A&E Negotiated Process as stipulated in the Procurement Manual, which will require a formal advertisement.
- One of the firms selected to quote should be a DBE or Small Business. In the event a DBE or Small Business cannot be identified to quote, the PM/CS will document efforts made to locate DBE's and Small Businesses.
- The CS and/or PM prepare a request for Qualification. If federally funded, the CS or the PM shall ensure that appropriate FTA terms, conditions, and certifications are attached to the request for Qualification.
- The CS/PM obtains technical qualifications and CS receives and keeps sealed price quotes. CS will determine if the firms are responsible and check WA State and Federal website to determine eligibility for contract award. Only responsive firms will be considered further.
- The PM evaluates and ranks the technical qualifications received. A simple documentation (e.g. rationale for ranking the most qualified firms) is prepared by the PM. The PM may conduct a phone or in-person interview when appropriate to determine the most qualified firm.
- An Evaluation Committee may be formed, consisting of a minimum of 2 members to discuss selection criteria, assign evaluation points and to evaluate qualifications or technical proposals. The Committee reviews all qualifications, rank the firm, and document the evaluation result. The Committee may conduct a phone or in-person interview when appropriate to determine

the most qualified firm.

- The PM informs the CS of the top ranked firm. CS then opens the sealed price quotes or cost proposal of the top ranked proposal. Negotiation of scope and/or cost maybe conducted by the CS or PM. Only after failing to agree on a fair and reasonable price, the CS terminates negotiation and continues price negotiations with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price is deemed fair and reasonable. The CS notifies unsuccessful firms if they are no longer under consideration.

The CS and PM need not negotiate if the prices quote or cost proposal with the top firm is found fair and reasonable. Unopened price quotes or cost proposals shall be returned to the proposers.

- The CS will contact the successful firm to request applicable insurance certificate if applicable.
- The CS prepares a Procurement Summary and obtains authorization to award.
- The CS issues a Purchase Order or Contract that includes delivery/performance end dates to the selected firm and provides the Purchase Order number to the PM.

For FTA funded projects, the CS shall ensure all applicable third party contract clauses are included for all purchase orders or contracts funded by FTA, consistent with the FTA C 4220.1F, Appendix D, “Federally Required and Other Model Clauses” and include all necessary certifications required by FTA.

A Notice to Proceed (NTP) is not issued, but the PO will serve as the Authority’s legal offer. The PO becomes a binding contract when the consultant returns a signed PO, or begins the work as prescribed in the Statement of work.

To ensure compliance with the Brook’s Act, the CS will prepare a Procurement Summary Memo for the Contract/Procurement Files. The CM shall review files to ensure compliance subject to 49 U.S.C. Section 5325(b)(1).

- Upon completion of the consultant services, the PM inspects and accepts the deliverables by approving the invoice for payment and forwards it to Accounts Payable for payment and PO close out. PM shall notify the CS if services are not satisfactory according to the scope of work and/or in the time indicated on the PO.

18 TWO STEP PROCUREMENT

18.1 Purpose:

This procurement method may be used in sealed bid and competitively negotiated procurements for complex goods and services, or for a large design-build project if the cost of construction component exceeds that of the design component and the use of qualification-based Brooks Act procurement procedure is prohibited, consistent with the Authority and FTA requirements. (See FTA Circular 4220.1F for additional guidance.)

18.2 Implementation:

Two-Step procurement involves:

- Step 1 consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The Step 1 determines the acceptability of the supplies or services offered. As used in this context, the word “technical” has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper Step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this Step.
- Step 2 involves the submission of sealed priced bids by those who submitted acceptable technical proposals in Step 1. Bids submitted in Step 2 are evaluated and the awards made.

18.3 Definition:

Two-Step procurement, also called two-Step sealed bidding, is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. It permits the development of a sufficiently descriptive and not unduly restrictive Statement of the Authority’s requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items.

18.4 Minimum Procurement Lead Time: 9 to 24 weeks

18.5 Procedure

- A PM submits an approved requisition, Statement of Work or Scope, and Independent Cost estimate (ICE) to PROCUREMENT AND CONTRACTS DIVISION.
- The PA and PM discuss the needed services. Topics for such discussion may include procurement schedule; inherent risk (for determining insurance requirements); subcontracting opportunities; appropriate evaluation criteria categories for the qualifications submittals and the proposal submittals; scope and schedule; federal or local funds (which will determine if federal requirements must be used); whether a pre-proposal conference is needed.
- The PA drafts Request for Qualifications (RFQ), incorporating FTA terms if applicable, and prepares advertisements. The PA shall include evaluation factors, such as technical capability of the item offered to meet the Authority’s requirement: e.g. past performance; management; key people; and evaluation points or the relative order of importance of the evaluation factors in the solicitation document. The PA routes Approval to Advertise and draft

RFQ to stakeholders for their approval. Evaluation criteria focus on technical qualifications. Advertisements are posted in the Authority web site (www.ati.pr.gov).

- The PA issues RFQ via the Authority web site and mayor Newspaper. All requests for information / questions are routed directly to the PA; written clarification and addendum will be issued by the PA when necessary. The PA will route all clarification and addenda for CMs review and approval.
- The PA receives Qualifications submittals and distributes to Evaluation Committee to review; qualified firms are determined to be in the competitive range at a subsequent evaluation meeting.
- The PA and PM receive and clarify questions relating to technical requirements. Conformity to the technical requirements is resolved in this Step. The PA and PM may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach
- The PA and PM shall establish an evaluation committee to evaluate the responses to the RFQ based on the factors, weighting, and process identified in the solicitation document. Based on the evaluation committee's findings, the Authority shall select the competitive range of responsive and responsible finalists to submit proposals. The Authority may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers. The PA shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall State the basis for the determination and that a proposal revision will not be considered.
- The PA may proceed directly with Step 2 if there are sufficient acceptable proposals to ensure adequate price competition under Step 2, and if further time, effort, and delay to make additional proposals acceptable and thereby increase competition would not be in the Authority's interest. If this is not the case, the PA shall requester bidders whose proposals may be made acceptable to submit additional clarifying or supplementing information. The PA shall identify the nature of the deficiencies in the proposal or the nature of the additional information required. The PA may also arrange discussions for this purpose. No proposal shall be discussed with any offeror other than the submitter.
- The PA notifies qualified firms selected for the competitive range and issues the request for Proposals (RFP) to those firms via the Authority's email system or by letter also published in the DTOP of PR web site. PA shall include price and price-related evaluation factors and/or the relative order of importance of the evaluation factors. All requests for information / questions are routed directly to the PA. Written clarification and addendum will be issued by the PA with the CMs review and approval.
- The PA shall notify offerors promptly in writing when their proposals are excluded from the Step 2. The notice shall State the basis for the determination and that a proposal revision will not be considered.

- If applicable, the PA obtains certificate of insurance from Consultant.
- The PM or PA must seek appropriate award and financial approvals prior to issuing Agreement to Consultant. Upon approval, the PA sends Agreement to Consultant for signature.
- When signed Agreement is returned, the PA routes Approval to Execute to the Director, Legal Counsel, and then to the Authority Staff with appropriate delegated authority to sign.
- Upon contract execution, the PA confirms with PM the date work is to begin. The PA issues the Notice to Proceed and sends it to Consultant along with the Agreement. The PA is also responsible for internal distribution of Contract and related documents.
- The PA issues the PO and provides the PO number to the Consultant and PM.

19 EMERGENCY PROCUREMENT

19.1 Policy:

The Chief Executive Officer is authorized to make a finding of the existence of emergency and execute contracts or purchases necessary to respond to the existing emergency, provided that the Chief Executive Officer shall, at the firms Board meeting following the Chief Executive Officer's finding of the existence of an emergency, request Board ratification of the finding of emergency and any purchases or contracts awarded and/or executed pursuant to that finding if the cost thereof exceeds \$50,000.

The Chief Executive Officer or designee shall keep the Board informed of the development of the emergency situation and the progress of any contracts or purchases executed to remedy the emergency.

- The Authority shall perform minimal work necessary to remove the emergency.
- Although competitive bidding may be waived for declared emergencies or public exigencies, the Authority will request quotations for the necessary supplies or services from available, known, reliable sources.
- All emergency procurements are considered “sole source procurement” and as such, all sole source justifications shall be reviewed by the Director or CM for concurrence.

19.2 References

- FTA “Circular 4220.1F (Third Party Contracting Guidelines) and revisions”

19.3 Definition

- FTA Circular 4220.1.F: “The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.”



- Responsible Manager is referred to “PM” within this Guide and means the person responsible for initiating, coordinating, and managing the emergency work as defined herein.
- [Procurement Activity LiPRITAs](#) (PAL): provides systematic instructions including required solicitation provisions and contract terms and conditions to all procurement process.

19.4 Approval Authority:

Sole Source justification must be reviewed and concurred by the Director, Procurement and Contracts Division or designee prior to obtaining approval.

All Emergency Actions	Approval Authority
Sole Sources up to \$250,000	Executive Director
Sole Sources greater than \$250,000	Board Of Director

19.5 Procedure

- When an emergency arises, the PM, in consultation with the PA shall contact contractor(s) and enter into a preliminary emergency contract agreement” by issuing a “Limited Notice to Proceed (LNTTP)”. In the event of extreme emergency, this must occur within two (2) business days after commencement of work.
- The PA shall ensure that each LNTTP contains the following additional conditions:
- A short summary of emergency work to be performed including duration, quoted rates, place of performance, delivery requirements, and the name of Responsible Manager.
- A date for submission of the contractor's price proposal, required cost or pricing data, and, if required, make-or-buy and subcontracting plans
- A target date for negotiation and finalization of contract, which shall be the earliest practicable date for expenditure limitation and notification; and payment provision (i.e. progress payment)
- The maximum liability to the Authority that is not to exceed 50% of the estimated cost of the definitive contract unless waived by appropriate Approval Authority.
- If required, customary construction provisions as required by the Authority and/or FTA (i.e. Buy America, prevailing wage , bonding requirements, payment schedule, insurance, DBE goal) to protect the Authority’s interests.
- The PA and PM will pay special attention to the contractor’s compliance with the contract

schedule and document any anticipated delays.

- The PA and PM will monitor the contractor’s expenditures and percentage of completion and assure that the limitations established by the letter contract are not exceeded.
- ***Within 7 calendar days*** after the issuance of a Notice to Proceed or letter contract, or after commencement of public work, the PA shall publish the contract description and contract value.
- After award of a letter contract, a written finding of the existence of an emergency (i.e. Sole Source justification) must be “duly entered of record”: meaning, a Board Resolution or the Authority’s Approval must be secured ***no later than 14 days after*** the issuance of an emergency contract.
- The Contractor may need to comply with federal regulations and certification requirements including additional, applicable FTA requirements that must be met (i.e. prevailing wage and bond requirements, payment schedule, insurance, the DBE goal)
- If the work qualifies for public works or construction, the PA shall ensure that the contract/LNTP contains appropriate clauses (i.e. prevailing wages, performance and payment bonds, retainage, diversity, insurance, change order.)
- The PM shall provide the specifications or Statement of work and Independent Cost estimate (ICE) for the supply or service being procured to the PA.
- The PA shall request cost or pricing data from the Contractor. The PA should allow adequate time for the contractor to prepare its proposal prior to submission.
- PM and PA will review the proposal with the Authority Staff to prepare for negotiations with the Contractor and negotiate the final terms and conditions of the contract including the final cost.
- As required by FTA Circular 4220.1F, a cost analysis shall be performed for emergency works if funded by FTA.

20 DESIGN-BUILD PROCUREMENT

20.1 FTA Requirement:

The design-build project delivery method provides design and construction under a single contract. In general, it may have an advantage over the traditional two-contract design-bid-build method. For FTA funded projects, the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU) expressly authorizes design-build projects after the recipient complies with 49 U.S.C. Section 5325(d)(2). See FTA Circular 4220.1F. Page VI-14 for more information. The method of procurement is determined by evaluating the following;

- a. If construction is determined predominant, sealed bids or competitive negotiations procurement methods shall apply.
- b. If design is found predominant, the Brooks Act and the procedure outlined in the A&E Procurement in this Rules and regulations shall be followed.
- c. The decision to use Design Build project delivery method should be made after documenting facts that support a finding that the construction under the Design-Build method is likely to result in substantial cost savings, higher quality, reduced errors, or other benefits to the Authority.

20.2 The Authority’s Requirement:

Based on the Authority’s regulations it may utilize the design-build procedure for public works projects in which the total project cost is over \$10 million and where:

- a. The design and construction activities, technologies, or schedule to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology; or
- b. The project design is repetitive in nature and is an incidental part of the installation or construction; or
- c. Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

20.3 Procedure:

The Authority may use any procurement methods discussed in this Manual (i.e. Sealed Bid, 2 Step Procurement, Contract by Negotiation, A&E Procurement) for Design Build contracts.

21 SOLE SOURCE

21.1 Purpose:

The purpose of this procedure is to provide direction on sole source procurements, which includes proprietary procurements. As a rule, the Authority will provide for full and open competition when soliciting bids or proposals. Only under certain limited circumstances, the Authority may conduct procurements without providing for full and open competition.

21.2 Minimum Procurement Lead Time: 9 to 12 weeks

21.3 Procedure:

Purchase requisitions for goods and services valued at \$3,000 with federal funds or valued at \$4,999 without federal funds or more shall be competitively procured. Sole Source procurements may only be used when the award of a competitive contract is unfeasible under

Small Purchase, Sealed Bidding or Competitive Negotiation procedures. The Sole Source Justification Form (Appendix Y) must be completed by the user and signed by the Executive Director.

Circumstances that may lead to a sole source action are:

21.3.1 Unique Capability or Availability.

The property or services are available from one source if one of the conditions described below is present:

- Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the Authority only from one source and has not in the past been available to the Authority from another source.
- Patent or data rights restrictions preclude competition.
- In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the Authority’s needs.
- Single Bid or Proposal. Upon receiving a single bid or proposal in response to a solicitation, the PA along with the PM should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- PA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the Authority’s control. Many unrelated factors beyond the Authority’s control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, the Authority’s competition requirements will be fulfilled, and the procurement will qualify as a valid sole source.
- PA acknowledges competition to be inadequate when, caused by conditions within the Authority’s control. For example, if the specifications used were within the Authority’s control and those specifications were unduly restrictive, competition will be inadequate.
- The Authority may limit the number of sources from which it solicits bids or proposals when the Authority has such an unusual and urgent need for the property or services that the Authority would be seriously injured unless it were permitted to limit the solicitation.

The Authority may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.

- 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 Authority must certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

The Authority allows use of proprietary procurements where only local operating funds are applied. Proprietary procurements may only be used when the award of a competitive contract is infeasible under Micro Purchase, Small Purchase, Sealed Bidding, or Competitive Negotiation procedures. FTA does not permit proprietary procurements unless it meets the sole source justification criteria stipulated in FTA Circular 4220.1.F.

If spare parts, replacement parts and maintenance contracts for existing equipment and systems where only proprietary items/ services are compatible with existing equipment and systems and where such items and services can be acquired only from the manufacturer or from a single distributor or licensee and all other alternatives are exhausted, they may be acquired, ordered or paid in the best interests of the Authority by the CEO within budget appropriations or other Board authorizations.

- The Common Grant Rules provide Federal agencies authority to permit a recipient to use noncompetitive proposals. Under this authority, FTA has made the following determinations:
- With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a consortium, joint venture, team, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects the Authority to use competition, as feasible, to select other participants in the project.
- The following actions constitute sole source procurements:
 - If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
 - Exercising an option after the Authority has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example. In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third party contract Standards for sole source awards.
 - Contract time extensions shall be considered in light of whether they are permissible changes

or impermissible cardinal changes. Once the Authority awards a third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

- When the Authority requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the Authority has made a sole source award that must be justified.
- Less than full and open competition is not justified based on:
 - The Authority’s lack of advance planning, or
 - Limited Availability of Federal Assistance.
- When less than full and open competition is available to the Authority:
 - The Authority should solicit offers from as many potential sources as is practicable under the circumstances.
 - If the Authority decides to solicit an offer from only one source, PA must justify its decision adequately.
 - Contracts for sole source procurements up to \$250,000 may be awarded by the Executive Director. Contracts for sole source procurements exceeding \$250,000 shall be approved by the Board. The resolution approving the contract shall also indicate the reasons for the sole source procurement.
 - The PA shall prepare or obtain a cost analysis verifying that the proposed costs and profits are fair and reasonable.
 - The PA will submit the proposed procurement to FTA for pre-award review if FTA so requests.

22 BLANKET AGREEMENTS (Indefinite Delivery, Indefinite Quantity Type Contracts)

22.1 Purpose:

Blanket agreements may be awarded on the basis of qualifications and prices, if applicable, and for specified periods of time but without specific descriptions, Statements, or scopes-of-work. Under blanket agreements and contracts, the Authority may issue task orders for materials, equipment, supplies, or services.

22.2 Minimum Procurement Lead Time:

Initial Blanket Agreement: 9 to 12 weeks; Task/Delivery Order Issuance: 3 days

22.3 Procedure:

A procurement for a blanket agreement shall include technical, price (except for A&E), or both technical and price considerations prior to award of the blanket agreement, which will be for a defined “not to exceed” dollar value. Procurements that result in blanket agreements shall be in accordance with all applicable laws and grant requirements.

Issuance of task orders shall be made upon submission of a quote by the vendor based upon rates established in the blanket agreement, and acceptance of the quote by the Authority. The quote may be a “not to exceed” estimate, where the vendor is compensated only for time and materials expended in producing the task order deliverables, or a firm fixed price.

In the event of a roster of blanket agreement awardees for a specific type of work, a documented selection process will be conducted by the Authority Staff to determine which vendor will be assigned the task order.

If there is no technical or price competition or the quote is not based upon rates established in the blanket agreement, the task order shall be deemed “Sole Source” procurement and the requirements applicable to sole source procurements shall be complied with before issuing the task order.

User departments shall issue a blanket order release in E1 for each work order or purchase made at the time the order is placed. The blanket order release number shall be provided to the vendor and included on their invoice.

23 PIGGYBACKING

23.1 Purpose:

Establish agreements and contracts by taking advantage of existing contracts awarded by other governmental entities for goods and services that the Authority currently needs.

Piggybacking is defined by the FTA Circular 4220.1.F as: “Piggybacking” is an assignment of existing contract rights to purchase supplies, equipment, or services.

23.2 Minimum Procurement Lead Time:

9 to 12 weeks

23.3 Procedure:

There are a number of issues that should be addressed before deciding to piggyback on another agency’s contract. Following are some of the important Steps a PA must follow. The Piggybacking Worksheet (Appendix Z) should be completed by the CS.

- For FTA assisted projects, the PA shall obtain a copy of the entire contract and review it carefully to determine if it contains the provisions required by FTA Circular 4220.1F. This is an important first step, because the requirements of the Circular apply to procurements made through inter-governmental contracts and assignments. If a required Federal clause is not included in the contract, the PA may add them to the Authority's contract.
- Confirm that the original contract contains an express assignability clause that provides for the assignment of all or part of the specified deliverables. FTA's policy is that the original solicitation must contain an express notification to all bidders that an assignment would be possible under the terms of the contract. Such a notification would put the bidders on notice that they would likely be called upon to deliver all of the deliverable items, both the base as well as the option quantities. The assignment clause would thus be an important factor in the original competitive bidding. If the contract does not contain an express assignability clause, piggybacking is not permitted. In addition, the Authority must have on file an inter-local cooperative agreement permitting the two agencies to piggyback on each other's contracts and include the required FTA clauses.
- Determine that the contract is still in effect.
- Determine that the specifications in the existing contract will meet the Authority's needs.
- Review the contract terms and conditions carefully to determine that they are acceptable to the Authority; e.g., warranty provisions, insurance requirements, etc.
- Determine that the requirements of the Authority will not be beyond the scope of the existing contract, creating a sole-source (noncompetitive) add-on to the contract, which will have to be justified in accordance with sole source procedures.
- Verify that piggybacking quantities were included in the original solicitation.
- For federally funded procurements and if the contract is an indefinite quantity contract, verify that the original solicitation and resultant contract contain both a minimum and a maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation.
- If the piggybacking action represents the exercise of an option provision in the contract, verify that the option is still valid. Options that have expired may not be exercised.
- Determine that the contract was awarded competitively, either through sealed bids or through competitive proposals. If the contract was a sole-source award, the PA will have to justify a sole-source award in accordance with sole-source procedures.
- Verify that a cost or price analysis was performed by the original procuring agency documenting the reasonableness of the contract price and include a copy in our files. The PA is not required to do a second price analysis if one was originally performed. However, the PA must determine that the contract prices originally established are still fair and reasonable.

Circumstances should dictate the Steps to be taken. For example, if the original award was made some time ago, the PA should conduct a market survey and/or perform price analysis to ensure that the prices are still fair and reasonable (even if the original award was competitive and a price analysis was performed initially). Similarly, if deliveries are to be made to a local or centralized delivery point and the original contract calls for Statewide deliveries, the PA should seek a price reduction. The PA should conduct a market analysis to justify prices or be used for establishing a negotiation position.

- If the contract is for federally funded rolling stock, verify that the contract term complies with the five-year term limit established by FTA Circular 4220.1F.
- Determine the types of changes the Authority will require to be made to the deliverables.
- For an assignment, only "within scope" (non-cardinal) changes are allowed (e.g., seating fabrics and colors, paint schemes, signage, floor coloring, etc.). The PA should use The Change Order Checklist (Appendix AA) to determine whether the change is within scope, and to ensure the appropriate documentation is completed.

24 CONTRACTING OPPORTUNITIES FOR THE AUTHORITY

24.1 Purpose

To describe the Authority’s Business and Contracting Opportunities Website, located at www.ati.pr.gov. The Procurement and Contracts utilizes an internet website managed by the Authority Systems for posting of solicitation information, including documents available for downloading by vendors.

24.2 Procedure

The Bid system is used by Procurement and Contracts Division to:

- Generate a new Contract/Procurement Number.
- Document essential procurement information, such as:
 - Status (Active, Canceled, Future).
 - Type (Bid, Emergency, Proposal, Qualifications, Quote, Small Works, Sole Source).
 - Issue and Closing Dates.
 - Events, such as pre-bid conferences.
 - Business Classifications, using the NAICS Codes (see www.census.gov/eos/www/naics/ to search the codes).
 - Bid Amounts and awarded vendor.

- Post documents for viewing, downloading and printing.
- Provide vendors an electronic mechanism for requesting document or asking questions.
- List firms that have downloaded the document, i.e., the Bidders List.
- Generate notifications to vendors.
- Prospective vendors should register on the Authority’s system to receive e-mail or fax notifications of the availability of solicitations and any resulting changes. The Authority system is used by the vendor community to:
 - Register as a vendor, with contact information, business classifications that pertain to their business, and Diversity data such as Small Business or DBE certification.
 - Respond to solicitations, such as downloading solicitation documents, requesting document orders for pick-up or delivery, and asking questions.
 - View the Bidders List on a solicitation to identify partnering or subcontracting opportunities.
 - View Award information on past procurements.

25 Contract Administration

Contract administration is the art and science of managing the performance of the contractor in all aspects of the contract to ensure successful contract fulfillment. Contract administration begins with the award of a contract or issuance of Notice to Proceed and ends with contract closeout, and includes all technical and administrative tasks that ensure proper performance of responsibilities by the Contractor and the Authority itself.

Factors determining the level, scope and intensity of contract administration activities will depend on the type and nature of contracts, the experience of the Authority project and contract Staff, and compliance requirements. Simple to moderate contracts will require relatively little contract administration efforts while most construction contracts or professional contracts, or cost reimbursement-based or specialized contracts such as incentives or design-build will require extensive contract administration involvement.

The Authority is subject to review and audit by FTA, and the Office of the Comptroller of Puerto Rico or its agents during and after contract performance and is required to comply with the Standards mandated by the FTA when using Federal assistance to finance its procurements. The Authority is also subject to several provisions governing its authorizing legislation, procurement of public works and architectural and engineering services, Disadvantaged Business Enterprise and Small Business requirements, identification of subcontractors, and tax Statues regarding sales and use taxes, business and occupation taxes, and real property taxes.

This Rules and regulations primarily implements the requirements of FTA Circular 4220.1.F and State laws in the interpretation of a contract. The contract administration principles, concepts

and approaches discussed in the Rules and regulations shall be utilized for all contracts at the Authority if such procedures will achieve savings in cost, or accelerate schedule, or meet the Authority’s goals, or meet public needs, consistent with applicable PR laws and regulations and the FTA Master Agreement.

26 SCOPE

This Rules and regulations provides a general procedural framework for contract administration to comply with the terms, conditions, and specifications of contracts and applicable Federal, State and local requirements.

Departments and Divisions may issue their own procedures and forms to supplement this Rules and regulations in collaboration with the Procurement and Contracts Division. Together, these form the agency-wide Contract Administration System at the Authority. For construction contracts, the Authority has developed detailed manuals, policies, and procedures to enable strong and full contract administration.

27 ROLES AND RESPONSIBILITIES

The goal of contract administration is to receive ordered contract deliverables in an economic, efficient, effective, timely, and compliant manner. Successful contract completion requires skilled professionals, cross-functional team support, collaboration, transparency, and timely decision making. As such, the contract administration functions are shared responsibility of all project owners/project managers and supporting organizations.

Project Owner/Project Manager (PM): – A PM is the technical, subject matter expert with daily contract performance oversight. The project management or technical oversight (e.g., daily field inspection, monthly or quarterly assessment and monitoring of project Status used to determine and validate project performance) is the responsibility of the Project Owner or PM.

Project Control (PC): – PC plays a critical role in supporting the project operation during procurement and contract administration. The post-award tasks include all project control functions (i.e. budgeting, estimating, forecasting, and scheduling, change order management and approval coordination, configuration management, and documentation control). The PC assists PM in coordinating or fulfilling contract administration functions, reporting of work progress, performing review and acceptance of schedule updates and preparing, reviewing, or directing the development of ICE, reviewing and processing invoices, reviewing or performing cost/price analysis, and reviewing and processing change orders and progress payments for all professional, consultants, and construction contracts.

Contract specialist (CS): - The Procurement and Contracts Division leads procurement and supports all requesting organizations, project owners, or project managers with post-award contract administration activities as necessary. A CS provides broad range of procurement planning, solicitation, source selection, negotiation, contract administration services. Collaborating with the Project Owners, Project Controls, consultants, and functional organizations, the CS ensures timely and compliant resolution of contract administration issues

and implements solutions for efficient, effective contract administration.

To ensure successful completion of a contract, the CS is available to properly interpret and appropriately apply the contract clauses as well as concurrently review change orders, recognize and analyze project and contract related problems, conduct contract or legal research, analyze claim proposals, summarize results, and make appropriate recommendations cradle to grave.

Immediately after full execution and award of the contract, the technical administration of the contract becomes the responsibility of the PM with the CS responsible for all contractual matters. The CS and the PM shall establish the methods and procedures to be utilized in the performance of the contract.

Prior to the contract completion date; the CS shall contact the PM to confirm that no contractor effort will be required after the specified contract completion date and that the contract may be closed out. This action shall be initiated depending on complexity of work, at least sixty to one hundred days prior to the contract completion date. This is necessary to determine whether there will be an overrun; to negotiate and extend the period of performance, if necessary; and, to allow sufficient procurement lead-time if there is a follow-on effort. If the contract is to be completed on schedule, the CS shall proceed with contract closure; otherwise, appropriate action shall be taken to extend the contract.

Construction Management Consultant or Resident Engineer (RE) - Construction projects require on-site engineering supervision by a resident engineer/program manager. At the same time, it is not feasible to have a CS at each construction site. An RE Team typically consists of a RE, office engineer, administrative assistant, document control specialist, inspectors, and a contract change specialist or project control specialist. The RE team performs nearly all of the construction management responsibilities and is the Authority authorized on-site field representative for all assigned work. The team monitors and maintains control of the progress of the work and all aspects of the contract through Monthly Progress Payment Meetings, Monthly Progress Reports, Contract Progress meetings, Quality Meetings, Schedule Meetings, claims, and disputes.

The Authority Construction Manual and Resident Engineer Manual provide detailed instructions for administering and managing construction contracts. The REs role includes responsibilities to liaison with Contractor and PM to ensure effective contract administration.

The following are other organizational functions involved in contract administration with a short description of typical contract administration responsibilities:

Diversity: – is responsible for establishing, reviewing, approving and monitoring Small Business and DBE Programs and administering the application of Title VI.

Legal: – is responsible for creation or review and approval of Standard contract terms and conditions for solicitation and award documents, representing the Authority in dispute and litigation cases.

Environmental Compliance: – is responsible for ensuring that the Authority’s environmental

commitments are addressed in solicitation documents and that the contractor complies with applicable environmental permitting requirements.

Risk Management: – is responsible for review and approval of contract terms and conditions relating to insurance and liability protection.

Budget: – is responsible for assuring that all procurements are coded to the appropriate accounts and that adequate budget authorization is allocated and available for the procurement.

Accounting: – is responsible for reviewing invoices and making payments. Accounting also reviews solicitation documents and provides guidance to Procurement Owners and Contract specialists on any financial issues related to accounting treatment of transactions and on how specific contract terms will affect a contract’s ultimate treatment, and sets up appropriate approval routes in Enterprise One, based on current organization charts and authority levels.

Real Estate: – provides input on real estate procurement issues and their potential impact on other related procurements to procurement owners and Contract specialists

Permits Team: – provides guidance on permit requirements and their impact on other related procurements.

Change Control Board (CCB): – Some departments form a CCB. The CCBs ensure proper cross-functional review of change orders.

Board Administration: – provides guidance to Procurement Owners related to procurement presentation to the Board of Directors. A contract change order that exceeds the sum of the “original contract amount” and the “original contract contingency” may require Board approval depending on change order amounts.

28 Contract Administration System

The following documents and resources form the basis of the Authority’s Procurement and Contract Administration System.

1. The Common Grant Rules
2. FTA Master Agreement
3. FTA Circular 4220.1F
4. The Authority’s Regulations

References for Best Practices:

1. FTA’s Best Practices Procurement Manual (BPPM)
2. FTA Project and Construction Management guidelines 2003 update
3. Federal Acquisition Regulation Part 31- Federal Cost Principles and Procedures
4. Federal Acquisition Regulation Part 42 – Contract Administration
5. Federal Acquisition Regulation Part 43 – Contract Modifications
6. The National Transit institute Course, “Cost or Price Analysis and Risk Assessment”

7. FTA’s Price and Cost Analysis guide located at “[Pricing Guide for FTA Grantees](#)”.

29 CONTRACT ADMINISTRATION TERMS

The following terms apply during performance of contract administration activities:

Allocable Cost: A cost is allocable if it is assignable or chargeable to one or more elements of work or final cost objectives (accounts, contracts, etc.) according to the relative benefits received from those objectives.

Allowable Cost: Cost which is reasonable, allocable, and in consonance with 48 CFR Chapter 1 Part 3 or otherwise conforms to accepted accounting principles, specific limitations, or exclusions set forth or agreed to between contracting parties.

Acceptance: A written Notice of Acceptance issued by the Authority constitutes acceptance of a designated portion of the Work.

Administrative Change: A unilateral contract change, in writing, that does not affect the substantive rights of the parties (e.g., changes of address for submittals of documents, reports).

Affidavit: A written declaration that is a formally and legally binding pledge made before an authorized individual.

Bilateral Change: A bilateral modification, also known as a “supplemental agreement”, is a Contract modification that is signed by both the Contractor and the Authority indicating acceptance of the modifications Stated therein. Bilateral modifications are used to: (a) provide equitable adjustments resulting from the issuance of a change order and (b) reflect other agreements of the contracting parties modifying the terms of the Contract.

Change Notice (CN): A document transmitted by the Authority (e.g., a Resident Engineer) to the Contractor initiating the change process. A CN may be either a Change Notice - request for Proposal (CN- RFP) or Change Notice - Work Directive (CN-WD).

Change Notice - request for Proposal (CN-RFP): A CN-RFP describes the scope of work and directs the Contractor to submit a cost and schedule proposal to perform the scope of work. A CN-RFP does not authorize a Contractor to perform the changed work or payment to the Contractor for performance of any portion of the scope of work.

Change Notice - Work Directive (CN-WD): A CN-WD is used in force account or field order situations to direct the Contractor to perform work on a Not-to-Exceed (NTE) cost basis with a request for a proposal to follow when the scope of the change is fully defined.

Change Clause: A contract clause, which permits the Authority to make unilateral changes, within the general scope of the contract along with such equitable adjustments in price and delivery schedule as necessary.

Construction Schedule: The schedule prepared by the Contractor and accepted by the Authority.

Claims: The schedule prepared by the Contractor and submitted to the Authority.

Contract Modification A written change order issued to contractors.

Contract Price: The amount payable to the Contractor under the terms and conditions of the Contract and identified in the Contract, as adjusted by a Change Order.

Construction Phase: Once the grantee enters into a Full Funding Grant Agreement (FFGA) with FTA (a multiyear funding commitment between FTA and the grantee), the Construction phase begins. At this time, the grantee will typically select a general contractor, specialty construction, and related subcontractors, and begin vehicle and system procurement. The scope and duration of these contracts will be based on the size of the project and on whether the grantee selects a more innovative approach to project construction, such as design. Once the construction and related acquisition activities are complete, the project moves beyond the **Start-Up** process into Operations and Maintenance. It is at this point that the project begins service and, assuming all FFGA funding is complete, the project progresses from the **Start-Up** program.

Constructive Change: A change resulting from the written or oral conduct of the grantee's officials or a change in the scope of work required by circumstances that lacks the formality of a directed change order, which has the effect of requiring the Contractor to perform additional work. When this action occur, the PM/RE shall have it reviewed by CS before an official determination can be made by the appropriate approval authority and proper directions given in writing under the Change clause.

Deductive Change: A change resulting in a reduction in the Contract Price because of a net reduction in the Contractor's Work.

Department: The highest organizational unit of the Authority.

Division: An organizational sub-unit within departments.

Escrow: A retained percentage of money held by a third party and only released after contract or procurement conditions have been met.

Final Design: Following Preliminary Design, this phase requires the grantee to address any remaining uncertainties in the construction cost estimate that were specified at the end of preliminary engineering. During this phase, grantees and their contractors prepare detailed specifications and bid documents, and address all remaining financial, technical, and regulatory issues necessary to begin construction. It is during Final Design that the most detailed designs, and resulting cost estimates, are established.

Force Account: The Authority’s own labor forces and equipment in performing project work. FTA third party contracting guidance does not apply to a recipient’s use of its own forces to perform project work.

Liens: A claim created by law for the purposes of securing payment for work performed or materials furnished.

Preliminary Engineering: During this phase, project development work shifts to creating design that is more detailed and engineering work. During this period, it is possible that the environmental work required to complete the Environmental Impact Statement and related activities, if not performed by the grantee, will continue under the same contract as established during Alternatives Analysis.

Punch List: A list or listed of items to be furnished and/or Work to be performed.

Release of Claim: Contractor affidavit that all claims have been resolved and settled.

Request for Change (RFC): A formal request by a Contractor that may or may not result in a Change Order.

Schedule of Values: Contractors’ submittal of Values representing the value of each activity performed by Contractor for payment.

The Authority PM: The Authority Project Manager responsible for administering and managing Small Works construction contract.

Time Extensions: Consistent with the general tone of the FTA Circular 4220 in effect, contract time extensions will be considered in light of whether they are permissible changes or impermissible cardinal changes.

Unilateral Change: A contract modification signed by an authorized representative of the Authority. The changes clauses in the contract must allow unilateral direction by the Authority.

30 CONTRACT ADMINISTRATION QUALIFICATION

The Authority’s employees or consultants performing any aspect of procurement or contract administration duties must demonstrate requisite skills, knowledge, and ability of having satisfactorily performed procurement and contract administration duties.

In addition, Staff assuming complex contract administration functions is expected to properly interpret and apply the contract clauses as well as recognize and analyze project and contract related problems, conduct research, summarize results, and make appropriate recommendations. If the consultants or outside contractors are performing the contract administration work, Project Owners shall take appropriate Steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor’s judgment or would result in unfair competitive advantage.

31 CONTRACT ADMINISTRATION TASKS

Post-award contract administration is a significant part of the procurement process, as shown in the sample contract administration activities below. As such, only the disciplined, compliant, and integrated team approach will ensure that the Authority makes the best use of the public funds entrusted to it.

Each contract will likely require different contract administration actions, collaboration and documentation activities. Simple to moderate goods and services contracts will have different specific administrative actions than construction contracts do just as lump sum contracts are managed differently than incentive or time and material or cost-reimbursement contracts.

32 STANDARDS OF CONDUCT

The Common Grant Rules require the Authority to maintain written Standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

As provided in the Common Grant Rules and the Federal Transit Administration Master Agreement, no Authority 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 have a financial or other interest in the firm selected for award.

The Puerto Rico Government Ethics Act of 2011.(1-2012) establishes a code of ethics for board members, officers, and employees; the Authority's officers, employees, agents or board members shall neither solicit nor accept gifts, entertainments, gratuities, favors, or anything of monetary value from contractors, consultants, potential contractors or consultants, or parties to sub-agreements. Information about conflict of interest, giving or accepting entertainment, gifts, favors or gratuities, political activity and other matters relating to ethical conduct are contained in the aforementioned Act.

33 CHANGE ORDER ADMINISTRATION

The Authority may execute bilateral or unilateral change orders to its contracts. Change Order administration requires that the CS make an in-scope determination for the desired change work. Later a cost or price analysis must be performed to ensure that the price for the changed work is equitable, fair and reasonable. The methodology and depth of analysis is influenced by the facts surrounding the particular procurement situation. The CS should use the Change Order Review Checklist Form (Appendix AA).

The following procedures will be applicable to administering and managing change management

and activities related to change orders, change notice, progress payment, and approval:

33.1 Independent Cost Estimate

The Independent Cost estimate (ICE) is a price or cost estimate developed by the PM, based on the project requirements (i.e., Statement of work or other specifications or change order condition), without the influence of potential contractors' efforts (e.g., marketing), prior to receiving contractor proposals.

FTA Circular 4220 requires a cost or price analysis for every procurement action, including change orders. The starting point for the analysis is an independent cost estimate. Prior to receiving a change proposal, the Authority shall independently estimate the cost of performing the work. The ICE can be used as a basis of comparison for evaluating the proposed price received. A "change order" means any contract action that calls for the negotiation of a cost or price proposal arising out of a change in the contract requirements.

33.2 Change Order Don'ts

The Authority shall ensure that **none of the following conditions** are present when preparing, processing, reviewing, or approving change orders:

1. Change order work is outside the original work scope; this requirement is met through sole source justification that results in a new contract.
2. An ICE is prepared after receipt of a change proposal or based on recommendation of the affected contractor.
3. A cost analysis is performed without detailed or sufficient cost elements.
4. A profit or fee is not analyzed commensurate with work complexity, performance/contractual risk, contractor's investment, amount of subcontracting, past performance data, or market place rates.
5. Fully loaded rates or NTE contract prices are not broken down into requisite cost elements (i.e., labor, overhead, G&A, material, equipment, profit or fee) when cost analysis is required.
6. Negotiations with contractors are not documented (*if negotiation is not necessary, the file should be documented to the analysis that led to that conclusion.)
7. If a lump sum price is compared, a price analysis is based on contract prices that were obsolete or established non-competitively without appropriate cost analysis.
8. A change order is approved for an option that cannot be exercised unilaterally.
9. A proper option evaluation (e.g. price/cost analysis) was not performed and documented

during the pre-award Stage. *The need to perform a pre-award cost/price analysis should not be circumvented through the use of post-award sole source justification.

10. No documentation is available to determine that the option price is better than prices available in the market, or that when the Authority intends to exercise the option, the option is not advantageous.

33.3 Change Order Cost/Price Analysis

The Common Grant Rules require a cost/price analysis in connection with all change orders. The method and degree of cost/price analysis depends on the facts and circumstances surrounding each contract action. If the original contract contains only a lump sum price, additional cost and pricing data must be requested to perform a cost/price analysis.

CS or PM shall perform a cost analysis when a contractor is requested to submit detailed cost elements (that is, labor hours, overhead, materials, and so forth) of the change order cost. Changes in scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.

A CS is responsible for performing cost/price analysis for all change orders. A PM/RE/RE Team is responsible for performing cost/price analysis for post-award construction contract change orders only.

1. The following references provide guidance in preparing cost or price analysis:
2. FTA’s “Best Practices Procurement Manual,” Chapter 5
3. Pricing Guide for FTA Grantees www.fta.dot.gov/documents/Helpline_Price_Guide.doc
4. FAR Part 31, Contract Cost Principles and Procedures

33.4 Termination Cost Analysis

If a contract of any type (fixed-price or cost-reimbursement) is contemplated for termination of convenience or for cause, a complete cost analysis must be performed to negotiate the final amount of the termination settlement. Terminating a contract means unilaterally, or not, ending it before its stated end.

Contracts can be terminated for the convenience of The Authority or for cause (also called default). Contracts are usually terminated for convenience when the Authority no longer has a need for the service or products as they are specified in the contract, or when it is not possible to substantiate that the contractor's performance is poor enough to terminate for cause. Contracts should be terminated for cause when the contractor fails to perform the contract as written.

33.5 Exercising Option

If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award. Exercising an option after the Authority has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates.

FTA expects the Authority to ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as Stated in the original contract at the time it was awarded. The Authority may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.

The Authority need not evaluate bids or offers for any option quantities when it determines that offer evaluation or exercise of option would not be in its best interests.

33.6 Invoice and Payment

The Contract specifies the payment terms. The contractor must submit and the Authority must process applications for progress payment in accordance with the requirements and General and Special Conditions of the contract.

The Finance Division Department has several stages of involvement in third party contracts and at various stages of post contract award action. A major responsibility in third party contracts is to ensure timely payments. While CS and Project personnel are responsible for recommending and approving payments, Finance Division is responsible for receiving invoices, issuing checks, and validating funds availability.

For contracts not serviced by Construction Management Consultants, invoices are first received in Finance Division. Finance Division routes these invoices to the CS or PM for review. In construction and other areas, Finance Division may not be receiving the invoices initially, in which case it must rely on Project Control or RE Team to log such invoices into a data system to ensure proper controls. Once an approved invoice is received by Finance Division, it will release payment if all documentation is in order. CS is responsible for identifying any retentions and withholdings. Finance Division provides oversight to such retentions and withholding to ensure payment accuracy. At contract closeout, Finance Division is responsible for the final check processing.

Invoice Review for CPFF or T&M Contracts: When reviewing invoices under a cost-plus-fixed-fee contract (CPFF), a time-and-materials (T&M) contract or any hybrid contract containing incentive or award fee, CS shall examine and validate all allocable and allowable costs incurred by the prime contractor, including amounts spent for supplies and services on purchase orders or subcontracts pursuant to the contract terms and conditions and the cost principles stipulated in FAR Part 31 and accordingly reject or disallow un-allocable or unallowable cost elements. This requirement equally applies to the invoices directly reviewed or approved by a RE or RE team or PM.

33.7 Advanced Payment

Advance payments are payments made to a contractor before the contractor incurs contract costs. The following principles and restrictions apply to all advanced payment situations at the Authority:

Use of Puerto Rico or FTA Assistance Prohibited: The Authority shall not use Puerto Rico or FTA assistance to make payments to a contractor before the contractor has incurred the costs for which the payments would be attributable.

Adequate Security for Advance Payments: FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.

Customary Advance Payments: The FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the Authority may use FTA assistance to support or reimburse the costs of such acquisitions. The FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000. In summary, advance payments are allowed if there are sound business reasons justifying the advance payment and adequate security for the payment.

33.8 Progress Payment

Progress payments are payments for contract work that has not been completed. The Authority may use FTA assistance to support progress payments provided that the Authority obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

Adequate Security for Progress Payments: Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the Authority's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances.

Adequate Documentation: Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

Percentage of Completion Method: The Common Grant Rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. The Authority, however, may not make progress payments for other than construction contracts based on this percentage method.

33.9 Record Retention

The record retention requirement of three years shall commence only after the final audit and final payment is made and all other issues are resolved. It does not necessarily start with completion of the contract work or contract closeout.

This requirement does not distinguish between fixed-price contracts and cost-type contracts. There would not be a final audit for fixed-price contracts and thus the three-year retention period will generally start upon contract closeout. A cost-type contract will be audited before being closed.

33.10 Contract Documentation

The Procurement and Contracts Division, in collaboration with all responsible parties, shall ensure that the history of all pre-award, post-award actions, and related project, operation, legal, and financial information are documented, collected, reviewed for compliance, maintained, distributed, archived and readily accessible to internal and external audits including the Puerto Rico General Budget Office, Puerto Rico Comptroller Office, the Authority's Audit Office and the FTA.

The Authority's personnel and consultants involved in and performing contract administration tasks shall prepare, maintain, and keep adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation and contract administration including

- Procurement documentation will include rationale for the method of procurement for each contract, including a sole source justification for any acquisition that does not qualify as competitive, as well as any change order deemed cardinal by the Procurement and Contracts Division.
- Contract type documentation will state the reasons for selecting the contract type used (i.e., fixed price, cost reimbursement, time and material);
- Contractor selection will include reasons for contractor selection or rejection, as well as a written responsibility determination for the successful contractor;
- Cost or Price Analysis: All procurement and change orders will evaluate and State its justification for the contract cost or price by including an ICE and cost or price analysis.
- Change Order: All change order information including essential documents, will be collected from the program/project organization, functional departments, and construction management contractors, and maintained in Live-link, and other project related information will be kept in the internal databases, readily available to internal audit and FTA. Change Orders documentation will include in-scope determination as well as a cost or price analysis to establish that the price is fair and reasonable.
- All Post-award Activities: partnering, inspection report, claims, disputes, invoice processing, and reports and forms.

- As determined by the Procurement and Contracts Division, the level of documentation will be commensurate with the size and complexity of the procurement.
- Access to Records: Apart from the more limited record access provisions of the Common Grant Rules, 49 U.S.C. Section 5325(g) provides FTA and the Authority’s officials, the Office of the Controller of PR, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

33.11 Disputes, Claims, Litigation, and Settlement

The Authority will resolve all contractual and administrative issues including protests, disputes, and claims using good administrative practices and sound business judgment. FTA may be involved in the Authority’s administrative decisions when the Authority uses federal funds to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation. For detailed FTA guidance, see FTA C 4220.1F, Page VII-1 through V-10. If any part, provision or chapter of this Rules and regulations is declared illegal or unconstitutional, the remainder shall remain in full force and effect in all aspects.

33.12 File Documentation Checklist

The PA and CS should use a standard Contract/Purchase Order File Index to create procurement files, and to ensure that all required procurement steps and documentation are completed. (See Appendix BB: Contract / Purchase Order File Index (For RFP Only) and Appendix CC: Contract / Purchase Order File Index (For Sealed Bids Only) as a reference.)

34 Appendix

A.	Appendix: Procurement Decision Matrix	90
B.	Appendix : Procurement Summary Memorandum	91
C.	Appendix : Option Analysis Form	92
D.	Appendix : Liquidated Damages Checklist.....	93
E.	Appendix : Cost Analysis Form	94
F.	Appendix : Price Analysis Template.....	98
G.	Appendix : Fair and Reasonable Price Determination	99
H.	Appendix : Conflict of Interest Disclosure Statement.....	100
I.	Appendix : Independent Cost Estimate.....	101
J.	Appendix : Small Purchase Process	102
K.	Appendix : Price / Rate Quotation Form	104
L.	Appendix : Responsibility Determination Form.....	105
M.	Appendix : IFB / Sealed Bid Flow Chart.....	106
N.	Appendix : Specification Template	107
O.	Appendix : SOW Template.....	111
P.	Appendix : Contract Clause Matrix.....	115
Q.	Appendix : Bid Opening Form.....	117
R.	Appendix : Responsiveness Checklist.....	118
S.	Appendix : Single Bid Analysis.....	119
T.	Appendix : Award Recommendation & Justification Form.....	120
U.	Appendix : RFP Process Flow Chart	121
V.	Appendix : Sample Evaluation Form.....	122
W.	Appendix : Memorandum of Negotiations.....	124
X.	Appendix: Contract Clause Matrix.....	126
Y.	Appendix : Sole Source Justification Form.....	128
Z.	Appendix : Piggybacking Worksheet	129
AA.	Appendix : Change Order Review Checklist.....	130
BB.	Appendix : Contract / Purchase Order File Index (For RFP Only).....	131
CC.	Appendix : Contract / Purchase Order File Index (For Sealed Bids Only).....	134



A. Appendix: Procurement Decision Matrix

Method of Procurement

Micro-purchase	
Amount < \$3,000	<input type="checkbox"/>
Multiple Sources	<input type="checkbox"/>

Small Purchase	
Amount < \$100,000	<input type="checkbox"/>
Complete and Adequate Specification or Description	<input type="checkbox"/>
Two or more quotes available	<input type="checkbox"/>

Sole Source	
Approved by FTA	<input type="checkbox"/>
OEM, Custom Item OR	<input type="checkbox"/>
Only One Source OR	<input type="checkbox"/>
Competition Inadequate after Solicitation OR	<input type="checkbox"/>
Emergency/Public Exigency	<input type="checkbox"/>

Selection of Contract Type

Type of Contract	
Fixed price	<input type="checkbox"/>
Firm fixed unit prices	<input type="checkbox"/>
Cost plus fixed fee	<input type="checkbox"/>
Time and materials (T&M)	<input type="checkbox"/>
Blanket purchase order	<input type="checkbox"/>
Indefinite Delivery Indefinite Quantity (IDIQ)	<input type="checkbox"/>

Competitive Procurement	
Amount > \$3,000	<input type="checkbox"/>
Multiple Sources	<input type="checkbox"/>
Not an Emergency	<input type="checkbox"/>

Sealed Bid (IFBs) > \$100,000	
Complete and Adequate Specification or Description	<input type="checkbox"/>
Two or more responsible bidders willing to compete	<input type="checkbox"/>
Selection can be made on the basis of price alone	<input type="checkbox"/>
Firm Fixed Price Contract is used	<input type="checkbox"/>
No discussion with bidders required after receipt of bids	<input type="checkbox"/>

Competitive Proposals (RFPs) > \$100,000	
Complete Specifications Not Feasible	<input type="checkbox"/>
Bidder Input Needed	<input type="checkbox"/>
Two or more responsible bidders willing to compete	<input type="checkbox"/>
Discussion needed with bidders after proposals	<input type="checkbox"/>
Fixed price can be set after discussions -- OR --	<input type="checkbox"/>
a cost reimbursement contract is determined	<input type="checkbox"/>

Justification for T&M Type Contract (if selected)	
	<hr/>



B. Appendix : Procurement Summary Memorandum

PROCUREMENT MEMORANDUM

Date: _____ Completed by: _____

PO / Contract No. _____ Source of Funding: _____

Method of Procurement

Micro Purchase: _____ Competitive RFP: _____ Competitive Bid: _____

Small Purchase: _____ A&E Services: _____ Sole Source: _____

Justification if Non-Competitive:

Reason for the Procurement

Contract Type:

Rationale for contract type:

Reason for selection/rejection:

Lowest responsive, responsible bidder: (IFBs)

Evaluation results were (RFPs):

Basis for Contract Price:

Accepted contractor's proposed pricing:

Negotiated Price (attached memorandum)

Other:

Cost / Price Analysis:

The price offered by the supplier was within ____% of the independent estimate, and variance between the offerors constituted a range of _____. The competitive range was determined to be from \$_____

Pricing discrepancies between the offers was attributed to _____

Other sources/data used to affirm price reasonableness were _____

Summary of Responsibility and Responsiveness Checks

Award

Date of contract award: _____

Board Approval (Attach Meeting Minutes): _____

Change Orders: Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.



C. Appendix : Option Analysis Form

I hereby determine the pricing of the option to be exercised is still advantageous based on:

1-Previous purchase adjusted for inflation

Date of last purchase:
Price paid:
Inflation rate:
Adjusted price:
Percent difference between past purchase price and option price:

Explanation / Notes:

2-Internet search of pricing for same product or service:

Date of search:
Price found:
Different features / Conditions:
Percent difference between internet price and option price:

Explanation / Notes:

3-Previous purchase from another Agency (phone):

Date contacted:
Housing Authority / Contact name:
Date of last purchase:
Price paid:
Inflation rate:
Adjusted price:
Percent difference between past purchase price and option price:

Explanation / Notes:

Purchasing Agent

Date



D. Appendix : Liquidated Damages Checklist

PROJECT NO. _____ **CONTRACT TITLE:** _____

ESTIMATED CONTRACT VALUE:

General _____ Mechanical _____ Electrical _____ Other _____

ITEM	Project Manager's Determination		If Applicable, Dollar Amount
	Applicable	Non-Applicable	
1. Costs reflecting the relative importance of completion of this contract to the completion of other directly associated activities, e.g., if a \$10 million dollar substation is being procured and requires construction of a building, the cost of delays upon the completion of the building on the substation procurement should be considered.			
2. Rental costs for each day of facilities and equipment necessitated by the delays in contract completion.			
3. Cost(s) for additional maintenance required on equipment or structures being replaced for each day of delay in completion of the project.			
4. Additional operating costs for each day of delay in completion, including but not limited to cashier, operator and supervisory costs resulting from contract completion delays. Costs of route detours or substitution of one transit mode for another shall be considered.			
5. Loss of revenue to operations for each day due to delay in contract completion.			
6. Any other damages for each day of delay in completion which the Authority may anticipate; e.g., is there a high potential for delay of one prime contract with resulting costs to the Authority for the other prime contracts.			
7. Estimated costs of inspection.			
8. Actual damages (Project Manager to indicate whether actual types of damages should be excluded from the calculations).			

PROJECT MANAGER: _____

Name (please print)

Signature



E. Appendix : Cost Analysis Form

	PAGE OF PGS
COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts) (See Instructions below)	
SOLICITATION #	SUPPLIES AND/OR SERVICES TO BE FURNISHED
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE	
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE

DETAIL DESCRIPTION OF COST ELEMENTS				
1. DIRECT MATERIAL	Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
A. PURCHASED PARTS				
B. SUBCONTRACTED ITEMS				
C. OTHER - (1) RAW MATERIAL				
(2) STANDARD COMMERCIAL ITEMS				
TOTAL DIRECT MATERIAL				
2. MATERIAL OVERHEAD (RATE % x \$ BASE *)				

3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
TOTAL DIRECT LABOR						

4. LABOR OVERHEAD			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
OH Rate						
X BASE (labor total above)						
TOTAL LABOR OVERHEAD						



5. OTHER DIRECT COSTS	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
A. SPECIAL TOOLING/EQUIPMENT				
TOTAL SPECIAL TOOLING/EQUIPMENT				
B. TRAVEL				
(1) TRANSPORTATION				
(2) PER DIEM OR SUBSISTENCE				
TOTAL TRAVEL				
C. INDIVIDUAL CONSULTANT SERVICES				
TOTAL INDIVIDUAL CONSULTANT SERVICES				
D. OTHER				
TOTAL OTHER				
E. SUBTOTAL DIRECT COST AND OVERHEAD				

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. SUBTOTAL ESTIMATED COST				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. SUBTOTAL ESTIMATED COST				
11. FEE OR PROFIT				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

35 ANALYSIS GUIDELINES

35.1 DIRECT MATERIAL

- A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).
- B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors
- C. Other:
 - (1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.
 - (2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

35.2 MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

35.3 DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

35.4 LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

35.5 OTHER DIRECT COSTS

- D. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.
- E. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.
- F. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.
- G. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

35.6 GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

35.7 ROYALTIES

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licenser; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

35.8 SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

35.9 CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

35.10 SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

35.11 FEE OR PROFIT

Review the total of all proposed Fees or Profit. The Authority prohibits cost plus percentage of cost contracting.

35.12 TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

35.13 DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.





F. Appendix : Price Analysis Template

PO / Contract: _____

The evidence compiled by a price analysis includes:

Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.

- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst’s conclusions are valid.

DATE: _____

PREPARED BY: _____

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

- Comparison with competing suppliers’ prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)
- Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)
- Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).
- Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other



G. Appendix : Fair and Reasonable Price Determination

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more:

- Found reasonable on recent purchase.
- Obtained from current price list.
- Obtained from current catalog.
- Commercial market sales price from advertisements.
- Similar in related industry.
- Personal knowledge of item procured.
- Regulated rate (utility).
- Other.

Comments:

- Copy of purchase order, quotes, catalog page, price list, etc. is attached.

Purchasing Agent

Date



H. Appendix : Conflict of Interest Disclosure Statement

GRANTEE: _____

DISCLOSURE STATEMENT

The U.S. Department of Transportation Federal Transit Administration Master Agreement, Section 3a(1) prohibits the Recipient’s employees, officers, board members or agents from participating in the selection, award, or administration of a third party contract or subagreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award:

- (a) an employee, officer, board member, or agent;
- (b) any member of his or her immediate family;
- (c) his or her partner;
- (d) an organization that employs, or intends to employ, any of the above.

It is the responsibility of the officers and employees of _____ (GRANTEE) upon acquiring interests which conflict or might appear to conflict with the interests of the Federal Transit Administration and/or GRANTEE, to bring them forth immediately for resolution.

I, the undersigned GRANTEE employee acknowledge receipt, understanding and acceptance of the GRANTEE Code of Conduct and certify that 1) I have not solicited or received any kickbacks or gratuities, and 2) I have no financial interest in any supplier with whom the Authority does business. If any real or perceived conflict should arise in the discharge of my duties, I will report such conflict immediately to the General Manager or Chairperson of the Board of Trustees in writing.

<i>Name (please print)</i>	<i>Signature</i>
<i>Title</i>	<i>Date</i>

This statement will be renewed on an annual basis.



I. Appendix : Independent Cost Estimate

Contract Type: _____ Date of Estimate: _____

Description of Goods / Service: _____

Method of Obtaining the Estimate:

- I have obtained the following estimate from....
- Published Price List / Past pricing (date) _____
- Engineering or technical estimate
- Independent Third Party estimate
- Other (specify) _____

Cost Estimate Details:

Through the method stated above it has been determined that the total cost of the goods/services is expected to be: \$_____. Details are shown below.

A: Cost of Standard Items

Product	Cost (\$/ea)		Notes / Data Source
	Delivered	No Freight	

B: Cost of Services, Repairs, or Non-Standard Items

Item / Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated overhead	SG&A	Profit	Total

The preceding cost estimate was prepared by:

_____ Signature _____ Date

For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.

J. Appendix : Small Purchase Process

SMALL PURCHASE OPTIONS

1. Buy off PR GSA or GSA Contract

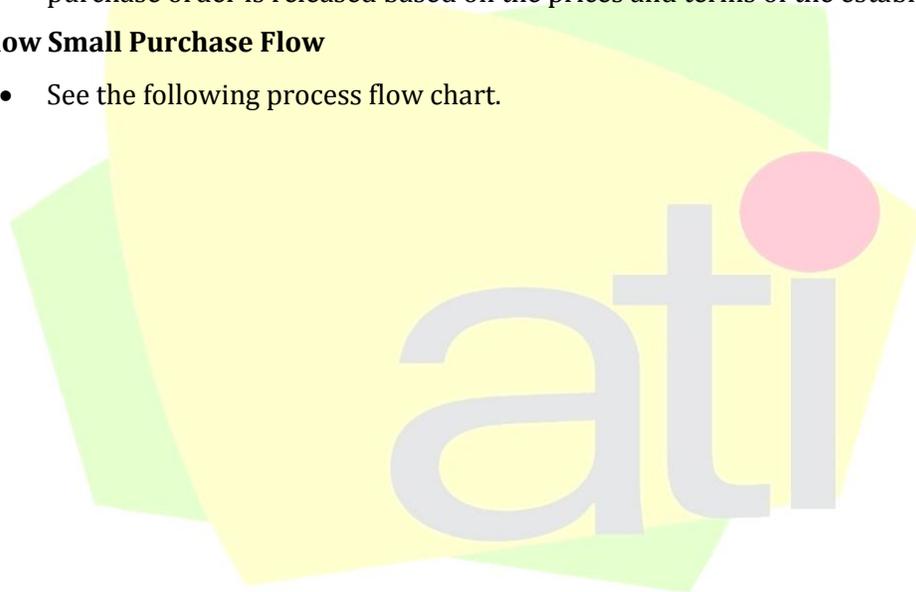
- Check assignability clause
- Ensure FTA Terms and Conditions are included
- Ensure minimum and maximum are included
- Perform a market analysis that price is fair and reasonable

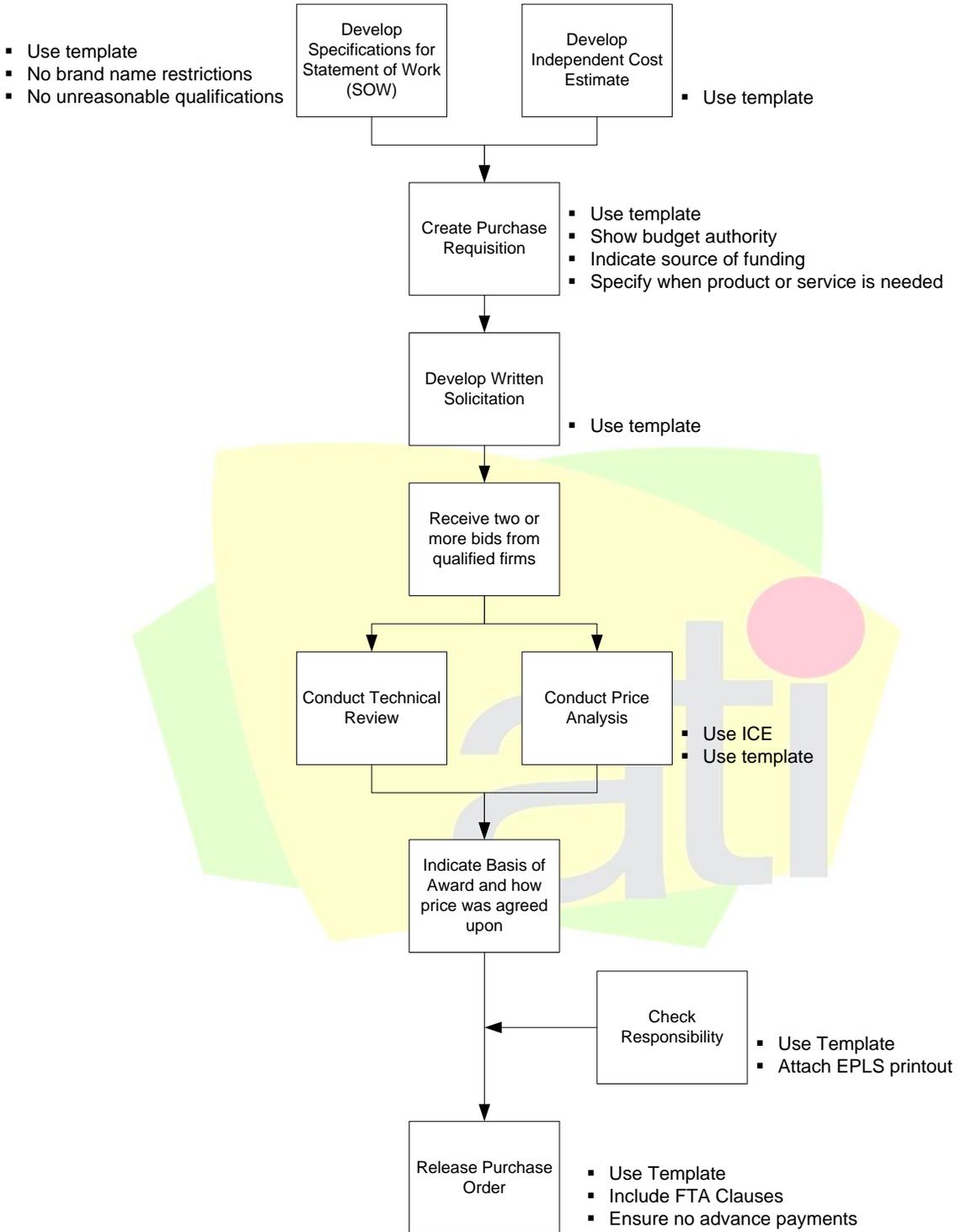
2. Create the Authority / MTA Blanket Order / IDIQ Contract

- Develop annual forecast of volumes
- Follow small purchase or sealed bid/RFP process
- Once contract is established, user group creates purchase requisition and the purchase order is released based on the prices and terms of the established contract

3. Follow Small Purchase Flow

- See the following process flow chart.

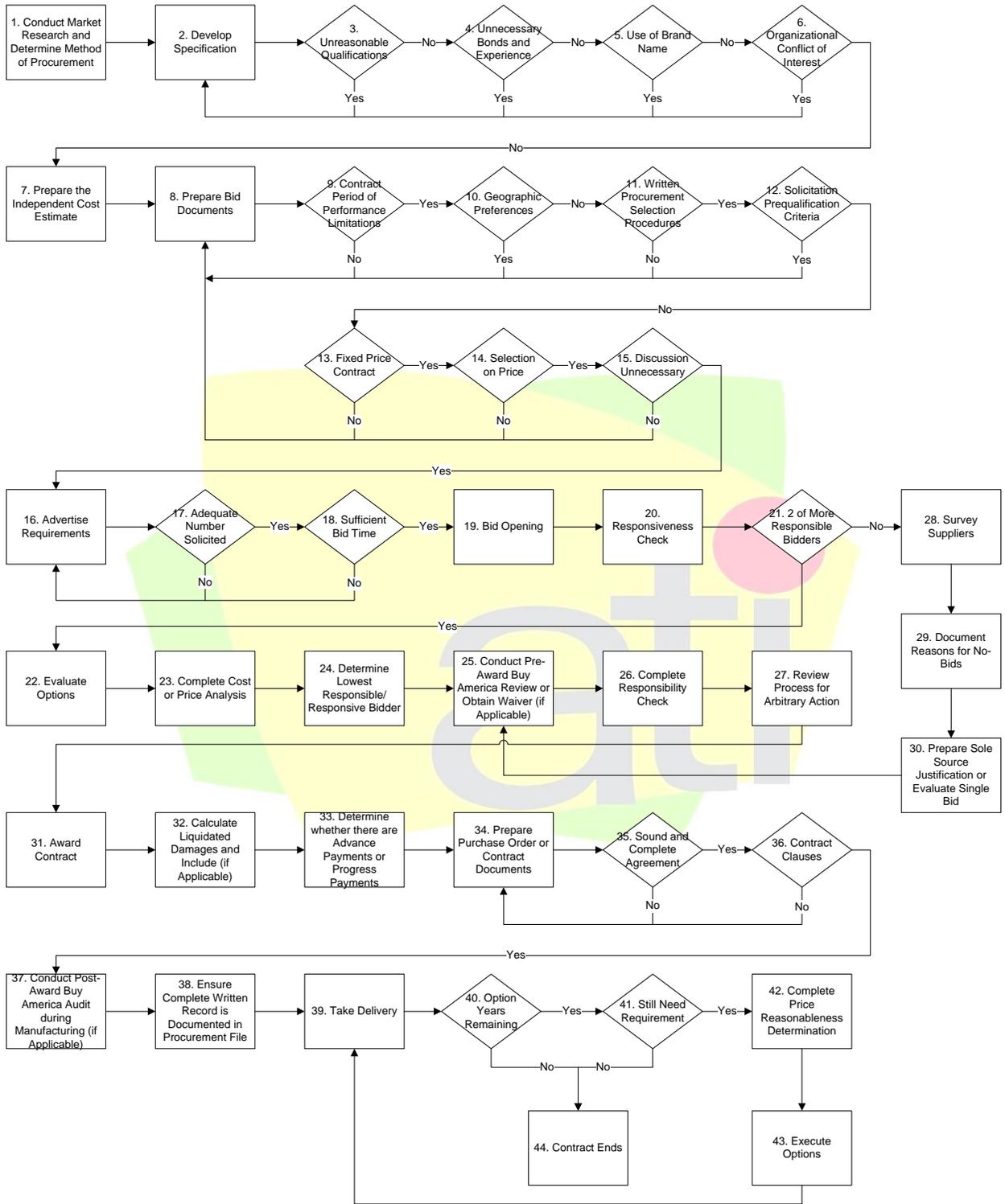




L. Appendix : Responsibility Determination Form

Bid/RFP No:		
Supplier:		
Date:		
<p>For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.</p>		
	Evaluated or Reviewed as part of Technical Evaluation	Comment/Documentation
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	Can review standard ratios on submitted financial reports or ask for D&B report
2. Ability to meet the delivery schedule	<input type="checkbox"/> Yes <input type="checkbox"/> No	Conduct an analysis of the offeror's technical approach
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	Tied to reference check; can also use D&B Past Performance Evaluation service/product
4. Satisfactory record of integrity, not on declined or suspended listings	<input type="checkbox"/> Yes <input type="checkbox"/> No	Attach the results from checking the Excluded Parties website at www.epls.gov
5. Ability to get bonding and insurance	<input type="checkbox"/> Yes <input type="checkbox"/> No	Evaluate insurance certificate and assurances from Bonding company_____

M. Appendix : IFB / Sealed Bid Flow Chart





N. Appendix : Specification Template

Date: _____
Revision Number: _____
User: _____
Item or Service: _____

Specifications are typically written using several categories. Design Specifications would utilize most of the categories while Performance Specifications would use only a few. Specific use is noted below.

Section 1. Common Nomenclature:

These are definitions of the acronyms, technical jargon, or industry/market terms used.

Section 2. Types of Materials to Be Used:

For products, these are listings of the type, grade, and substitutes allowed.

Section 3. Electrical Data:

These are specific requirements for electronic connectivity, response times, ampages, and the like.

[Redacted content]

Section 4. Dimensions, Size, or Capacity:

These are the overall dimensions of the product, or performance capacity or capability of the product. Normally, product drawings are included as an attachment, particularly in the case of specially designed products.

[Redacted content]

Section 5. Principal of Operation:

These are specific requirements that detail how the products must be operated, such as start-up commissioning or physical maneuvering that may reference industry standards.

[Redacted content]

Section 6. Restrictive Environmental Conditions:

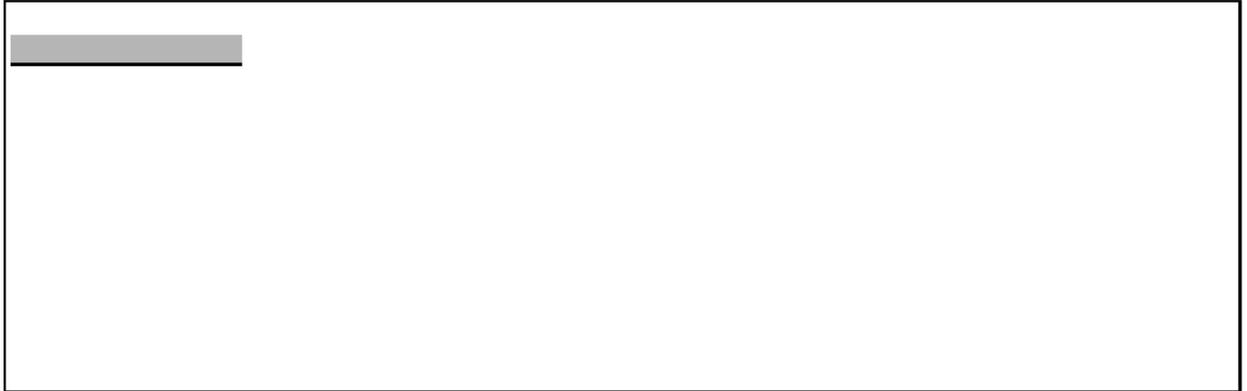
These are typically specifications on temperature operating range or ability of the product to operate in extreme weather conditions, and may describe the physical location of a product as part of an overall system.

Section 7. Intended Use:

These are descriptions as to the product's location as part of an assembly or system, and the essential operating conditions of the product such as up time, speed, and cleanliness.

Section 8: Integration:

This area contains detail about how the product will be integrated, installed, and operated in relation to other products in the system.



Section 9: Other Pertinent Information:

This is the miscellaneous area of every specification that may include:

- Paint
- Marking
- Manufacturing Methodology
- Service Methodology
- Test Requirements
- Approval Requirements
- Customer Directed Parts to be Used





O. Appendix : SOW Template

Statement of Work Title: [Type text]	
1.0 Project Background	
Describe the need for the goods or services, the current environment, and the Authority’s key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought.	
Short statement of the problem to be resolved Expected project duration The Authority organizational units and/or key individuals involved in managing the project Alternative solutions or implementation strategies evaluated	
a) The Authority requires these products and/or services due to: b) The Authority is attempting to complete a project on <input type="text"/> and requires supplier/contractor assistance in the: c) The completion of this work will help the Authority:	
2.0 Scope	
Include a high-level view of the procurement, its objectives, size and projected outcomes.	
Describe the extent of what the work entails.	
This procurement is limited to the purview of:	
To support the location(s) of: <u>[Type text]</u>	
The supplier / contractor will provide such products and / or services to achieve the following outcomes (state quantitative or measureable outcomes):	
1) [Type text]	
2) [Type text]	
3) [Type text]	
Only work within this scope can be performed under an eventual contract.	
2.1 Results	



<p>Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.</p>
<p>2.2 Anticipated Benefits</p> <p>Describe what the organization will gain through completion of this project.</p>
<p>2.3 Business Processes Impacted</p> <p>Review major changes in the way work will be conducted once the project is complete (if any).</p>
<p>2.4 Customers / End Users Impacted</p> <p>Identify the specific individuals or groups whose work will be most affected during and after the project's execution.</p>
<p>3.0 Applicable Documents</p> <p>List legal, regulatory, policy, security, and similar relevant documents. Include publication number, title, version, date and where the document can be obtained. If only certain portions of documents apply, state this. Indicate the definition of terms, if needed.</p> <p>List any publications, manuals, and regulations that the supplier / contractor must abide by:</p> <p>a) [Type text]</p> <p>b) [Type text]</p> <p>c) [Type text]</p> <p>Definitions and Acronyms:</p>
<p>4.0 Summary of Requirements</p>



These are the key tasks expected of the supplier / contractor according to the Schedule and the Statement of Work.

List the key technical and functional requirements for the project. Highlight up to 20 requirements that you consider to be essential to the ultimate success of the project. Include the expected outputs / outcomes and performance standards.

Write tasks to be performed in a logical and sequential arrangement of work to the extent possible. Describe the tasks in terms of outcomes expected, such as response time, cleanliness level, equipment up-time and functionality. Use “work” words, such as:

1) Review...

2) Analyze...

3) Repair...

4) Install...

5) Construct...

All tasks should have quantifiable or observable results.

5.0 Schedule and Deliverables

List all outputs / outcomes and submittals with specific due dates or time frames. Include type, quantity and delivery point (s). Include the acceptance criteria for each.

Milestone or Major Project Deliverable	Planned Completion Date

6.0 Quality Assurance Plan

Explain what the Authority’s quality expectations are, how (and how often) deliverables or services will be monitored and evaluated, and the process to follow when the outputs / outcomes are below performance standards.

The following levels of quality are to be judged acceptable under this contract:

a) All milestones or services will be achieved and all reports will be submitted on time in accordance with Section 5.0 of this SOW.

b) All milestones, services, products or reports will meet the outcomes noted in Section 4.0 of this SOW.

c) Supplier / Contractor work will be monitored by the Authority’s project and Contract Management Staff.

d) Specific quality requirements for this contract are as follows:

- 1) On time policy = [Type text]
- 2) Acceptable quality = [Type text]
- 3) Responsiveness = [Type text]
- 4) Service Level = [Type text]



P. Appendix : Contract Clause Matrix

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>\$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	>\$ 25,000	>\$ 25,000	>\$ 25,000	>\$ 25,000	> \$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
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			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	



PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
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 Copyright 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	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States



Q. Appendix : Bid Opening Form

PUBLIC BID OPENING:

Date:

Address:

Witnessed by:

Grantee Cost Estimate: \$

Checked by:

Documentation:
Prices:

		DOCUMENTATION REQUIRED												
CONTRACTOR	Proposed Contract Prices	1	2	3	4	5	6	7	8	9	10	11	12	13
		x		x	x	x	x	BOND	x	x	x	x		x
		x		x	x	x	x	BOND	x	x	x	x		x

1. Acknowledgement of addendum 1
2. Commitment of Surety
3. Certification pertaining to ineligible contractors
4. Certification of Dumping Facilities
5. Certification of Examination of Available Subsurface Data
6. Bid signatures including EEO certification
7. Proposal guarantee furnished
8. Affidavit of non-collusion
9. Schedule for participation by DBE Contractors 16%
10. Buy America Certificate
11. Right-to-Know Law Certification
12. Debarment
13. Lobbying



R. Appendix : Responsiveness Checklist

This checklist is to be reviewed at bid opening to ensure that all bids received meet the requirements advertised in the solicitation in terms of information requested and submission of certifications or other additional data.

SOLICITATION No. _____ Opening Date: _____

DESCRIPTION: _____

CONTRACT ADMINISTRATOR: _____

CONTRACTOR / NAME OF BIDDER: _____

SOLICITATION REQUIREMENTS:

REQUIREMENT	YES	NO	COMMENTS
1. Bid received on time, in sealed envelope			
2. All items (A to F) priced clearly in unit measures specified			
3. Drawings submitted for products proposed as 'equal to' specified brand			
4. Bid Security Received (\$___)			
5. Signature of Company Officer to the bid / offer			
6. Lobbying Certification signed and attached			
7. Financial information submitted per Section V:			
8. DBE Documentation included and complete			
9. Insurance documentation included			
10. No exceptions to terms or other solicitation language			
11. Other _____			

Non-responsive bids are to be noted on the bid opening sheet and reviewed with a supervisor.

Non-responsive bids will not be considered for award.



S. Appendix : Single Bid Analysis

Solicitation	Action to Plan
Solicitation:	Award Contract Basis:
Product / Service to be procured:	Extended Deadline (modify solicitation):
Bid or Proposal Due Date:	New Due Date:
Number of Solicitations Requested:	Procure:
Number of Bids Received:	New Solicitation Due to be Completed:
Reasons for Lack of Competition <input type="checkbox"/> Lack competency <input type="checkbox"/> Lack available resources <input type="checkbox"/> Poor timing <input type="checkbox"/> Short response due date <input type="checkbox"/> Other	Projected due Date:

Signed

Title

Date



T. Appendix : Award Recommendation & Justification Form

Department: _____

Procurement Number: _____
(RFP/BID #)

Subject: _____

Report Date: _____ Number Bids / RFP'S Mailed: _____ Number of Bids / RFP'S Received: _____

Recommendation:

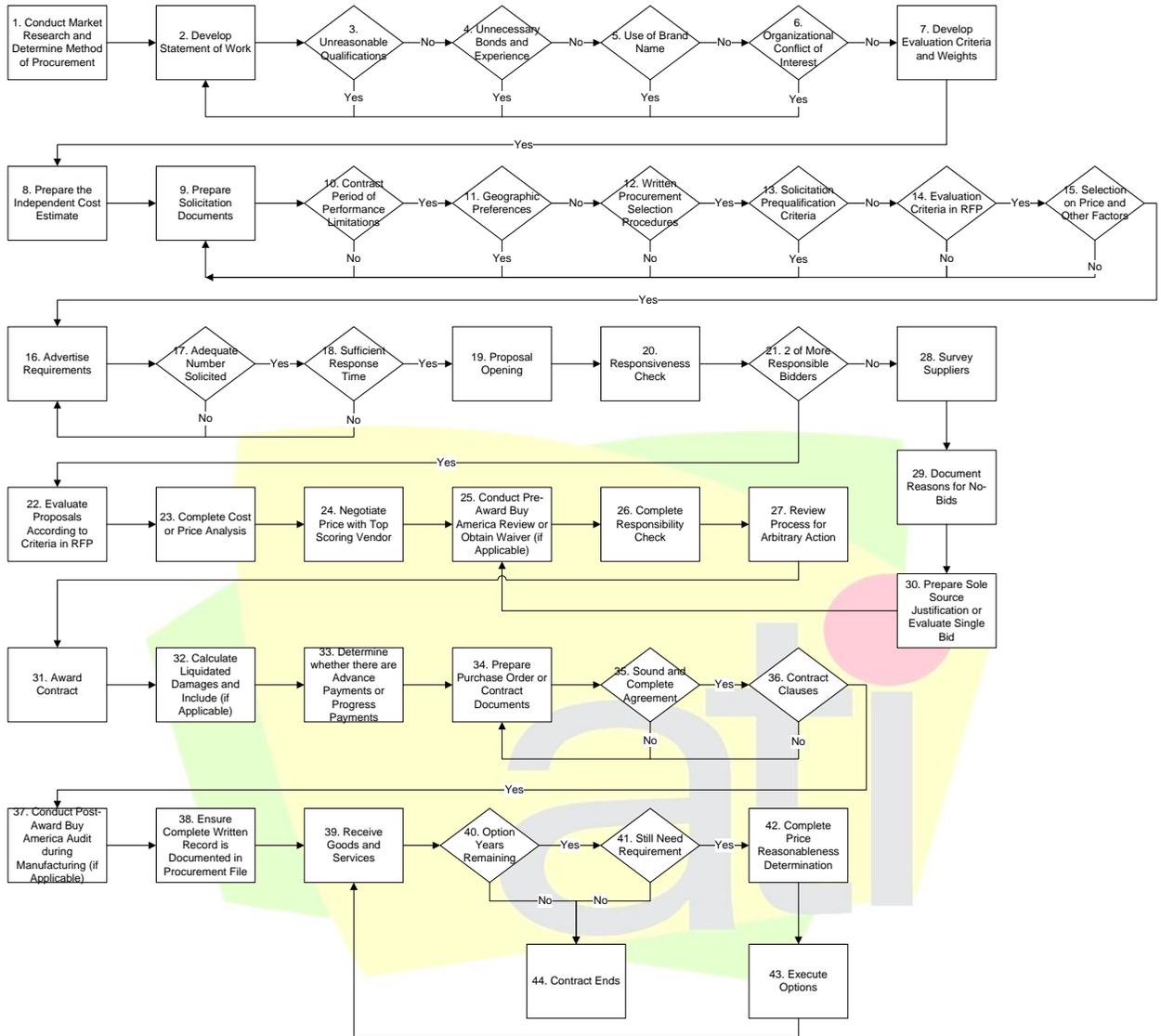
Justification:

Approvals:

PROCURING AGENT

DIRECTOR OF PURCHASING

U. Appendix : RFP Process Flow Chart





V. Appendix : Sample Evaluation Form

PO / Contract: _____

Date: _____ Supplier Name: _____

Solicitation Elements:

Responsibility: (rate 1-5)

Past Performance: _____

1= 0 experience with Metro. 2= 1 yr., 3= 2-5 yrs., 4= 5-10 yrs., 5 = 10+ yrs.

Financial Stability: _____

1= D&B rating of C or worse 2= D&B rating of B, 3= A, 4= AA, 5=AA

Years in Business: _____

1= <2 yrs. in business, 2= 2-5 yrs., 3= 5-10 yrs., 4= >10 yrs. business

Understanding of Requirements: _____

1= no similar work experience, 2= 1 job, 3= 2 jobs, 4= 3-5 jobs, 5=>5 jobs similar to this

Technical Proposal:

Major systems:

1= omissions in proposal 2= minimal compliance to spec. 3= compliant (100%) 4= compliant with add'l ideas 5=

Item 1 _____

Item 2 _____

Item 3 etc. _____

-

Quality Record: _____

1= no record, 2= ISO 9000, 3= ref. record 90%+, 4= Metro record LY >90%, 5= multi-year >95% Metro et al.

Spare Parts Availability : _____

1= not available 2= available for 1 yr., 3= avail. 2-5 yrs. 4= available for 5-10 yrs., 5= available for life of product

Warranty Issues: _____

1= limited 30 day warranty, 2= limited warranty up to 1 yr., 3= limited warranty 2-5 yrs., 4= unlimited warranty 1-3 yrs

5= unlimited warranty >5 yrs. or life of product

Subsystem 1: _____

Subsystem 2 etc. _____

-

Engineering Support: _____

1= limited 1 yr. support, 2= limited support 1 yr. w/more for fee 3= limited support 2-5 yrs., 4= unlimited support 1-3 yrs.

5= unlimited support >5 yrs. or life of product

Page 2.



Pricing: _____

-Divide lowest proposed price by the proposal price being scored. Multiply result by weight

Weighting per Solicitation:

Responsibility - _____ %
Technical- _____ %
Pricing- _____ %

Final Scores:

_____ % x _____ score above = _____
_____ % x _____ score above = _____
_____ % x _____ score above = _____

Total: _____

Comments: _____

Reviewer Name (print) _____

Reviewer Name (sign) _____





W. Appendix : Memorandum of Negotiations

Contract No.:		Date:	
Change Order No.:		Change Order Amount:	
Purpose of Negotiations:			

- In accordance with FAR 15.403-1, Cost or Pricing Data Requirements are not required for this procurement.
- Cost and Price Analysis are included separately in the procurement folder.
- The Procurement Specialist:
 - Relied on the cost or pricing data submitted and used them in negotiating the price;
 - Recognized as inaccurate, incomplete, or non-current any cost or pricing data submitted; the follow-up action taken by the Procurement Specialist and the contractor as a result; and the effect of the defective data on the price negotiated are attached under separate letter; or
 - Determined that an exception applied after the data were submitted and, therefore, considered not to be cost or pricing data.

Summary of the Contractor's Proposal:

Prenegotiation:	
Negotiation:	

Synopsis of the initial negotiations:

NEGOTIATION ITEM	COMMENT	CONTRACTOR'S REBUTTAL	DISPOSITION



**Significant
Facts or
Considerations:**

--

**Agency
Direction and
Influence:**

--

Profit or Fee

Prenegotiation:

--

Negotiation:

--

Summary of Results:

--





X. Appendix: Contract Clause Matrix

FTA CONTRACT CLAUSES						
	Clauses	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
1	Fly America	X	X	X	X	X
2	Buy America			X	X	X
3	Charter Bus & School Bus		X			
4	Cargo Preference			X	X	X
5	Seismic Safety	X (A & E)			X	
6	Energy Conservation	X	X	X	X	X
7	Clean Water	> \$100,000	> \$100,000	> \$100,000	> \$100,000	> \$100,000
8	Bus Testing			X		
9	Pre-Award/Post Audit			X		
10	Lobbying	X	X	X	X	X
11	Access to Records	X	X	X	X	X
12	Federal Changes	X	X	X	X	X
13	Bonding				> \$100,000	
14	Clean Air	> \$100,000	> \$100,000	> \$100,000	> \$100,000	> \$100,000
15	Recycled Products	> \$10,000	> \$10,000	> \$10,000	> \$10,000	> \$10,000
16	Davis-Bacon Act				> \$2,000	
17	Contract Work Hours			> \$100,000	> \$100,000	
18	Copeland Anti-Kickback				> \$2,000	
19	No Government obligation	X	X	X	X	X
20	Program Fraud	X	X	X	X	X
21	Termination	> \$10,000	> \$10,000	> \$10,000	> \$10,000	> \$10,000
22	Government-wide Debarment	> \$25,000	> \$25,000	> \$25,000	> \$25,000	> \$25,000
23	Federal Privacy Act	X	X	X	X	X
24	Civil Rights	X	X	X	X	X
25	Breach of Contract	> \$100,000	> \$100,000	> \$100,000	> \$100,000	> \$100,000
26	Patent Rights	ONLY FOR EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK				
27	Transit Employees Protective Act		X			
28	Disadvantaged Business Act	X	X	X	X	X
29	State and Local Govt Laws/Regulations	X	X	X	X	X
30	Incorporation of FTA Terms	X	X	X	X	X
31	Drug & Alcohol		X			
32	ITS National Architecture	X	X	X	X	X
33	TVM Certifications			X		
34	Metric Requirements		X	X		
35	ADA Compliance	X	X	X	X	X
36	Notice of Federal Participation	> \$500,000		> \$500,000	> \$500,000	> \$500,000



			> \$500,000			
--	--	--	----------------	--	--	--





Y. Appendix : Sole Source Justification Form

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

- The item is available only from a single source (sole source justification is attached).
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
- FTA authorizes noncompetitive negotiations (letter of authorization is attached).
- After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).
- 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 time to be replaced (price certification attached).

Comments:

- Independent Estimate and Cost Analysis are attached.

Purchasing Agent

Senior Manager

Date

Date



Z. Appendix : Piggybacking Worksheet

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

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

1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Does the solicitation and contract contain an express “assignability” clause that provides for the assignment of all or part of the specified deliverables?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Did the Contractor submit the “certifications’ required by Federal regulations? See <u>BPPM</u> Section 4.3.3.2.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Does the contract contain the clauses required by Federal regulations? See <u>BPPM</u> Appendix A1.	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA <u>Circular 4220.1F</u> , Chapter IV, 2 (14) (i).	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. If you will require changes to the vehicles (deliverables), are they “within the scope” of the contract or are they “cardinal changes”? See <u>BPPM</u> Section 9.2.1.	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

AA. Appendix : Change Order Review Checklist

Date _____
 Contract Number _____
 Contractor _____
 Contract Title _____
 Reviewer _____
 New Contract Total _____
 Change Order Number _____
 Dollar Value Increase _____
 Length of Time Extension Granted _____
 New Performance Period End Date _____

Change Order Checklist	Category			Comment
	ND	D	NA	
1. In-house estimate prepared				
2. Project Manager approval				
3. Scope meeting held				
4. Work authorized within contract scope				
5. Scope of work adequate for bidding				
6. Contractor proposal includes impact costs, price				
7. Cost analysis conducted				
8. If price >10% of ICE, rationale provided				
9. Negotiation memorandum				
10. Written record of change documented				
11. Signed modification in file				
12. Evidence of Board Approval prior to initiation of changed work (if required)				
13. Notice to Proceed on file				
14. No evidence of arbitrary action				

Additional comments:

BB. Appendix : Contract / Purchase Order File Index (For RFP Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

Section A - Solicitation Documents		
Tab #	Document(s)	Audit
1	Purchase Request Rationale for Method of Procurement	
2	Specifications / Statement of Work	
3	Justification for Procurement	
4	Cost Estimate	
5	Set Aside Decision / DBE Goal	
6	Contractor Information Form	
7	Justification of Procurement Method	
8	List of Prospective Proposers	
9	Proof of publication	
10	Copy of RFP	
11	Addenda	
12	Pre-Proposal Minutes & List of Attendees	
13	Correspondence with Bidders	
14	Interoffice Correspondence	
15	Review of Responsiveness	

RFP No.	<input type="text"/>	Contract Administrator	<input type="text"/>
Date	<input type="text"/>		

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

Section B – Award Documents		
Tab #	Document(s)	Audit
1	Copy of Each Proposal	
2	Proposal Tabulation Sheet	
3	Evaluation Team Notification	
4	Evaluation Sheet / Matrix	
5	Pre-Award Survey	
6	Determination of Zone of Consideration	
7	Late Proposers	
8	Invitations for Oral Interviews	
9	Notice of Rejection	
10	Minutes of Meetings	
11	Correspondence with Proposers	
12	Cost or Price Analysis	
13	Justification of Contract Type	
14	Negotiation Memorandum	
15	Copy of Each Best & Final Offer	
16	Award Recommendation Memo	
17	Board Resolution	
18	Legal Review of Contract Documents	
19	Notice of Award	
20	Notice to Unsuccessful Bidders	
21	Procurement Summary	
22	Determination and Findings	
23	Bonds & Certificates of Insurance	
24	Contract Document	
25	Notice to Proceed	
26	Purchase Order	

RFP No.	<input type="text"/>	Contract Administrator	<input type="text"/>
Date	<input type="text"/>		



INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

Section C – Contract Administration Documents		
Tab #	Document(s)	Audit
1	Post Award Conference	
2	Quality Assurance Records	
3	Change Notices / Modifications / Change Orders	
4	Periodic Status Reports	
5	Contractor Evaluation Form	
6	Site Visit Reports	
7	Termination / Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payments & Receipts	
10	Advance or Progress Payment Documents	
11	Notice of Substantial Acceptance	
12	Punch List Discrepancies	
13	Notice of Final Acceptance	
14	Notice of Claims	
15	Release of Claims / Bonds	
16	Assignments	
17	Notice of Final Payment	
18	Audit Reports	
19	Liquidated Damages	
20	Close Out Documentation	

RFP No.		Contract Administrator	
Date			



CC. Appendix : Contract / Purchase Order File Index (For Sealed Bids Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

Section A - Solicitation Documents		
Tab #	Document(s)	Audit
1	Purchase Request	
2	Specifications & DBE Goals	
3	Requirement Justification	
4	Independent Cost Estimate	
5	Bidder's List	
6	Contractor Information Form	
7	Justification of Procurement Method	
8	Copy of IFB	
9	Proof of publication	
10	IFB Attachments / Modifications	
11	Pre-Bid Minutes & List of Attendees	
12	Correspondence with Bidders	
13	Protests Prior to Bid Opening	
14	Interoffice Correspondence	
15	Review of Responsiveness	

RFP No.		Contract Administrator	
Date			



INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

Section B – Award Documents		
Tab #	Document(s)	Audit
1	Rationale for Method of Procurement Copy of Each Bid	
2	Late Bid – Bid Errors	
3	Bid Analysis / Tabulation Sheet	
4	Technical Evaluation & Pre-Award Survey	
5	Affirmative Action Evaluation / DBE Plan	
6	Bidder’s Responsibility Determination	
7	Price Analysis	
8	Record of Negotiation for Single Bid	
9	Justification of Contract Type	
10	Award Recommendation Memo	
11	Board Resolution	
12	Notice of Award	
13	Notice to Unsuccessful Bidders (Bond, Check Returns)	
14	FTA Approval	
15	Legal Review of Contract Documents	
16	Contract Document	
17	Bond & Certificate of Insurance	
18	Notice to Proceed	
19	Purchase Order	

RFP No.		Contract Administrator	
Date			



INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

Section C – Contract Administration Documents		
Tab #	Document(s)	Audit
1	Post Award Conference	
2	Status Reports	
3	Change Notices / Modifications / Change Orders	
4	Site Visit Reports	
5	Progress Meeting Minutes	
6	Quality Assurance Records	
7	Termination / Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payments	
10	Notice of Substantial Acceptance	
11	Notice of Claims	
12	Release of Claims / Bonds	
13	Assignments	
14	Notice of Final Payment	
15	Audit Reports	
16	Liquidated Damages	
17	Close Out Documentation	

RFP No.		Contract Administrator	
Date			



36 ADOPTED & VALIDATED BY:

Juan A. Vázquez Acevedo
Chief Financial Officer,
Puerto Rico Integrated Transportation Authority (The Authority)

DATE

37 EFFECTIVENESS AND REPEAL

This Regulation shall enter into force after thirty (30) days from its registration in the Department of State of the Commonwealth of Puerto Rico, as required by the Law of Uniform Administrative Procedure (Act No. 170 of August 12, 1988 as amended) These Rules and Regulations thus approved nullifies any other procedures or regulations on procurement, auctions and contracts existing in this Authority, which are found incompatible with the provisions contained herein.

Approved in San Juan, Puerto Rico

FILING DATE

RECOMENDED BY:

Alberto M. Figueroa Medina, PhD, PE
Executive Director
Puerto Rico Integrated Transportation Authority

DATE

APPROVED BY:

Miguel A. Torres Diaz
Chairman of the Board
Puerto Rico Integrated Transportation Authority

DATE