

# MENDOCINO COUNCIL OF GOVERNMENTS

## Regional Transportation Planning Agency (RTPA)

### Procurement Policies & Procedures Manual

DRAFT - October 2015



Based on suggested format and content of Draft Procurement Manual developed by California's Rural Counties Task Force, including Appendices. RTPA specific Procurement Manual and Appendices should be developed in consultation with RTPA Legal Counsel, Board of Directors and appropriate regulatory agencies.

Prepared by Janet M. Orth, MCOG Deputy Director/CFO

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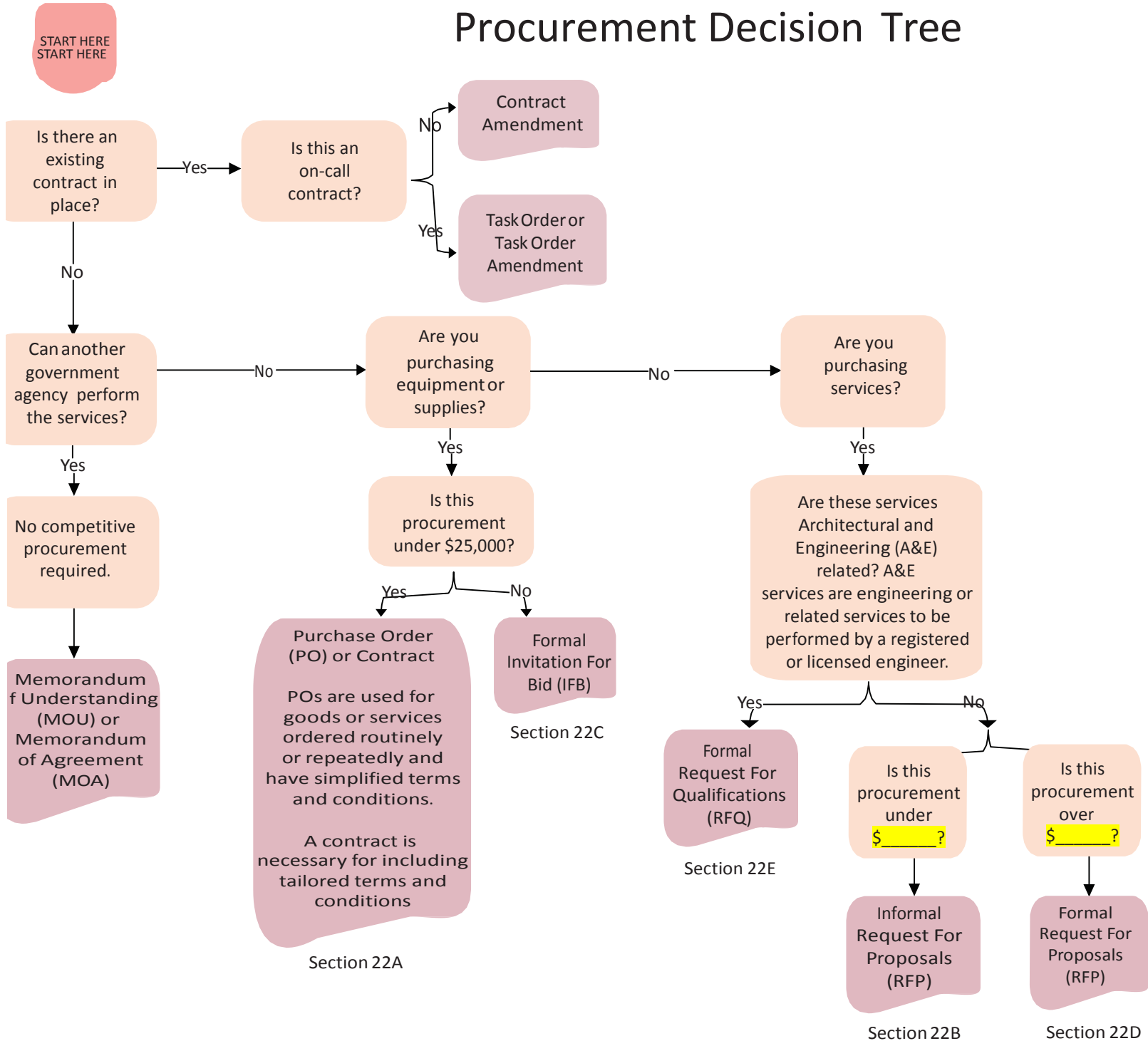
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# Procurement Decision Tree



## **PART II – Specific Policies and Procedures**

Part II of this manual contains specific policies and procedures that have been adopted by the Mendocino Council of Governments (MCOG), in its role as the Regional Transportation Planning Agency, identified herein as “MCOG” or “RTPA.” It is intended for use relative to Non-Infrastructure projects.

This manual is based primarily on a template provided by the Rural Counties Task Force, a body that reports to the California Transportation Commission, of which MCOG is a member. The manual template was developed as part of an administrative Guidebook to assist RTPAs in improving compliance with state and federal requirements. Previously, MCOG relied upon Caltrans’ Regional Planning Handbook and the Local Assistance Procedures Manual (LAPM) for guidance in procurement procedures. MCOG will continue to use the LAPM for procedures relating to Infrastructure projects.

MCOG has modified the thresholds for levels of procurement with state and federal funds. Also, provisions have been added for procuring professional services with local funds such as Transportation Development Act (TDA) sales tax revenues. These modifications to the Rural Counties Task Force draft manual template will increase efficiency, cost effectiveness and timeliness in procuring small contracts, without losing sight of fairness and competition.

For the purposes of this manual, even when not specifically indicated as such, “Executive Director” refers to RTPA Executive Director or designee. State funds are referred to as “Caltrans funds.”

### **SECTION 001 – BACKGROUND**

This manual sets forth the requirements RTPA uses in the solicitation, award, and administration of its third-party contracts with nongovernmental entities, whether the contract results in revenue or expense to RTPA. These requirements are based on the common grant rules, federal statutes, executive orders and their implementing regulations, FTA policy, FHWA policy, State of California Public Utilities Code, State of California Public Contract Code, State of California Labor Code, RTPA Board and administrative policies, and all other local, state, and federal requirements relating to procurement and applicable to RTPA as a regional public agency. Additionally, general requirements for intergovernmental agreements are included in specific sections.

### **SECTION 002 – REFERENCES**

The following federal and state statutes and regulations are incorporated by reference in this manual to the extent required by law. This is not an exhaustive list of the statutes and regulations:

1. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), P.L. 102-240
2. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
3. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively
4. OMB Circular 2CFR
5. Executive Order 12612, “Federalism,” dated 10-26-87
6. Applicable provisions of the State of California Public Contract Code
7. Applicable provisions of the State of California Labor Code

8. Disadvantaged Business Enterprises (DBE) - 49 C.F.R. Part 26
9. Federal Brooks Act and State Mini-Brooks Act (40 U.S.C.§541 and CA Gov. Code §4525)
10. Federal Funding Accountability and Transparency Act of 2006 (FFATA)
11. 49 USC 53, as amended by MAP-21
12. The Caltrans Master Fund Transfer Agreement
13. Caltrans Local Assistance Programs Manual

#### ***Appendices***

- None

### **SECTION 003 – APPLICABILITY OF COMPETITIVE PROCUREMENT REQUIREMENTS**

The solicitation, award, and administration of third-party contracts must be carried out on a competitive basis, except in the instances set forth below. Competitive procurement requirements apply even if the award will not require RTPA to directly pay any funds to the award recipient. So, for example, competitive procurement requirements apply in situations where the contractor will be paid by commission or fee from a source other than RTPA. Competitive procurement requirements also apply to revenue agreements. If the awardee of RTPA contract will receive compensation from any source as a result of RTPA’s award, then a competitive process should be used to ensure fairness. Exceptions are as follows:

1. If the requirements of sole source or limited competition procurement are met as set forth in Section 22.
2. If RTPA chooses to use an alternate procurement method that is authorized for state or local agencies by state or federal law.

#### ***Appendices***

- Sole Source Approval Form (Appendix 1)
- Limited Competition Approval Form (Appendix 25)

### **SECTION 004 – DEFINITIONS**

All definitions in 49 U.S.C. § 5302 are applicable. For purposes of the manual, the following additional definitions are provided:

1. “Approval, Authorization, Concurrence, Waiver” means a deliberate written statement of an official authorized to permit RTPA to take or omit action required by a contract, Board Policy or FTA Circular 4220.1F, which action may not be taken or omitted without additional permission. An oral permission or interpretation has no legal force, authority, or effect.
2. “Best Value” is a competitive, negotiated procurement process in which RTPA reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that it may acquire technical superiority, even if it must pay a premium price. A “premium” is the difference between the price of the lowest-priced proposal and the one that RTPA believes offers the best value. RTPA should disclose these factors in its solicitation.

3. "Bidder" refers to a respondent to a RTPA solicitation document, such as an invitation for bids (IFB) or request for quotes (RFQ), which will lead to a selection based on cost.
4. "Board," "Commission," "Owner," "Grantee," or "RTPA" means RTPA.
5. "Cardinal Change" means a major deviation from the original purpose of the work or the intended method of achievement or a revision of contract work so extensive, significant, or cumulative that the contractor is required to perform very different work from that described in the original procurement document/contract.
6. "Change Order" means an order authorized by RTPA directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.
7. "Common Grant Rules" means Department of Transportation (DOT) regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, which apply to federally funded agreements.
8. "Constructive Change" means an act or omission that, although not identified by a "change order," does in fact cause a change in the contract work.
9. "Contract Documents" means all of the contents of the solicitation documents and associated addenda, contract drawings, technical reports, technical specifications, and documented agreements. Said documents shall be considered as part of any contract made pursuant to a solicitation.
10. "Contractor," "consultant," "vendor," or "seller" is the successful bidder or offeror to whom a contract is awarded.
11. "Contracts Officer" means the individual assigned to the procurement who serves as the single point of contact for all correspondence during the procurement and/or contract administration process. This person also is responsible for relating to commercial terms and conditions during the period of performance of the agreement to the consultant or contractor.
12. "Cooperative Agreement" means an instrument by which FTA awards federal assistance to support a project in which it takes an active role or retains substantial control.
13. "Days" means business days unless otherwise specified.
14. "DBE" is the acronym for Disadvantaged Business Enterprise and means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5 of the Code of Federal Regulations (CFR).
15. "Design-Bid-Build Project" means a construction project under which an architect or engineer is commissioned to prepare drawings and specifications under a design services contract, and a separate contract is let for construction by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.
16. "Electronic Commerce (E-Commerce)" consists of electronic techniques, including electronic mail or messaging, World Wide Web internet technology, electronic bulletin boards, purchase cards, electronic funds transfer, electronic signatures, and electronic data interchange.
17. "Executive Director" refers to RTPA Executive Director or designee.
18. "FHWA" refers to the Federal Highway Administration.
19. "FTA" refers to the Federal Transit Administration.
20. "Full and Open Competition" means that all responsible sources are permitted to compete.

21. “Governmental Recipient” means a state or local government, such as RTPA, that receives federal funding and therefore must comply with the Common Grant Rule at 49 CFR Part 18.
22. “Grand Total Bid Price” means the grand total price and shall include all direct and indirect labor and material costs, taxes, duties, fees, and any other charges applicable to complete the total requirements as specified in the solicitation document, including all addenda, contract drawings, and technical specifications.
23. “Grant” means the instrument by which the FTA awards federal assistance to support a particular project in which the FTA does not take an active role or retain substantial control.
24. “Grantee” means the public or private entity to which a grant or cooperative agreement is awarded. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document. For the purposes of this policy, “grantee” also includes any subgrantee of the grantee. Furthermore, a grantee is responsible for assuring that its subgrantees comply with the requirements and standards of this policy and that subgrantees are aware of the requirements imposed upon them by federal statutes and regulations.
25. “Hazardous Substances” and/or “Contaminated Materials” means any substance, waste, or material which is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to Section 311 of the Clean Water Act, 33 USC Sections 1321, et seq., Section 1004 of the Resource and Conservation and Recovery Act, 42 USC Sections 6903, et seq., Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, et seq.; Section 25141 of the Hazardous Waste Control Law, California Health and Safety Code Sections 25117, et seq.; Section 25316 of the Carpenter Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25316; Section 25501 of the Hazardous Materials Release Response Plans and Inventory Law, California Health and Safety Code Sections 25281, et seq., as may be hereinafter amended.
26. “Intergovernmental Agreement” means a contract between RTPA and another governmental entity, such as a Memorandum of Understanding with a municipality, Native American tribe, or public university.
27. “Invitation for Bid” invitation for a firm to provide a firm fixed priced proposal.
28. “Joint Procurement” (sometimes referred to as “cooperative procurement”) means a method of contracting in which two or more purchasers 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. A joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract as such a contract is merely assignable to third parties to the extent the parties agree and the original procurement scope and amount are sufficient.
29. “Local Government” means a county, municipality, city, town, township, local public authority, or any agency or instrumentality of a local or regional government. This term does not include a local public institution of higher education.
30. “Master Agreement” means the document incorporated by reference that contains the standard terms and conditions governing the administration of a project supported with state and federal assistance.
31. “Non-RTPA Procurement” means a procurement for which another public entity served as the lead procurement entity and that includes provisions that will allow it to be used by RTPA to contract with one or more specific contractors/vendors using pre-established prices, terms and/or conditions. Examples of such procurements include joint procurements, piggybacks, and state purchasing schedules.



32. "Notice To Proceed (NTP)" is a written notice from the Contracts Officer to a contractor authorizing the contractor to commence work and to start the performance period.
33. "Offeror" or "Proposer" refers to a respondent to a RTPA solicitation document, which will lead to a selection based on qualifications and possibly cost.
34. "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.
35. "Property" includes real property consisting of land and buildings, structures, or appurtenances on land, equipment, supplies, other expendable property, intellectual, and intangible property.
36. "Public Transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, sightseeing, or intercity bus transportation, or intercity passenger rail transportation provided AMTRAK, (or a successor to such entity).
37. "Recipient" means the public or private entity to which the FTA or FHWA awards federal assistance through a grant, cooperative agreement, or other agreement. The term "recipient" includes "grantee," each member of a consortium, joint venture, team, or partnership awarded FTA or FHWA assistance. Neither a contractor nor a subcontractor is a "recipient."
38. "Responsible" (Bidder/Offeror) is a contractor, business entity or individual who is fully capable to meet all the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.
  - a. FTA defines "responsibility" to be a contractor/consultant who can demonstrate that it possesses the ability to perform successfully under the terms and conditions of the proposed procurement.
39. "Responsive" (Bidder/Offerer) is a contractor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material respects to the IFB/RFP and all of its requirements, including all form and substance.
  - a. FTA defines "responsive" – if an offer conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the offerer other than on matters that may be deemed inconsequential in nature, the offer is responsive.
40. "Revenue Contract" means a contract with the primary purpose of producing revenues or creating business opportunities involving the use of FTA- or FHWA-assisted property.
41. "Solicitation Documents" refers to the packet of materials provided to prospective consultants or contractors in the form of an IFB, request for proposal (RFP), and RFQ, etc., requesting a responsive bid, proposal, or a statement of qualifications.
42. "State" means any of the several states of the United States, District of Columbia, the Commonwealth of Puerto Rico, any territory of the United States, or any agency or instrumentality of a state exclusive of local governments. "State" does not include a county, municipality, city, town, township, local public authority (which includes any public and Indian housing agency under the United States Housing Act of 1937), school district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity (such as a regional transit authority), or any agency or instrumentality of a local government.

43. "State or Local Government Purchasing Schedule or Purchasing Contract" means an arrangement between state or local government with multiple vendors in which vendors agree to provide an option to the state or local government entities to acquire specific property or services in the future at established prices.
44. "Task Order" means a contract document that is issued under a master or umbrella contract to dole out work to a consultant in phases, or in the case of an on-call contract, for severable projects.
45. "Third-Party Contract" refers to any purchase order (PO) or contract awarded by RTPA to a consultant, vendor, or contractor.
45. "UDBE" is the acronym for Underutilized Disadvantaged Business Enterprise and are the DBE groups that have been determined in an applicable disparity study to have a statistically significant disparity in their utilization in previously awarded transportation contracts.
46. "U/DBE" is the acronym used when DBE and UDBE groups are being referred to collectively or interchangeably.
47. "Written Order" means a written order signed by the Executive Director, or properly authorized representative or agent, mailed to the contractor at the address designated in his bid or to such other address he may designate in writing as its official place of business.

#### *Appendices*

- None

### **SECTION 005 – CONFORMANCE WITH THE LAW AND RTPA POLICIES AND PROCEDURES**

RTPA should use procurement procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal and state law. RTPA's policies require all competitive procurements to commence with a Procurement Requisition form and a Method of Procurement Selection (MOPS) form providing the Contracts Officer with the information necessary to make a purchase. Section 036 (Procurement Requisitions) of this manual provides additional information regarding these forms. All procurements and contracts must be approved in accordance with RTPA's policies concerning delegation of authority. (See Section 032 Delegation of Authority of this manual for additional information.)

#### *Appendices*

- Method of Procurement Selection Form (Appendix 10)
- Procurement Requisition Form (Appendix 2)

### **SECTION 006 – CONTRACT DEVELOPMENT and ADMINISTRATION**

1. For purchases involving no federal funds and that do not need any specialized terms and conditions regarding matters such as allocation of risk or liability due to the nature of the procurement and not exceeding \$25,000, a Purchase Order (PO) may be used after completion of the Purchase Order Checklist. For purchases involving federal funds, all applicable federal requirements and certifications are required for the P O or contract. For purchases exceeding \$25,000, a contract should be used in order to ensure provisions are included to protect RTPA's interests. RTPA will implement a contract development and

administration process that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or POs.

2. Prior to any contract development, a scope of work must be prepared in order to determine what procurement method and type of contract document will be used and fill out the MOPS form. In addition, an independent cost estimate (ICE) must be prepared for all procurements. The person responsible for developing the ICE form must be free from financial and organizational conflicts of interest. In order to avoid the perception that the person who approved the ICE form for a project may improperly bias the cost or price negotiations with the contractor/consultant/vendor selected for award, it is advisable that a different person than the one responsible for approval of the ICE have primary responsibility for any contract negotiations that may be needed.
3. In order to determine what type of contract payment type should be stated in the procurement and included in the contract language, the Contracts Officer will use the Contract Payment Type Selection Form and select the applicable language from the contract boilerplate options.

### *Appendices*

- Method of Procurement Selection Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23a)
- Independent Cost Estimate, Scope of Work, Summary and Staffing Plan (Appendix 24)
- Purchase Order Checklist (Appendix 31)

## **SECTION 007 – STANDARD OF CONDUCT FOR PERSONS INVOLVED IN PROCUREMENT**

RTPA staff is required to follow RTPA Standard of Conduct Policy when carrying out procurement or contracting functions. If non-RTPA staff is used to evaluate proposals or bids, those persons should be provided a Declaration Concerning Conflicts for Evaluators.

### *Appendices*

- Standard of Conduct Policy (Appendix 3)
- Evaluator (Consultant/Contractor Evaluation Committee) Guidelines (Appendix 7)
- Declaration Concerning Conflicts for Evaluators (Appendix 8)

## **SECTION 008 – STATEMENT OF NECESSITY TO ENSURE MOST EFFICIENT AND ECONOMIC PURCHASE**

It is RTPA policy to review proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The Contracts Officer will review all requisitions for compliance with this policy.

1. RTPA adopts adequate procedures for determining the types and amounts of property and services it needs to acquire. These procedures will avoid the purchase of unnecessary property and services not needed (including duplicates and quantities or options not intended to be used). RTPA monitors compliance of these procedures by determining what is necessary, current, and reasonably expected at the time the contract was executed.

- a. RTPA may not add quantities or options to contracts solely to permit assignment to another party at a later date. These limits on assignments do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.
  - b. If the quantity of property or services reasonably believed as needed at the time of contract award changes, RTPA may assign its unneeded contract authority to another entity.
2. RTPA considers procurement size on whether to consolidate or break out the procurement to obtain a more economical purchase.
    - a. When economically advantageous to enter into joint procurements with other government agencies, RTPA may be responsible for undertaking the joint procurement and may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services.
    - b. RTPA may break out procurements into smaller amounts to provide greater opportunities for DBEs, small and minority firms to participate. RTPA will not split a larger procurement merely to gain the advantages of small purchase procedures.
  3. RTPA contracts may include options to ensure the future availability of property or services so long as it is able to justify them as needed for its projects. An option, for a specified time, may allow RTPA to acquire more than what was originally procured or also may extend the term of the contract. To be used without being considered a sole source, however, such options must be evaluated as part of the selection or low bid determination process.
  4. To obtain the best value, RTPA reviews lease versus purchase alternatives and if necessary, obtains an analysis to determine the more economical alternative. Before leasing an asset, RTPA makes a written comparison of the cost of leasing compared with purchasing or constructing the asset. Costs used in the comparison are reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.
  5. RTPA is responsible for preparing specifications that describe its needs, while assuring that those specifications are not exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of federal laws or regulations. The specifications describe the property or services to be procured and state how the bids and/or proposals will be evaluated.

### ***Appendices***

- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23a)

### **SECTION 009 – USE OF OTHER NON-RTPA PROCUREMENTS**

Public Utilities Code section 132352.4(b)(2) states that RTPA is permitted to contract in conjunction with other government agencies without utilizing competitive procurement procedures. This exception to competitive procurement is not permitted when FTA or FHWA funds will be utilized to carry out the project unless the procuring agency followed federal procurement requirements. The requirements and standards of this manual apply to procurements entered into under such agreements. If evidence that a competitive procurement process was followed by the procuring agency is sufficient, and no federal or Caltrans funds will be used, then purchases under another entity's procurement are allowable as long as various requirements are met if federal or Caltrans funds are utilized, additional requirements must be met. In all cases a market, price or cost analysis must be performed and documented to establish the amount that will be paid at the time of purchase will be fair and reasonable per Master Fund Transfer agreement provision, CFR 49 18.36 (f)(1).

### *Resource(s)*

- FTA Best Practices and Procedures Manual, Chapter 6 and Appendix B16

## **SECTION 010 – THRESHOLD DETERMINATIONS CONCERNING CONTRACTORS/CONSULTANTS/VENDORS**

There are several determinations that must be made by the Contracts Officer before a contractor, consultant, or vendor can be procured and/or utilized, whether or not the procurement is competitive. A discussion of these issues follows.

### Conflicts of Interest

1. A contractor is eligible for an award by RTPA so long as the procurement in question does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to RTPA or where a firm would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following situations:
  - a. If the selected consultants and/or subconsultants will be assisting RTPA in the preparation of one or more documents that will be used for a future solicitation, assisting RTPA evaluate the work of others on the project, or designing the specifications for a future project, the consultant team selected will not be allowed to participate as a proposer or join a team submitting a proposal in response to future solicitation(s) because this could cause an organizational conflict to arise.
  - b. A consultant that provides legal, lobbying, auditing, or public relations services to an entity with a conflicting position from RTPA or with whom RTPA is in or previously was in litigation, may be precluded from providing services to RTPA if RTPA believes the consultant may not be able to render impartial advice or provide effective advocacy on behalf of RTPA.
2. A notice of potential for conflict of interest shall be included within any solicitation document issued by RTPA.
3. For purposes of this section of the manual, a “firm” is defined as any company or family of companies where there is a single parent board of directors or staff of officers who can influence the policies and actions of the design company.
4. For purposes of this section of the manual, “ineligible” shall include the prime contractor for the services, subcontractors for portions of the services, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.
5. If there is any doubt by a firm regarding a potential conflict of interest for a specific project or function, the appropriate member of management staff, depending on type of project, will (upon written request) provide a written ruling. Contractors should be encouraged to use this procedure prior to submittal of a bid or proposal. In the event a conflict of interest is determined to exist, a written appeal may be made by the affected firm to the Executive Director within five calendar days of notice from RTPA of the conflict. The Executive Director will determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.
6. Waiver of any actual, potential, or apparent conflict of interest that may exist or arise as a result of concurrent legal representation of RTPA and parties whose interests may conflict shall be decided by the Executive Director in consultation with Legal Counsel.

### Debarment

7. Prior to doing business with a firm, the Contracts Officer must verify that the firm has not been debarred by RTPA or any of the agencies funding the procurement and add documentation of the debarment check to the contract file.

Procurements That Will Give Consultants Project Management Responsibilities

8. If a procurement's scope of work will include allocation of project manager types of responsibilities or any other responsibilities that will call for a consultant's or subconsultant's staff to prepare an ICE or Record of Negotiation (RON) or negotiate contract terms on behalf of RTPA, the persons on the consultant's staff who will perform these responsibilities will need to fill out a disclosure of financial interests (Form 700) and be free of any conflicts of interest. If the scope of work will include such responsibilities, the Contracts Officer should inform Legal Counsel so that an attorney can provide appropriate terms and conditions to protect RTPA interests for insertion in the contract.

Procurements That Will Allow Use of RTPA Office Space by Non-RTPA Staff

9. If a procurement will call for the contract awardee to house any staff at RTPA, the Contracts Officer should consult with Legal Counsel so that appropriate terms and conditions to protect RTPA interests are inserted in the contract.

*Appendices*

- None

**SECTION 011 – CONTRACT AWARDS TO RESPONSIVE AND RESPONSIBLE BIDDERS/OFFERORS**

1. RTPA will make awards only to responsible bidders/offerors who submit responsive proposals/bids and who can demonstrate they possess the ability to perform successfully under the terms and conditions of a proposed procurement.
2. RTPA may award a contract to other than the lowest bidder. RTPA may include a statement in the solicitation reserving the right to award the contract to other than the low bidder or offeror.
3. RTPA will award only to "responsive and responsible" contractors that it believes possess the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. RTPA determines responsiveness and responsibility after receiving bids or proposals and before making contract award. A bidder/offeror must demonstrate affirmatively to RTPA that it qualifies as "responsible" and that its proposed subcontractors also qualify as "responsible." To determine that a bidder/offeror is "responsive and responsible," RTPA, at a minimum, will determine and ensure that the bidder/offeror satisfies the following criteria:
  - a. Has no known record of dissatisfactory integrity or improper business ethics;
  - b. Is neither debarred nor suspended from federal programs under DOT regulations, "Nonprocurement Suspension and Debarment;"
  - c. Bidder/offeror confirms that it is in compliance with the Common Grant Rules' affirmative action and FTA's DBE requirements;
  - d. Bidder/offeror confirms it is in compliance with the public policies of the federal government;
  - e. Has the necessary organization, experience, accounting, and operational controls and technical skills (or the ability to obtain them);
  - f. Is in compliance with applicable licensing and tax laws and regulations;

- g. Has, or can obtain, sufficient financial resources to perform the contract;
  - h. Has, or can obtain, the necessary production, construction, and technical equipment and facilities;
  - i. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; and
  - j. Is able to provide a satisfactory current and past performance record in view of its records of long-time performance or performance with a predecessor entity, including key personnel with adequate experience, a parent firm with adequate resources and experience if applicable, and key subcontractors with adequate experience and past performance and past experience in carrying out similar work, with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations.
4. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be nonresponsible unless RTPA determines that the circumstances were beyond the bidder's or offeror's control or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance.
  5. RTPA may consider the number of the bidder's or offeror's contracts involved and the extent of deficient performance in each contract when making the responsibility determination. RTPA maintains the right to reject all bids or proposals submitted in response to IFB or RFPs.
  6. All requisitions resulting in the formal procurement process of an IFB, RFQ, or RFP should document the award to a responsive and responsible contractor through use of checklists, reference checks, recommendation memo, or other contract file documentation and, at a minimum, should include the following applicable items:
    - a. Review "Responsibility" Requirements. Before selecting a contractor for award, RTPA must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
    - b. Perform a reference check of an adequate number of references and complete the applicable reference check form.
    - c. Review the federal debarred/suspended contractor listing at: <http://sam.gov/portal/public/SAM>. RTPA may collect a debarment and suspension certification from the prospective contractor or include a clause in the contract requiring disclosure. RTPA checks the System for Award Management (SAM) before awarding a contract.
    - d. Review the State debarred/suspended contractor listing at: <http://www.dir.ca.gov/DLSE/Debar.html>. RTPA treats any proposer listed on the debarment and suspension list as nonresponsible and ineligible for award.
  7. For all contracts in excess of \$500,000, the following uniform system of determining whether or not a bidder/offeror is "responsive and responsible" may be applied. Following is a nonexclusive list of factors in relation to the work to be performed for the project:
    - a. Financial Requirements:
      - i. Bidders/offerors shall have evidence of the availability of working capital;
      - ii. The largest value of all work any bidder/offeror has had under contract over a previous similar time frame as the subject contract shall meet or exceed the total amount of the bid;
      - iii. The dollar value of at least one of the previous individual contracts listed shall be at least 50 percent of the dollar value bid on the RTPA contract; and

- iv. The bidder/offeror shall have successfully completed contracts during the previous five years that together exceeds five times the annual value of the RTPA contract.
- b. Experience Requirements:
- i. The bidder/offeror must demonstrate organization experience on work similar to RTPA contract by submitting a list, covering at least the previous five years, of all projects of any type that have been completed or are under construction. The list shall contain a name, title, address, and phone number for agency/firm staff to contact to verify the contract details;
  - ii. The bidder/offeror shall demonstrate individual experience by submitting a list of all officers, superintendents, and engineers who will be involved in RTPA contract. These key personnel shall have at least three years experience on contracts where the work is similar to RTPA contract and shall have been employed by the bidder/offeror for at least two years before RTPA contract bidding date. The individuals listed shall have been involved at the same level of responsibility on successfully completed contracts during the previous five years that together exceeds the value of RTPA contract. A résumé for each individual listed shall include the name, title, address, and phone number of an individual or organization who can verify the individual's experience;
  - iii. The bidder/offeror shall submit a summary of all claims made in the last five years arising out of previous contracts listed (this summary shall include all claims by owner against bidder or bidder against owner and the final status of each claim);
  - iv. The bidder/offeror shall state whether or not it has defaulted on a project within the last two years;
  - v. The bidder/offeror shall list any violation of the apprenticeship requirements under a State Business and Professions Code of Labor Code found by an appropriate authority within the last two years;
  - vi. The bidder/offeror shall state whether they have been found guilty of failure to pay required prevailing wages on a public contract within the last two years;
  - vii. The bidder/offeror shall state whether they have been formally found to be a nonresponsible bidder, for reason other than being nonresponsive by a public agency within the last two years;
  - viii. The bidder/offeror shall list how many projects the bidder will be working on in conjunction with RTPA project;
  - ix. The bidder/offeror shall state whether they have ever been terminated by an owner or client or rejected from bidding on a public works project in the last five years;
  - x. The bidder/offeror shall state whether a surety ever completed any portion of the work on the bidder's project within the last five years;
  - xi. The bidder/offeror shall state whether the bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder has ever been disqualified, removed, or otherwise prevented from bidding on or completing a federal, state, or local government project because of a violation of a law or safety regulation, and if so, explain the circumstances; and
  - xii. For all items identified under this subsection, the bidder/offeror shall provide name of owner, title of project, contract amount, location of project, date of contract, and name of bonding company.
- c. Reporting Forms:
- i. In order to demonstrate that RTPA financial and experience requirements are met, the bidders/offerors shall submit, when requested by RTPA, a Contractor's Statement of Experience and Financial Condition prepared by the bidder/offeror and a financial statement prepared by an independent auditor, both verified under oath, shall meet RTPA's requirements.
  - ii. Failure to provide accurate information relative to its financial status or experience may result in the debarment of the bidder/offeror from future RTPA work.



- iii. RTPA will make its determination of responsiveness and responsibility based upon information submitted by bidders/offerors, and, if necessary, interviews with previous owners, clients, design professionals, or subcontractors with whom the bidder/offeror has worked, including RTPA project managers. If a nonresponsive or nonresponsible offeror submits additional evidence within the time limitation provided by RTPA, then that additional evidence should be considered by the director in making the recommendation to the Executive Director regarding determination of the bidder/offeror that should be awarded the contract.
8. The methods above may be employed at the discretion of the Contracts Officer to include the requesting of a Dun & Bradstreet (<http://www.dnb.com/government>) financial report on the low bidder (IFB) or highest evaluated offeror(s) (RFP). All methods employed must be documented and contained in the contract file.

#### *Appendices*

- Contractor's Statement of Experience and Financial Condition (Appendix 4)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)

### **SECTION 012 – WRITTEN RECORD OF PROCUREMENT HISTORY**

RTPA will maintain and make available to authorized agencies, records detailing the history of a procurement. At a minimum, these records should include:

1. The rationale for the method of procurement: RTPA provides the rationale it used for each contract, including a limited competition or sole source justification for any acquisition that does not qualify as competitive;
2. Selection of contract payment type: RTPA states the reasons for selecting the contract type it used, such as fixed-price or cost reimbursement;
3. Reasons for contractor selection or rejection: RTPA states its reasons for contractor selection or rejection and includes a written responsibility determination for the successful contractor; and
4. The basis for the contract price: RTPA evaluates and states its justification for the contract cost or price.

The determination for items 1 and 2 above will be made through the use of the Method of Procurement form or equivalent documentation to the contract file. In addition, any Board agenda report requesting approval to award a third-party contract or recommendation memo will serve as a record detailing procurement history. For item 3, a recommendation memo is used to justify contractor selection. For item 4, the justification for a procurement cost can be detailed in the Independent Cost Estimate (ICE) document.

#### *Appendices*

- Method of Procurement Selection Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23a)
- Independent Cost Estimate, Scope of Work, Summary, and Staffing Plan (Appendix 24)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)

## **SECTION 013 – USE OF TIME-AND-MATERIAL CONTRACTS**

RTPA will use time-and-material type contracts only:

1. After a determination that no other type of contract is suitable; and
2. If the contract specifies a ceiling price that the contractor shall not exceed the amount except at its own risk.

### *Appendices*

- Method of Procurement Selection Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)

## **SECTION 014 – VARIATIONS FROM PROCEDURES**

1. Nothing herein is intended to limit the Executive Director’s authority to determine not to make a contract award if he/she determines that the bids/proposals received or contract terms negotiated by RTPA staff are not in RTPA’s best interests.

### *Appendices*

- None

## **SECTION 015 – WRITTEN PROTEST PROCEDURES**

RTPA has written protest procedures to handle and resolve disputes relating to its procurements. There are separate procedures related to protests involving the Disadvantaged Business Enterprises provisions in procurements and contracts. All protest decisions must be in writing. For FTA- or FHWA-funded procurements, RTPA will disclose all information regarding the protest in a timely manner in its next quarterly milestone progress report and at its next project management oversight review. A protestor must exhaust all administrative remedies by pursuing RTPA’s protest procedures to completion before appealing the decision to the FTA. In the case of contracts funded by the FTA, the FTA will review only protests regarding the alleged failure of RTPA to have written protest procedures or alleged failure to follow such procedures. An appeal to the FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date when the protestor has received actual or constructive notice of RTPA’s final decision.

1. RTPA’s role and responsibilities with regard to the FTA when there is a protest on FTA-funded procurements:
  - a. RTPA will provide copies of all protests and any or all related supporting documents for protests that have a value exceeding \$100,000, or; involve a controversial matter, irrespective of amount, or; involve a highly publicized matter, irrespective of amount.
  - b. RTPA will provide a brief description of the protest; the basis of disagreement, and; if open, how far the protest has proceeded, or; if resolved, the agreement or decision reached, and; whether an appeal has been taken or is likely to be taken.
  - c. When RTPA denies a bid protest, and especially if an appeal to the FTA is likely to occur, RTPA will inform the FTA regional administrator for the region administering a regional project or the FTA associate administrator for the program office administering a headquarters project directly.
2. The FTA’s role and responsibilities with regard to FTA-funded procurements in the appeals process for reviewing protests state that the protestor must qualify as an “interested party,” which is an actual or

prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract.

- a. A subcontractor does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
- b. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety would qualify as an “interested party” because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
- c. An association or organization that does not perform contracts does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.

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

#### ***Appendices***

- Protest Procedures for Procurements (Appendix 5)
- DBE Complaint Procedures (Appendix 32)

### **SECTION 016 – CHANGES AND MODIFICATIONS**

RTPA is responsible for issuing, evaluating, and making necessary decisions involving any change to its contracts, amendments, any change orders, or modifications. It also will evaluate and make the necessary decisions involving any claim of a constructive change to a contract. Changes and modifications will be evaluated to ensure that if they will constitute a sole source, applicable sole source documentation is prepared. In addition, an ICE will be prepared and the project manager will document negotiations of prices, costs and/or profit mark-up.

RTPA will have cost justifications supporting each change order it may issue and approve any proposed change order before it is issued. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of any applicable grant, cooperative agreement, or other funding restriction and must be reasonable for the completion of project scope.

#### ***Appendices***

- Method of Procurement Selection Form (Appendix 10)
- Sole Source Approval Form (Appendix 1)
- Record of Negotiation (Appendix 27)

### **SECTION 017 – DISPUTES**

RTPA has written procedures to handle and resolve disputes relating to contract provisions. All disputes must be in writing by contractors/consultants. Adequate documentation must be submitted by the contractor/consultant documenting the facts, events, negotiations, and/or applicable laws establishing the grounds for the dispute.

RTPA will notify the FTA about disputes on FTA-assisted procurements that have a value exceeding \$100,000 if the FTA funding could be used to resolve the dispute. Upon request from the FTA, RTPA will provide a brief

description of the dispute; basis of disagreement, and; if open, how far the dispute has proceeded, or; if resolved, the agreement or decision reached, and; whether an appeal has been taken or is likely to be taken.

This information will be provided to the FTA as applicable in RTPA's next quarterly milestone progress report and in the next project management oversight review, if any.

*Appendices*

- None

**SECTION 018 – CONTRACT PERIOD OF PERFORMANCE LIMITATION**

Except for procurements of rolling stock and replacement part contracts, which are limited on federally funded procurements to five (5) years, RTPA's other contracts (such as property, services, leases, construction, revenue) are not limited by federal requirements to the five-year limit.

Even if a federal time limit is not applicable, however, RTPA staff will use sound business judgment and be judicious in establishing, extending, and documenting a contract's period of performance. Generally, RTPA's standard maximum contract length will not exceed five (5) years, inclusive of options, unless the reason for a longer term is documented in the contract folder. Contracts may be awarded with periods of performance in excess of five years if prior concurrence by the Executive Director in consultation with Legal Counsel is documented. This requirement applies to the initial contract and contract extensions or renewals beyond a five-year term. The same process also is required for the exercise of an option which will extend the contract's period of performance beyond five years.

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. RTPA staff should consider competition, pricing, fairness, and public perception when making decisions regarding the term of a contract. Particular attention should be paid when the procurement provides for on-call services on a wide range of services for more than three years. Such procurements limit the firms eligible for award to a specific list of on-call firms and may lead to missed opportunities for better pricing and/or experience from other firms that have been established or have gained the necessary experience to be eligible for award if a new procurement was issued at a sooner interval. RTPA staff will document its rationale for determining the performance period designated for each contract.

RTPA considers contract time extensions in light of whether they are permissible changes or impermissible cardinal changes. Once it awards the contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

Contract Extensions must be executed prior to the expiration date of the original contract.

*Appendices*

- Sole Source Approval Form (Appendix 1)

## **SECTION 019 – ASSIGNMENT OF CONTRACT RIGHTS, JOINT PROCUREMENTS, AND INTERGOVERNMENTAL PROCUREMENT**

RTPA limits its procurements to the amount required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. Advertised quantities and dollar amounts should be justifiable.

When RTPA solicits, competes, and awards through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, the solicitation and the contract award should both contain a minimum and maximum quantity that represents reasonably foreseeable needs.

Should RTPA find that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to other public agencies if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded or contains other appropriate assignment provisions. This process is sometimes referred to as “piggybacking.”

1. In cases where RTPA finds it useful to “piggyback” off of another public entity’s procurement, it first has to determine the contract price remains fair and reasonable and the negotiated contract provisions are adequate for compliance with all federal requirements if the contract will use federal funds. RTPA need not perform a second price analysis if a price analysis was performed for the original contract in the previous 12 months, however, RTPA staff will still need to determine whether the contract price or prices originally established are still fair and reasonable before using those rights by performing an analysis. RTPA is then responsible for ensuring the contractor’s compliance with the FTA’s Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications, if applicable. RTPA staff should review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities it is seeking, do not exceed the amounts available under the entity assigning the contract.
2. Piggybacks and assignments may limit choices to specific property and services acquired. RTPA may choose to instead use joint procurements by combining or “pooling” procurements to obtain better pricing. Joint procurements are often more desirable than assignments because an assignment does not represent the combined buying power of more than one purchaser at the time when prices are established. A joint procurement also may offer the advantage of permitting the parties to acquire property and services more closely responsive to each purchaser’s material requirements than would be available through assignment of existing contract rights. However, if RTPA and another party jointly solicit and award an IDIQ contract, the joint minimum and maximum quantities are expected to be stated in the solicitation and contract.
3. Non-RTPA procurements are procurements for which another public entity served as the lead procurement entity and that include provisions that will allow the procurement to be used by RTPA to contract with one or more specific contractors/vendors using pre-established prices, terms and/or conditions. Examples of such procurements include joint procurements, piggybacks, and state purchasing schedules. When obtaining property or services in this manner, RTPA staff should ensure that all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included in the master intergovernmental contract or in RTPA contract as applicable. When buying from a purchasing schedule, and as applicable, RTPA will obtain Buy America certification before entering into the contract or PO. If the product is not Buy America-compliant, RTPA should obtain a waiver from the relevant federal agency before proceeding if the procurement will be federally funded.

## *Appendices*

- None

### **SECTION 020 – COMPETITION**

This section is composed of the following subsections:

- 020A Full and Open Competition
- 020B Prohibition Against Geographic Preferences
- 020C Written Procurement Selection Procedures
- 020D Pre-Qualification Criteria

### **SECTION 020A – FULL AND OPEN COMPETITION**

RTPA will provide for full and open competition when soliciting bids or proposals. All procurement transactions, excluding approved limited competition or sole source procurements, will be conducted in a manner providing full and open competition consistent with this manual. Some of the situations that may be considered to be restrictive of competition include, but are not limited to:

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

RTPA will adhere to these principles of competition:

1. Fundamental to the use of any procurement method is the principle of full and open competition. The availability of suppliers who are willing to compete for a procurement is essential for the effective use of small purchase procedures, formally advertised procurements (IFBs), or negotiated procurements (RFPs and RFQs).
2. Competition in procurement is defined as a condition where at least three sources are able to compete for a requirement, both in price and technical skills.
3. An attempt to get at least three quotes or bids is required for RTPA's competitive procurements.
4. RTPA will not fund procurements that restrict competition by utilizing exclusionary or discriminatory specifications. These include:

- a. Placing unreasonable requirements on firms by specifying technical features, conditions, or other factors for which there is insufficient operational justification of legitimate need;
  - b. Allowing noncompetitive practices between firms (collusion, price fixing);
  - c. Conflicts of interest within RTPA; and
  - d. Requiring unnecessary experience and bonding.
5. By working throughout the procurement process to encourage full and open competition among potential contractors, RTPA will assure that both its interests and those of the state and federal government are protected and that RTPA is getting a fair return on the expenditure of federal, state, and local tax dollars.
6. Less than full and open competition is not justified based on failure to plan or limited availability of federal assistance to support the procurement (for example, expiration of federal assistance previously available for award). When less than full and open competition is available to RTPA on a federally-funded procurement, the common grant rule requires RTPA to:
- a. Solicit offers from as many potential sources as is practicable under the circumstances;
  - b. Provide a sole source or limited competition justification. If RTPA decides to solicit an offer from only one source or use a limited competition procurement, it must justify its decision adequately and in writing;
  - c. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits; and
  - d. Submit the proposed procurement for pre-award review if a federal agency so requests.

#### *Appendices*

- Section 022I of this manual
- Sole Source Approval Form (Appendix 25)
- Limited Competition Approval Form (Appendix 10)

### **SECTION 020B – PROHIBITION AGAINST GEOGRAPHIC PREFERENCES IN FEDERALLY FUNDED PROCUREMENTS**

RTPA will conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals if federal funds will be used, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt state licensing laws; however, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

#### *Appendices*

- None

## **SECTION 020C – WRITTEN PROCUREMENT SELECTION PROCEDURES**

RTPA will have written selection procedures in its solicitations. All solicitations should:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description should not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, should set forth those minimum characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used. RTPA will use a “brand name or equal” description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, use of “brand name or equal” must carefully identify its minimum needs and clearly set for those salient physical and functional characteristics of the brand name product in the solicitation.
2. Identify all requirements that bidders/offerors must fulfill and all other factors to be used in evaluating bids or proposals.
3. If a multiple-award on-call procurement is utilized, the solicitation must identify the requirements and criteria that will be used to select a specific firm for a specific project or task order so that notice is provided to competing firms of RTPA’s selection procedures.

### ***Appendices***

- None

## **SECTION 020D – PREQUALIFICATION CRITERIA**

RTPA does not typically use a prequalification process, except in the case of major projects that will exceed \$5,000,000. RTPA will not, however, preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date, unless a determination has been made based on sufficient evidence that the bidder is not responsible. For procurements in excess of \$5,000,000 that will utilize a prequalification process, RTPA will take measures to confirm that its list of prequalified persons or firms that are used in acquiring goods and services are current and include enough qualified sources to ensure full and open competition. Firms that choose to prequalify will be asked to submit documentation, including a completed Contractor’s Statement of Experience and Financial Condition.

### ***Appendices***

- Contractor’s Statement of Experience and Financial Condition (Appendix 4)



## SECTION 021 – BEST VALUE

RTPA may award a contract to a proposer who provides the greatest value. “Best Value” describes a competitive, negotiated procurement process in which RTPA reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that it may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest-priced proposal and the one that RTPA believes offers the best value. RTPA bases its determination of which proposal represents the best value on an analysis of the tradeoff of qualitative technical factors and price or cost factors. The documentation and analysis establishing best value should be documented in the RFP for small procurements, which includes the score sheets used to evaluate proposers on small procurements and establishes which proposer will provide the best value to RTPA for all procurements under the applicable small purchase threshold.

For procurements in excess of the small procurement threshold, the contract file should contain documentation in the evaluation factors within the solicitation and relevant score sheets, as well as the record of negotiation (RON) and other written records to establish the best value criteria are met. RTPA will disclose those factors in its solicitation that will form the basis for award. The evaluation factors for a specific procurement reflect the subject matter and the elements that are most important to RTPA. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan.

### *Appendices*

- Record of Negotiation (Appendix 27)

## SECTION 022 – METHODS OF PROCUREMENT

This section is composed of the following subsections:

- 022A Procurement by Small Purchase Procedure for Equipment & Supplies (Up to \$25,000)
- 022B Procurement by Small Purchase Procedure for Services Other Than A&E (\$ \_\_\_\_\_ to \$ \_\_\_\_\_ with Caltrans or Federal Funds OR (\$ \_\_\_\_\_ to \$ \_\_\_\_\_ with Local Funds )
- 022C Procurement by Sealed Bids/IFB for Equipment & Supplies and Construction (More Than \$25,000)
- 022D Procurement by Competitive Proposal for Services Other Than A&E (More Than \$ \_\_\_\_\_ with Caltrans or Federal Funds OR More Than \$ \_\_\_\_\_ with Local Funds)
- 022E Procurement of A&E Services
- 022F Audit Requirements
- 022G Procurement by Non-Competitive Proposals (Sole Source) (With Caltrans or Federal Funds)
- 022H Procurement by Non-Competitive Proposals (Sole Source) (Without Caltrans or Federal Funds)
- 022I Procurement by Limited Competition
- 022J Options
- 022K Contracts with Other Government Entities
- 022L Use of On-Call Multiple Award Procurements

## **SECTION 022A – PROCUREMENT BY SMALL PURCHASE PROCEDURES FOR EQUIPMENT & SUPPLIES**

Small purchase procedures are those relatively simple and informal procurement methods for securing equipment, supplies, or other property, which do not cost more than RTPA’s simplified acquisition threshold of \$25,000. If small purchase procedures are used, price or rate quotations should be obtained from an adequate number of qualified sources, with three sources being the minimum number of quotes staff must attempt to obtain. Prior to requesting bids, the project manager will prepare an ICE and the Contracts Officer will prepare a Method of Procurement Selection Form.

1. Staff should attempt to obtain written bids or document oral bids from at least three suppliers in a manner that permits prices and other terms to be compared. This should be accomplished by sending a fax or email request to an adequate number of firms using any combination of RTPA’s bid list, California Unified Certification Program, Caltrans DBE list, or known sources or sources generated from published documents. Staff should recommend the supplier that is determined to be the low responsive and responsible bidder meeting the terms, conditions, and specifications of the solicitation, taking into account the possible range of competing product and materials available, fitness of purpose, manufacturer’s warranty, and other similar factors in addition to price. Documentation of which vendors were sent quote requests, the responses received, and the low bidder selected should be documented by the project manager using the recommendation memo template.
2. Approved Equal Clause: In order to establish a basis of quality, functionality, and/or performance, certain materials, equipment, or kinds of materials may be specified, either by description of functionality and/or performance or by designating a manufacturer by name and referring to his brand of product designation, make, model, or part number or by specifying a kind of material. The solicitation should not exclude other processes, equipment or materials of equal functionality and/or performance, utility, or merit, which may be approved by RTPA upon request. Requests for approved equal, clarification of the solicitation specifications, and complaints on specifications must be received by RTPA, in writing, by the time specified in the solicitation. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

### ***Appendices***

- Method of Procurement Selection Form (Appendix 10)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23a)
- Recommendation for Selection of a Contractor Memo Template (Appendix 6)

## **SECTION 022B – PROCUREMENT BY SMALL PURCHASE PROCEDURE FOR SERVICES OTHER THAN ARCHITECTURAL & ENGINEERING**

- \$5,001 to \$50,000 / \$75,000 or \$5,001 to \$100,000 / \$150,000 with Caltrans or Federal Funds OR
- \$25,001 to \$100,000 or \$45,001 to \$100,000 with Local Funds

1. Prior approval of the use of this procurement procedure and the evaluation criteria should be obtained from the applicable management staff. The Contracts Officer also should concur with the use of this procurement method and fill out a Method of Procurement Selection Form to document the appropriateness of this procurement method. An informal competitive process may be followed with price or rate quotations obtained from an adequate number of qualified sources to ensure that RTPA is obtaining a fair and reasonable price and that the recommended consultant will provide the best value to RTPA if a best value analysis is utilized. Generally, quotes/proposals must be sought from at least three qualified consultants to meet this requirement. The

competitive process should be documented by the Contracts Officer in the Recommendation template, the RON, or some other written record. In obtaining price or rate quotations, a SOW and evaluation criteria that include cost as a factor should be developed and supplied to all bidders/offerors.

2. Determination of which proposal will provide the best value to RTPA when the informal solicitation includes options that may be awarded, must include the options in the evaluation and selection process. If the optional work is not used to determine the best value proposal, such options, if exercised, will need to be justified as a sole source.
3. All procurements should have a documented RON that establishes that the project manager made the effort to obtain the best price for RTPA for the goods or services with quality, level of effort, cost, and other relevant factors taken into consideration. The staff member that takes the lead during negotiations is responsible for signing off on the RON whether it is a Contracts Officer or other staff person.

### *Appendices*

- Method of Procurement Selection Form (Appendix 10)
- Record of Negotiation (Appendix 27)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)

## **SECTION 022C – PROCUREMENT BY SEALED BIDS/IFB FOR EQUIPMENT, SUPPLIES AND CONSTRUCTION (More Than \$25,000)**

Under this procedure, bids are publicly solicited, and a firm-fixed-price contract (lump sum or cost per unit of work with a not-to-exceed amount) is awarded to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. A Method of Procurement Selection Form, Request for Major Construction Procurement Checklist, and ICE/EE must be prepared before an IFB is issued. Board consent in a public meeting may also be required if the procurement is of the type and amount the Board has directed that staff bring it for pre-procurement and/or pre-contracting approval.

1. Guidelines for IFBs:
  - a. The IFB includes the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.
  - b. IFBs must be based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain, in competitive procurements, features that unduly restrict full and open competition. The “brand name or equal” description may be used to define the performance or other necessary requirements of a procurement. When so used, the specific features of the brand name product that must be met by bidders must be clearly identified. Brand names that are known to meet the “or equal” requirements should be listed.
  - c. IFBs should be publicized through distribution to prospective bidders, posting on RTPA website, posting in public places, advertising in newspapers, and such other means as may be appropriate in sufficient time to enable bidders to prepare and submit their best bids before the time set for the public opening of bids.
  - d. If the procurement is successful, the contract will be awarded to the responsive and responsible bidder submitting the lowest bid determined on the basis of the specifications set forth in the IFBs.
  - e. The IFBs, including specifications and attachments, should permit full and open competition consistent with the requirement for the property or services to be procured. The requirement should represent RTPA’s minimum needs and be sufficiently described to promote full and open competition.

- f. All bids should be opened publicly at the time and place stated in the IFB.
2. In order for sealed bidding to be feasible, the following conditions should be present:
    - a. A complete, adequate, and realistic specification or purchase description is available;
    - b. Two or more responsible bidders are willing and able to compete effectively for the business;
    - c. The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price; and
    - d. There is no price negotiation with bidders before sending out the notice of intent to award.
  3. If the sealed bid procurement method is used, the following requirements apply:
    - a. The IFB will be publicly advertised, and bids should be solicited from an adequate number of known suppliers or contractors, providing them sufficient time to prepare bids prior to the date set for opening the bids;
    - b. The IFB, which will include any specifications and pertinent attachments, should define the items or services sought in order for the bidder to properly respond;
    - c. All bids will be publicly opened at the time and place described in the IFB;
    - d. Bid amounts will be included in the bid opening documentation;
    - e. A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. For the procurement of tangible items, when specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs may be considered in determining which bid is lowest; payment discounts will only be used to determine the low bid when industry practice for the type of project involved indicates that such discounts are usually taken advantage of; and
    - f. Any or all bids may be rejected if there is a sound documented reason.
  4. For purchases of equipment or supplies that are better suited for an RFP or purchase on the open market instead of an IFB, approval may be sought from the Contracts Officer to utilize a different procurement process based on the documentation in the Method of Procurement Selection Form. An alternate procurement process to the IFB may be in RTPA's best interest in the following example situations:
    - a. The purchase may be made at a lower price on the open market.
    - b. Competitive bidding is an inadequate method of procurement because it is necessary to purchase prototype equipment or modifications in order to conduct and evaluate operational testing.
    - c. The article(s) to be procured is undergoing rapid technological changes, and it is in the public's interest to issue an RFP so that the broadest possible range of competing product and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price can be taken into consideration.
  5. If staff seeks authorization to utilize an alternate procurement process, documentation setting forth the reasons a deviation from the typical competitive bidding process is warranted, and a technical evaluation of the articles, prices, and suppliers should be placed in the contract folder.

6. Payment Method

Contracts awarded as a result of IFBs should be fixed price. Escalation may be appropriate where unusual risks for labor or material are present and some flexibility is necessary and feasible. When escalation is necessary, an escalation ceiling must be established and must be the same for all bidders. Payment for unbid items, including items in change orders will not call for payment to the contractor on the basis of cost, plus a fixed percentage of cost. Markup amounts must be negotiated and determined reasonable on each item added to a low bid procurement.

## 7. Solicitation of Bids

- a. Preparation of IFBs. For supply and construction contracts, IFBs should contain the following information if applicable to the procurement involved:
  - i. Invitation number.
  - ii. Name and address of Contracts Officer.
  - iii. Date of issuance.
  - iv. Date, hour, and place of bid opening (prevailing local time should be used.)
  - v. Number of pages and numbered pages.
  - vi. A description of supplies or services to be furnished under each item in sufficient detail to promote full and open competition.
  - vii. The time of delivery or performance requirements.
  - viii. Statement of whether submission of electronic bids will be permitted.
  - ix. The IFB should set forth full, accurate, and complete information, including attachments.
  - x. Bid guarantee, performance, and payment bond requirements.
  - xi. A requirement that all bidders must allow an acceptance period of not less than a specified number of calendar days and that bids offering less than the minimum stipulated acceptance period will be rejected.
  - xii. Special experience and/or technical qualifications due to the complexity of the equipment being procured, or for some other special reason.
  - xiii. Any authorized special provisions relating to such matters as progress payments, patents, liquidated damages, etc.
  - xiv. Any additional contract provisions or conditions required by state, local, or other jurisdictions.
  - xv. All factors to be considered in the evaluation of bids that weigh on price, such as shipping costs. It is essential that the IFB inform vendors of those factors that will be evaluated and exactly how each factor will be evaluated. Bidders must know these factors to properly construct their bid prices. It is imperative that this process be followed to assure that any perception of arbitrary application of the price factors by buyers is eliminated.
  - xvi. Directions for obtaining copies of any documents that have been incorporated by reference. All documents incorporated in the IFB by reference must be readily available to all potential bidders.
  - xvii. A bid price form should be included that is tailored such that it breaks down all of the appropriate cost elements and options such that RTPA staff can determine the low bidder and the responsiveness of the bids.
- b. Bidding Time. Consistent with the need for obtaining the supplies or services, all IFBs should allow sufficient bidding time (i.e., the period of time between the date of distribution of an IFB and the date set for opening the bids) to permit prospective bidders to prepare and submit bids. Generally, bidding time should not be less than 21 calendar days when procuring standard commercial articles and services. It should not be less than 30 calendar days when procuring other than standard commercial articles or services. The exception is when the urgency of the need does not permit such delay.
- c. Place and Method of Delivery of Supplies. IFBs specifying f.o.b. origin should state that bids will be evaluated on the basis of bid price plus transportation cost to the buyer from point of origin to one or more designated destinations.
- d. Bid Sample. For the procurement of tangible items, a “bid sample” may be required by the IFB document to assist the buyer in determining whether the bid is an offer to perform exactly as required in the

invitation. Such samples, however, may be used solely for the purpose of determining responsiveness and should not be used to determine the bidder's ability to produce the required items. Bidders should not be required to furnish samples unless there are certain characteristics of the product that cannot be described adequately in the specification or purchase description, thus necessitating inspection of a sample to assure procurement of an acceptable product. Submission of bid samples should be discouraged unless they are absolutely necessary.

- e. Descriptive Literature for the Procurement of Tangible Items
  - i. Definition. The term "descriptive literature" means information, such as cuts, illustrations, drawings, and brochures, which describe or show the characteristics or construction of a product or explain its operation. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment;
  - ii. Use. Bidders should not be required to furnish descriptive literature as a part of their bids unless the project manager determines that such literature is needed to determine whether the product(s) offered meet the specification requirements of the IFB or establish exactly what the bidder proposes to furnish.
- f. Final Review of IFBs. RTPA Contracts Officer shall review each IFB allowing adequate review time as necessary to correct any discrepancies or ambiguities that could limit competition unnecessarily.
- g. Contacting Prospective Bidders. Notice of release of the IFBs should be sent via email or otherwise delivered to the maximum number of prospective bidders to promote and ensure maximum full and open competition. Unnecessary restrictions on competition should be avoided. From the time the solicitation is being prepared to the time of contract award, only the Contracts Officer should have contact with potential or actual proposers in order to reduce the likelihood of any unfair advantage in the competitive process.
- h. Pre-bid Conference. A pre-bid conference may be used as a means of briefing prospective bidders and explaining to them complicated specifications and requirements, including U/DBE information, goals, and documentation as early as possible after the invitation has been issued and before the bids are opened or proposals are due. The pre-bid conference should not be used as a substitute for amending a defective or ambiguous IFB or RFP. If a modification is proposed as a result of the pre-bid conference, such modifications should be made through a formal addendum and not through the pre-bid notes. A DBE interest list or non-inclusive DBE list of firms is made available with the IFB documents on RTPA website to assist contractors and subcontractors in locating each other to potentially partner on the project and may be provided again at the pre-bid conference as needed.
- i. Advertising. All IFBs should be advertised in a manner that promotes participation in the bidding by all qualified and capable firms. If there is a U/DBE goal, the goal amount should be advertised. Advertising only in the immediate local news media may not be adequate for large projects needing contractors of a type that are not common locally.
- j. Records of IFBs and Records of Bids. The Contracts Officer should retain a record of every IFB he/she issues and a copy of each abstract or record of bids. Contracts Officer should review this record during each subsequent procurement action for the same and, when appropriate, similar items. This should ensure that the information in the file is utilized with the new procurement. The IFB file should show the date of the IFB and the original distribution source list..
- k. Amendment of IFBs. If after issuance of IFBs, but before the time set for bid opening it becomes necessary to make changes or corrections in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, the changes will be accomplished by issuance of an addendum to the IFB at least 72 hours before the bid is due. Distribution of the addendum will be made to each concern to whom the invitation for bids has been furnished and/or placed on RTPA's website. Before

amending an IFB, the period of time remaining to bid opening and the possible need to extend this period should be considered and, if necessary, confirmed in the addendum. Any information given to a prospective bidder concerning an IFB should be furnished promptly to all other prospective bidders as an addendum to the IFB. No award should be made unless the addendum has been issued in sufficient time to permit all prospective bidders to consider the information in submitting or modifying their bids. In this regard, changes to DBE goals or requirements that may require additional time for bidders to conduct a good faith effort to locate DBE firms will be considered in determining whether an extension of the deadline is needed.

- l. Responsiveness of Bids. To be considered for award, a bid should comply in all material aspects with the IFB. Bidders must use RTPA bid forms in order to be in material compliance with the IFB requirements. This applies to both the method and timeliness of submission and the substance of any resulting contract. It is imperative that all bidders be afforded an equal opportunity so that the integrity of the bidding system is maintained. Bids should be completed, executed, and submitted in accordance with the instructions contained in the IFB.
  - m. Time of Bid Submission. Bids should be submitted so as to be received in the office designated in the IFB not later than the exact time set for opening of bids. Late bids must be rejected.
  - n. Modification or Withdrawal of Bids. Bids may be modified or withdrawn by written notice. The notice must be received in the office designated in the IFB not later than the exact time set for bid opening. A bid may be withdrawn, in person, by a bidder or his authorized representative provided:
    - i. his/her identity is made known;
    - ii. he/she signs a receipt for the bid; and
    - iii. the withdrawal is prior to the exact time set for bid opening.
  - o. Late Modifications and Withdrawals. Modifications and requests for withdrawal of bids that are received after the exact time set for bid opening are considered "late modifications" and "late withdrawals," respectively. A late modification will not be considered.
8. Opening of Bids and Award of Contracts

The official designated as the bid opening officer should decide when the time set for bid opening has arrived and so declare to those present. All bids received prior to the time set for opening should be publicly opened, read aloud to the persons present, and be recorded. The name of the bidder and the total amount of each bid should be read and documented in the IFB file. Bidders may obtain copies of the bid documents that must be disclosed pursuant to the California Public Records Act at any time after the bid amounts are publicly read and recorded.

The original copy of each bid should be carefully safeguarded, particularly until an abstract of the bids has been made and its accuracy verified. RTPA may allow for electronic bidding of IFBs. If electronic bidding is allowed, the electronic process will record all data, and the results will be immediately available on RTPA website for the public to view.

9. Recording of Bids

All hard copy bids must be time and date stamped upon their receipt. A time-and-date stamp should be kept at the desks of the receptionists and administrative staff handling mail, and these staff members should be instructed to place a time-and-date stamp on all proposals/bids. To comply with FTA Circular 4220.1F, all bids received against an IFB will be documented using a bid summary form. The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation should be entered into the bid summary. When the items are too numerous to warrant the complete recording of all bids, an entry should be made of the invitation number, opening date, general description of the procurement items, and the total price bid where definite quantities are involved. The

bid summary should be completed as soon as practicable after the bids have been opened and read. The Contracts Officer serving as the bid opening officer will certify the accuracy of the information. If the IFB is cancelled before the time set for bid opening, the cancellation should be recorded, together with a statement of the number of organizations invited to bid and the number of bids received.

10. Review of Bids

Review of bids for responsiveness and bidders for responsibility should be conducted by technically qualified staff and/or consultants without financial or organizational conflicts of interest. Consultants or non-employees that assist staff in evaluating and reviewing bids must fill out a declaration concerning conflicts prior to reviewing bids. No oral discussion or written communication should be conducted with bidders except to obtain clarification regarding the bid contents or provide information regarding protests or delays.

11. Cancellation of Invitation After Opening

Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest-priced, responsive bid unless there is a compelling reason to reject all bids and cancel the invitation. An IFB should probably be cancelled if one of the following occurs (this is not an exhaustive list):

- a. all bids contained unreasonable prices;
- b. there is evidence of collusion or bad faith; or
- c. competition was not adequate to ensure a reasonable price.

The solicitation documents will be corrected, when necessary, before the procedure for re-solicitation may be followed.

12. Rejection of Individual Bids

Any bid that fails to conform to the essential requirements of the IFB, such as specifications, delivery schedule, or any alternatives to these or other requirements specifically provided for in the IFB should be rejected as nonresponsive. Ordinarily, a bid will be rejected when a bidder imposes conditions that would modify requirements of the IFB or limit its liability to the buyer in a way that gives the bidder an advantage over other bidders. Minor deviations may be waived. A minor deviation is an error that does not go to the substance of a bid. A condition goes to the substance of a bid when it affects the price, quantity, quality, or delivery of the items offered. Waivers of minor deviations should be consistently applied to avoid allegations of favoritism. Any bid may be rejected if RTPA determines that it is unreasonable as to price, and the determination is supported by review and analysis of the action. If a bid guarantee is required and the bidder fails to furnish the guarantee in accordance with the requirements of the IFB, the bid must be rejected.

13. Notice to Bidders of Rejection of All Bids

When it is determined to reject all bids, the Contracts Officer should notify each bidder in writing that all bids have been rejected, stating the reason(s) for such action if appropriate.

14. Award

Unless all bids are rejected, award should be made by written notice within the time specified for acceptance in the bid or extension thereof. Award should be made to that responsible bidder whose bid, conforming to the IFB, will be most advantageous to RTPA, price and other factors considered. Determination of the lowest bidder must include the bid amount that includes all options that may be awarded. If the option bid amounts are not used to determine the low bidder, such options, if exercised, will need to be justified as a sole source. Award should not be made until the protest period has ended and all required RTPA approvals have been obtained. All unsuccessful bidders should be sent a notice of intent to award as soon as possible in order to start the clock running on the protest period.



15. Responsible Bidder-Reasonableness of Price

Before awarding the contract, Contracts Officer, with the assistance of technical staff or consultants, should determine that prospective contractor is responsible and that the prices offered are reasonable. These determinations should be made in the light of all prevailing circumstances.

16. Discounts

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

17. Delay of Award

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

18. Information to Bidders

When award is made to other than the apparent low bidder, the Contracts Officer should promptly notify the unsuccessful lower bidders. The notification should state the reason for rejection of their bid. In addition, notification that an award has been made to another firm should be given immediately to all unsuccessful bidders.

19. Technical Evaluation Memorandum

A recommendation memo should be prepared for each IFB procurement. The recommendation memo should include a certifying statement confirming that the low bidder is acceptable with respect to the technical specifications of the IFB. It should be prepared by the project manager in cooperation with the Contracts Officer to ensure that the apparent low bidder is technically responsive. The memorandum should be supported by documentation and placed in the contract file. Any non-RTPA employee involved in evaluating bidders or bids will be given RTPA Evaluator Guidelines and fill out a Declaration Concerning Conflicts for Evaluators.

20. Protests

Protest procedures shall be included in the IFB.

***Appendices***

- Standard of Conduct Policy (Appendix 3)
- Method of Procurement Selection Form (Appendix 10)
- Responsive Bidder/Proposer Checklist for RFP/RFQ (Appendix 11)
- Bid Summary (Appendix 12)
- Evaluator (Consultant/Contractor Evaluation Committee) Guidelines (Appendix 7)
- Declaration Concerning Conflicts for Evaluators (Appendix 8)
- Notice of Intent to Award (Appendix 16)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)
- Post-Award Notice to Unsuccessful Proposers (Appendix 21)

## SECTION 022D – PROCUREMENT BY COMPETITIVE PROPOSAL FOR SERVICES OTHER THAN ARCHITECTURAL AND ENGINEERING

- More than \$50,000 / \$75,000 or more than \$100,000 / \$150,000 with Caltrans or Federal Funds OR
  - More than \$ \$100,000 with Local Funds
1. When the project or operating budget or ICE determines that the value of the services to be procured exceeds \$ \_\_\_\_\_ and the Method of Procurement Selection (MOPS) Form indicates this method is appropriate, the RFP method should be used. Board consent in a public meeting may also be required if the procurement is above pre-designated thresholds. This competitive proposal method of procurement is normally conducted with more than one source submitting an offer (i.e., proposal). Either a fixed-price or cost-reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:
    - a. RFPs will be publicized. All evaluation factors will be identified along with their relative importance.
    - b. Proposals should be solicited from an adequate number of qualified sources.
    - c. The RFP will define the method for conducting technical evaluations of the proposals received and for selecting awardees.
    - d. Awards will be made to the responsible firm whose proposal is most advantageous to RTPA with price and other factors considered, which is sometimes referred to as best value.
  2. The RFP solicitation is publicized and proposals are requested from a number of sources. Negotiations may be conducted with one or more of the sources submitting offers and a fixed-price or cost-reimbursement type (that identifies specific rates of compensation) of contract is awarded, as appropriate. When the RFP is used, the following procedures apply:
    - a. A technical and a cost proposal should be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The RFP should be publicized, and requests for the solicitation by other potential sources as a result of the advertisement should be honored to the maximum extent practicable. The objective is to promote full and open competition.
    - b. Care should be exercised to avoid providing any information to an offeror which would give them a competitive advantage. From the time the solicitation is being prepared to the time of contract negotiations, only the Contracts Officer should have contact with potential or actual proposers in order to reduce the likelihood of any unfair advantage in the competitive process.
    - c. The RFP should disclose a ceiling price or budget range.
    - d. The RFP should identify all significant evaluation factors (criteria) and corresponding point value for each evaluating factor. If a two-step RFP procurement method is used, RTPA will identify a short-listed group of proposers within the competitive range for the highest-scoring offerors in the first step based on proposal evaluating factors that include price. Then, the short-listed group of proposers will be invited to participate in the second step of the competitive process. More details on the two-step process can be found below. A one-step RFP is used when obtaining a qualified consultant at the lowest price is the primary objective. In order to successfully perform the work, the consultant does not need to be the most qualified competitor. Such an RFP is used when the services are routine. A two-step RFP is used when obtaining the most qualified consultant is the primary objective. Price is a significant factor in the selection, but obtaining the lowest price is not the primary objective. Such an RFP is used when the services requested are not routine and are complex or highly specialized. RTPA may elect to negotiate

with the highest-scoring short-listed offeror based on proposal evaluating factors alone, including price, and forgo interviews if RTPA has sufficient information to determine that the offeror provides the best value to RTPA and the interview process is unnecessary.

- e. Determination of which proposal will provide the best value to RTPA when the solicitation includes options that may be awarded, must show documented inclusion of the options in the evaluation and selection process. If the optional work is not used to determine the best value proposal, such options, if exercised, will need to be justified as a sole source.
- f. RTPA may elect to conduct interviews with all responsible offerors who submit proposals within a competitive range, with price and other factors considered.
- g. Upon selection of the most qualified offeror, RTPA may elect to conduct negotiations with one or more offerors in the competitive range. During the negotiation process, the offeror(s) will be given reasonable opportunity (with a common cutoff date) to support, clarify, correct, improve, or revise its/their proposal(s).
- h. Unsuccessful offerors should be notified at the earliest practicable time that their offer is no longer being considered for award. Upon written request, unsuccessful offerors should be informed (in general terms only) of the reasons for not being awarded a contract, but this should not be done until after the contract has been executed with the awarded consultant in order to preserve the competitive process. After award of a contract, a debrief for the unsuccessful offerors may occur. Before, during, and after contract award, staff should take care to avoid disclosing offerors' proprietary data if it is labeled as such.
- i. Award should be made to the responsible offeror whose proposal will be most advantageous to RTPA; price, technical, and other factors considered ("other factors" means factors other than price-related factors such as quality of proposal, experience, etc.).

### 3. Solicitation of Proposal

- a. Knowledge of the product or service and its use is essential to sound pricing. The project manager should develop an ICE of the proper price level or value of the product or service to be purchased. For goods, such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, and prior procurement data.
- b. Selection of qualified sources for solicitation of proposals is basic to sound prices. Proposals should be invited from a sufficient number of competent sources to ensure adequate competition.
- c. Failure to determine requirements in sufficient time to allow a reasonable period for preparation of RFP, preparation of quotations, contract negotiation and preparation, and adequate lead time for performance may cause delays in deliveries and increased prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase prices or restrict desired competition.
- d. The RFP should contain sufficient information to enable a prospective offeror to properly prepare a proposal. The RFP should be as complete as possible with respect to:
  - i. item description and/or SOW;
  - ii. specifications;
  - iii. buyer furnished property, if any;
  - iv. required delivery schedule;
  - v. general provisions;
  - vi. special provisions;
  - vii. cost and pricing data requirements;
  - viii. contract clauses (standard or special);

- ix. experience and technical experience;
  - x. project organization and key personnel;
  - xi. duration of agreement;
  - xii. payment method (selection of which is documented in a Contract Payment Type Selection Form);
  - xiii. project schedule; and
  - xiv. any U/DBE requirements.
- e. RFPs should specify a date and time for submission of proposals. Any extension of time should be granted uniformly to all prospective offerors. Each RFP should be available to all prospective offerors at the same time, and no offeror should be given the advantage of advance knowledge regarding SOW details or evaluation factors that could affect the competitive process.

4. Addenda to the RFP

If after issuance of the RFP, but before the time set for the proposal deadline, it becomes necessary to make changes or corrections in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous language, the changes will be accomplished by issuance of an addendum at least 72 hours before proposals are due. Distribution of the addenda will be via RTPA's website and sent to original RFP recipients. Before amending an RFP, the period of time remaining until the proposal deadline and the possible need to extend this period should be considered and, if necessary, confirmed in the addendum. Any information given to one proposer should be furnished promptly to all other prospective proposers as an addendum. No award should be made unless the addendum has been issued in sufficient time to permit all prospective sufficient time to submit or modify their proposals. In this regard, changes to DBE goals or requirements that may require additional time for proposers to conduct a good faith effort to locate DBE firms will be considered in determining whether an extension of the deadline is needed.

5. Pre-Proposal Meeting

A pre-proposal meeting may be used as a means of briefing prospective offerors and explaining to them complicated specifications and requirements, including U/DBE information, goals, and documentation as early as possible after the solicitation has been issued and before the proposals are due. The pre-proposal meeting should not be used as a substitute for amending a defective or ambiguous solicitation. After a pre-proposal meeting is held, question-and-answer notes should be taken and posted on the website. If a modification is proposed as a result of the pre-proposal meeting, such modifications should be made through a formal addendum and not through the question-and-answer notes. A list of interested small and U/DBE firms should be prepared and posted within three days after the pre-proposal meeting on RTPA website to assist contractors and subcontractors in locating each other to potentially partner on the project.

6. Evaluation Committee

Evaluation of proposals should be conducted by one or more committees of technically qualified personnel concerned with the procurement and should include at least one non-RTPA staff member. All non-staff members must receive the evaluation committee guidelines and complete a declaration concerning conflicts of Interest before taking part in the evaluation. Selection of evaluation committee members should be approved by the Executive Director using the evaluation committee selection memo. Evaluation Committee members will evaluate and provide their individual ratings of the technical component of the proposals. The Contracts Officer will analyze the cost proposals and provide the analyses to the Evaluation Committee members. If an Evaluation Committee member prepared the Independent Cost Proposal, he/she should not take the lead in negotiations but may assist Contracts Staff in preparing the negotiation strategy.

7. Selection of Offerors for Negotiation and Award

The objective of contract negotiation is to obtain complete agreement on all the basic issues. Oral discussion or written communication should be conducted with offerors, to the extent necessary, to resolve uncertainties relating to the technical and nontechnical issues. Basic questions should be resolved when they arise and not be left for later agreement during subsequent proceedings.

Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described below. The approach and procedures are those that are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with offerors within the competitive range after which best and final offers (BAFOs) may be requested. However, RTPA may select a proposal for award without any discussions or negotiations or request for any BAFO(s). Subject to RTPA's right to reject any or all proposals, the offeror will be selected whose proposal is found to be most advantageous to RTPA. Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures included in the RFP. Proposals may not be evaluated on the basis of criteria that were not included in the RFP. After receipt of initial proposals, written or oral discussion may be conducted with all responsible offerors who submitted proposals within a competitive range, price and other factors considered. Exceptions to this requirement are:

- a. procurements in which rates or prices are fixed by law or regulation; and
- b. procurements in which it can be clearly demonstrated (from the existence of adequate competition or accurate prior cost experience with the product or service) that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price. In such procurements the RFPs must contain a notice that award may be made without discussion of proposals received and that proposals should be submitted initially on the most favorable terms possible from a price and technical standpoint. When there is uncertainty, however, as to the pricing or technical aspects of any proposal, the project manager and Contracts Officer should not make award without further exploration and discussion. When the project manager and Contracts Officer deem a proposal to be the most favorable and that proposal involves a material departure from the requirements stated in the RFP, all offerors should be given an opportunity to submit new proposals on a basis comparable to that of the offeror tentatively selected.

#### 8. Confidentiality of Negotiations

In competitive negotiations, offerors should not be given any indication of a "target" price that must be met to ensure further consideration for contract award. Such practice constitutes an auction technique that may violate the integrity of the procurement process and must be avoided. Additionally, the RFP boilerplate should state that proposals (minus the cost proposal/estimate until the time of award) will not be treated as confidential documents unless they are marked as such by the bidder/offeror and the bidder/offeror is able to demonstrate the documents contain the type of information protected by law as confidential or trade secret. Large portions of proposals are typically public records. They should not, however, be released to the public during the procurement or contract negotiation process without the approval of the Executive Director in consultation with Legal Counsel.

#### 9. Opening of Proposals

Proposals will not be publicly opened. All detailed cost estimates ("cost proposals") and evaluations related to costs will be kept strictly confidential throughout the evaluation, negotiation, and selection process. Only the members of the evaluation committee and RTPA officials, employees and agents having a legitimate interest will be provided access to the cost proposals and cost evaluation results during this period.

#### 10. Negotiations

All negotiated procurements over \$ \_\_\_\_\_ with Caltrans or Federal funds, or over \$ \_\_\_\_\_ of Local funds, must have a documented RON that establishes that staff made the effort to obtain the best price

for RTPA for the goods or services with price, quality, level of effort, and other relevant factors taken into consideration. A template exists for documenting the RON. The project manager should take the lead on preparing the RON when he/she leads the contract negotiations if he/she did not take the lead on preparing the ICE. The Contracts Officer is responsible for documenting negotiations in the RON or in other records when it takes the lead on the contract negotiations.

11. Protests

Protest procedures shall be included in the RFP.

12. Normally, a “one-envelope” selection procedure will be used for service contracts in excess of \$100,000. The “one-envelope” competitive process is as follows:

- a. Notice of the professional services required should be published at least once in a newspaper of general circulation in the county and in community newspapers, as appropriate, at least three weeks before the proposal due date. For federally funded projects, notice also should be published in one or more minority newspapers in the county. The notice should state that RTPA is interested in receiving responses from qualified firms and indicate how additional information can be obtained and the time and place for receiving responses.
- b. Notice also should be sent to firms or individuals known to be interested in providing the required services, including small and emerging businesses on RTPA’s various interested party lists and to appropriate DBE firms or individuals registered with RTPA.
- c. The RFP should include:
  - i. Pass/fail criteria to be used as an initial screening of responses. Such criteria should include, but not be limited to, insurance requirements, licensing, and any other consideration which would make the proposer ineligible to perform the work.
  - ii. Evaluation factors.
  - iii. Any standard contract language that the successful offeror will be required to comply with, including all applicable federal clauses and certifications.
- d. Responses to an RFP shall list all proposed subconsultants and subcontractors, their area of the work and certified U/DBEs. A cost proposal shall be submitted along with the technical proposal and will be used as an evaluation factor by the evaluation committee.
- e. The Contracts Officer will document the receipt of all proposals. A time-and-date stamp shall be kept at the desks of the receptionists and administrative staff handling mail, and these staff members shall be instructed to place a time-and-date stamp on all proposals. RTPA’s procedure for determining whether a proposal is disqualified for being submitted to RTPA after the deadline for proposals or statements of qualification will be stated in the solicitation document.
- f. The responses should be evaluated by an evaluation committee appointed by the project manager with the approval the Executive Director. The evaluation committee should consist of RTPA staff and should include at least one person from outside the agency. Care should be taken to avoid using direct supervisors and their reports as the sole staff scoring evaluators. Additional staff members/advisers, who do not participate in scoring, may sit in on evaluation panels if needed to provide expertise.
- g. The firm(s) that are deemed responsible and responsive and who receive the highest scores will be short-listed. Short-listed proposers should be sent a notice to short-listed proposers and those who have not made the short-list should be sent a notice to proposers not making short-list. This notice will trigger the protest period.
- h. The top-ranked firm(s) may then be interviewed, if deemed necessary. The final list of qualified firms shall be based on the response to the RFP references, the interview, and other relevant factors. The project

manager should summarize the findings of the evaluation committee in a recommendation memo to the Executive Director. The memo should include the evaluation committee's recommendation for negotiations with one or more firms in the competitive range.

- i. The Executive Director will approve or reject the recommendation based upon information provided by the evaluation committee and other factors as deemed appropriate, including, but not limited to, qualifications, ability to meet schedule and budget, cost of work, and meeting insurance requirements. The Executive Director also may interview one or more of the firms prior to making a selection.
  - j. Approval by the Executive Director of the recommendation shall be deemed approval to enter into negotiations with one or more firms in the competitive range. After one or more offerors are selected for contract negotiations, they should be sent a notice of intent to award. This notice is not a commitment by RTPA to award a contract; it is just notice that RTPA intends to negotiate. At this stage any necessary certificates of insurance should be requested from offerors with whom RTPA will negotiate. Proposers who are not selected for negotiation should be sent a notice of intent to enter negotiations with another consultant in order to trigger their protest period. A contract should not be finalized until a sufficient number of days have passed from the time the notice of intent to enter negotiations with another proposer is sent to the unsuccessful proposers for the protest period to have expired.
  - k. The cost proposals from the firm(s) in the competitive range should be used as a basis for negotiation. Negotiations will be conducted by the Contracts Officer and the Executive Director and can include factors in addition to cost, such as staffing levels, project schedule, etc. If negotiations are conducted with more than one firm in the competitive range, then staff attempt to obtain the most favorable terms by negotiating with all of the firms. Should negotiations fail, the Executive Director may issue a BAFO to the qualified firms. Once negotiations are complete, a contract incorporating the negotiated terms and conditions will be prepared for the approval of the Executive Director or his/her designee. A post-award notice should be sent to all of the unsuccessful firms at this point in time to notify them that a final selection has been made and trigger their protest period.
12. For services that have a very explicit SOW containing detailed, straight-forward specifications that will allow consistent responses and offerors can be considered qualified or not qualified based on predetermined criteria, the low-bid IFB process may instead be used. The Contracts Officer can assist the project manager in determining whether the nature of any of the services is appropriate for using this low-bid process.
  13. Cost must be used as a factor in evaluating all proposals for services pursuant to this section.
  14. As mentioned above, if desired, a **“two-envelope”** selection process may be followed, as follows:
    - a. Requests for information/letters of interest/statements of qualifications (RFIs/LOIs/SOQs) may be solicited from the current RTPA on-line vendor database and any other applicable list, for the particular services specialty.
    - b. Notice of the professional services required should be published at least once in a newspaper of general circulation in the county and in one or more minority newspapers in the county at least three weeks before the proposal due date. The notice should state that RTPA is interested in receiving RFIs/LOIs/SOQs from qualified firms, indicate how additional information can be obtained, and indicate the time and place for receiving responses.
    - c. An RFI or RFP may be sent to firms or individuals previously known to be interested in or capable of providing the required services. Reasonable effort should be made to send requests to minority firms known to be capable of providing the required services.
    - d. “Pass/fail” criteria will be established by staff and clearly stated in the RFIs/RFP to be used as a screening of responses for responsiveness to the RFP/RFP. Such criteria may include, but are not limited to, adherence to project budget, insurance requirements, and DBE compliance (if DBE is applicable).

- e. An evaluation committee will be formed by the project manager with the approval the Executive Director, which should consist of RTPA staff and should include at least one person from outside the agency.
- f. The evaluation committee will evaluate the technical component of the SOQs, and the Contracts Officer will analyze the cost proposals and provide the analyses to the evaluation committee members. The project manager or Contracts Officer should prepare a recommendation memo to the Executive Director summarizing the evaluation committee's findings and recommending one or more qualified firms to be invited to receive an RFP. The firm(s) in the competitive range that is deemed responsible and responsive will be short-listed. Short-listed proposers should be sent a notice and those who have not made the short-list should be sent a notice of failure to make short-list. Following approval by the Executive Director or designee, the Contracts Officer may then issue the final version of the RFP to the qualified firm(s).
- g. From this point, the steps above for a one-envelope procurement should be followed.

### *Appendices*

- Standard of Conduct Policy (Appendix 3)
- Method of Procurement Selection Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)
- Independent Cost Estimate Scope of Work, Summary and Staffing Plan (Appendix 24)
- Evaluator (Consultant/Contractor Evaluation Committee) Guidelines (Appendix 7)
- Declaration Concerning Conflicts for Evaluators (Appendix 8)
- Responsive Bidder/Proposer Checklist for RFP (Appendix 11)
- Subconsultant List (Appendix 13)
- Notice to Short-Listed Proposers (Appendix 18)
- Notice to Proposers Not Making Short-List (Appendix 19)
- Request for Cost Proposal (Appendix 20)
- Notice of Intent to Enter Negotiations with Another Proposer (Appendix 17)
- Record of Negotiation (Appendix 27)
- Notice of Intent to Award (Appendix 16b)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)
- Post-Award Notice to Unsuccessful Proposers (Appendix 21)

## **SECTION 022E – PROCUREMENT OF A&E SERVICES**

The procedures outlined in this section relate to contracts with engineering firms to perform architectural and engineering related work. It is based on the Brooks Act when federal funding is utilized and on the California mini-Brooks law whether or not federal funds are used. Rather than selection based on price, the Act provides for selection based on professional qualifications and experience, followed by negotiation with the most qualified firm of a price that is fair and reasonable to the government.

Based on the nature of RTPA's federal and state mandates, the need to perform a qualifications based selection in compliance with the Brooks Act is unlikely.

1. RTPA will use competitive proposal procedures based on the Brooks Act and California Mini-Brooks Act when contracting for A&E services as defined in 40 U.S.C. §541 and California Government Code 4525, as documented in a Method of Procurement Selection Form. Board consent in a public meeting may also be required if the procurement is of the type and amount the Board has directed that staff bring it for pre-procurement and/or pre-contracting approval. Although price is not an evaluation criteria, and ICE must be



prepared before the RFQ is issued for A&E Services. Types of services considered A&E services include environmental, program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer. The Brooks Act requires that:

- a. An offeror's qualifications be evaluated;
  - b. Price be excluded as an evaluation factor;
  - c. Negotiations be conducted with only the most qualified offer or; and
  - d. Failing agreement on price, negotiations with the next most qualified offer or should be conducted until a contract award can be made to the most qualified offer or whose price is fair and reasonable to the grantee.
2. Separately bound or sealed cost proposals should be submitted as part of the process and should not be opened until after the evaluation committee has ranked the proposers. Cost proposals should be excluded as an evaluation factor and will only be used by the Executive Director or his/her designee when negotiating within the prescribed budget, except as may be otherwise provided in this manual.
  3. The separately submitted cost proposal should be used as a basis for negotiation. Negotiations will be conducted by the Executive Director or his/her designee and can include factors other than cost, such as staffing levels, project schedule, etc. The party who prepared the original IC or Cost Analysis may participate in preparation of the negotiation plan, but should not lead the negotiations. Should negotiations fail, the Executive Director, or his/her designee, will enter into negotiations with the next ranked firm. Once negotiations are complete, a contract incorporating the negotiated terms and conditions will be prepared for the approval of the Executive Director or his/her designee. Only the cost proposal of the firm(s) in negotiations should be opened. At the end of the process, all unopened cost proposals should be disposed of unopened or returned to the offeror.
  4. All provisions of Section 022D (Procurement of Services Other Than A&E by Competitive Proposal with a value greater than \$\_\_\_\_\_ with Caltrans or Federal Funds OR greater than \$\_\_\_\_\_ with Local funds) of this manual applicable to RFQs, which are not in conflict with this Section will be used for A&E procurements.
  5. Audits and Indirect Costs. The following requirements apply to a third-party contract for A&E services:
    - a. Performance of Audits. The third-party contract or subcontract must be performed and audited in compliance with Federal Acquisition Regulation (FAR) Part 31 cost principles.
    - b. Indirect Cost Rates. RTPA, the contractor, its subcontractors must accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant federal or state government agency, if those rates are not currently under dispute.
    - c. Application of Rates. After a firm's indirect cost rates are established and accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or de facto ceilings.
    - d. Pre-notification – Confidentiality of Data. Before requesting or using cost or rate data, RTPA should notify the affected firm(s) that their data will be kept confidential and may not be accessible by or provided by the group of agencies that share cost data, except by written permission of the audited firm. If prohibited by law, that cost and rate data may not be disclosed under any circumstances. California's Public Records Act may make it difficult to maintain confidential cost or rate data. As a result, before requesting or using cost or rate data, RTPA should notify the affected firm that its cost or rate data may be subject to disclosure and should try to obtain permission to provide that data from the firm if RTPA receives a public records request for these records under applicable California law.

6. All procurements must have a documented RON that establishes that the project manager made the effort to obtain the best price for RTPA for the goods or services with quality, level of effort, and other relevant factors taken into consideration. A template exists for documenting the RON for task orders. The Contracts Officer is responsible for documenting the RON in other records when a template is not used.
7. Protest procedures should be included in the RFQ.

### *Appendices*

- Method of Procurement Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)
- Independent Cost Estimate Scope of Work, Summary and Staffing Plan (Appendix 24)
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- Record of Negotiation (Appendix 27)
- Notice of Intent to Award (Appendix 16b)
- Post-Award Notice to Unsuccessful Proposers (Appendix 21)

### **SECTION 022F – AUDIT REQUIREMENTS**

Caltrans direction prior to 2013 required the performance of preaward audits of contracts over \$1,000,000 involving state and federal funds.

The purpose of the preaward was to assess the adequacy of the consultant's accounting system to segregate allowable, unallowable and allocable costs, to assess the consultant's financial position; and to evaluate the reasonableness of the proposed costs.

The 2013 version of the Local Programs Manual dispenses with the preaward audit concept, but still requires RTPA to determine the eligibility of costs paid to consultants. RTPA accomplishes this requirement to determine the eligibility of costs by performing costs and/or price analysis as part of the procurement process.

**For A & E contracts only**, where cost is not a consideration in the selection of the consultant, Caltrans Audits and Investigations now requires RTPA to submit the following prior to executing negotiated contracts:

#### **Small Purchases, less than \$150K -**

No documentation required.

#### **Procurements between \$250K and \$1M -**

The following certifications by the consultant:

- That establishes the firm's indirect cost rate and asserts that it is in compliance with the cost principles of FAR Title 48, CFR, Part 31 and contains no unallowable costs.
- That the firm's financial management system meets the standards of financial reporting, accounting records, internal and budget controls in compliance with FAR, Title 49 CFR, Part 18.20.
- The dollar amount of all A&E contracts awarded by Caltrans or California local agencies within the last three years and the number of states with which the firm conducts business.
- That the direct costs identified in the cost proposal are reasonable, allowable and allocable in accordance with the cost principles of FAR 48, CFR, Part 31.

- Proposed contract amount for sub-consultants.
- Proposed Contract amount for the prime.
- A list of all sub-consultants and proposed subcontract dollar amounts.

**Procurements between \$1M and \$3.5M –**

- The proposed contract.
- Cost proposals for the prime and all sub-consultant contracts of \$150,000 or more.
- Consultant generated Indirect Cost Rate schedule prepared in accordance with applicable CFRs.
- A completed Internal Control Questionnaire
- The following certifications by the consultant:
  - That establishes the firm’s indirect cost rate and asserts that it is in compliance with the cost principles of FAR Title 48, CFR, Part 31 and contains no unallowable costs.
  - That the firm’s financial management system meets the standards of financial reporting, accounting records, internal and budget controls in compliance with FAR, Title 49 CFR, Part 18.20.
  - The dollar amount of all A&E contracts awarded by Caltrans or California local agencies within the last three years and the number of States the firm does business with.
  - That the direct costs identified in the cost proposal are reasonable, allowable and allocable in accordance with the cost principles of FAR 48, CFR, Part 31.
  - Proposed contract amount for subconsultants.
  - Proposed contract amount for the prime.
  - A list of all subconsultants and proposed subcontract dollar amounts.
- One of the following:
  - A copy of the prior fiscal year and most recently completed fiscal year Cognizant approved indirect cost rate approved by the state DOT or
  - A copy of the prior fiscal year and most recently completed Indirect Cost Rate Schedule and audit report by an independent CPA.
  - A copy of the prior and most recently completed fiscal year Indirect Cost Rate evaluation or audit report on a prior Caltrans or local agency contract, and any other governmental agencies report, review or attestation.

**Procurements over \$3.5M –**

- The proposed contract
- Cost proposals for the prime and all sub-consultant contracts of \$150,000 or more.
- Consultant generated Indirect Cost Rate schedule prepared in accordance with applicable CFRs.
- A completed Internal Control Questionnaire
- The following certifications by the consultant:
  - That establishes the firm’s indirect cost rate and asserts that it is in compliance with the cost principles of FAR Title 48, CFR, Part 31 and contains no unallowable costs.
  - That the firm’s financial management system meets the standards of financial reporting, accounting records, internal and budget controls in compliance with FAR, Title 49 CFR, Part 18.20.
  - The dollar amount of all A&E contracts awarded by Caltrans or California local agencies within the last three years and the number of States the firm does business with.
  - That the direct costs identified in the cost proposal are reasonable, allowable and allocable in accordance with the cost principles of FAR 48, CFR, Part 31.
  - Proposed contract amount for subconsultants
  - Proposed contract amount for the prime
  - A list of all subconsultants and proposed subcontract dollar amounts.
- One of the following:
  - A copy of the prior fiscal year and most recently completed fiscal year Cognizant approved indirect cost rate approved by the state DOT or

- A copy of the prior fiscal year and most recently completed Indirect Cost Rate Schedule and audit report by an independent CPA.
- A copy of the prior and most recently completed fiscal year Indirect Cost Rate evaluation or audit report on a prior Caltrans or local agency contract, and any other governmental agencies report, review or attestation.
- Indirect Cost Rates Audited by a CPA
  - A copy of the consultant's approved State DOT Cognizant Indirect Cost Rate Schedule and Report and the Cognizant Approved State DOT Cognizant Concurrent letter (if issued) OR
  - A CPA Audited Indirect Cost Rate Audit Report AND
  - A copy of the CPA audited financial statements.

In the case of procurements for A&E consultants of \$1M or more, RTPA can begin, but not conclude, cost negotiations with the best qualified firm until a conformance letter is received from Caltrans Audits.

Based on the information gathered through the above steps, Caltrans Audits will perform risk analyses to determine which contracts/firms Caltrans will audit.

***Resource(s)***

- Caltrans Local Assistance Manual, Section 10
- Caltrans Local Assistance Manual, Exhibit 10-A
- Caltrans Local Assistance Manual, Exhibit 10

**SECTION 022G – PROCUREMENT BY NONCOMPETITIVE PROPOSALS (SOLE SOURCE) WITH CALTRANS OR FEDERAL FUNDS**

When RTPA requires supplies or services available from only one responsible source and no other supplies or services will satisfy its requirements, RTPA may make a sole source award following documentation of an adequate justification. When RTPA requires an existing contractor to make a change to its contract that is beyond the scope of that contract, it may be a sole source award that must be justified. RTPA staff should work with the Contracts Officer to determine if a particular contract amendment could be considered a sole source. A sole source cannot be justified when the need for the sole source is due to either a failure to plan or a lack of advance planning or due to concerns about the amount of assistance available to support the procurement (for example, expiration of federal assistance available for award). Board consent in a public meeting may also be required if the procurement meets pre-designated thresholds. Procurement via the limited scope procurement method described in Section 022I also should be explored prior to utilizing the sole source method. The following requirements apply to a sole source procurement that falls within the parameters of this section:

1. A cost analysis (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit (ICE), is required.
2. The Contracts Officer should not commence a sole source unless the Method of Procurement Selection Form indicates a sole source is appropriate and the procurement requisition includes a sole source approval form that:
  - a. justifies the use of such actions in writing based on one or more of the justifications permitted by the federal funding agency(ies);
  - b. certifies the accuracy and completeness of the justification; and
  - c. approval by the Executive Director is received.

3. The project manager is responsible for providing and certifying as accurate and complete necessary data to support his/her recommendation for a noncompetitive procurement.
4. The sole source justification form must accompany each procurement requisition requesting a sole source procurement.
5. When the acquisition will be paid for in whole or in part by federal funds, one of the following conditions must be met:
  - a. Staff solicited competitive bids and was unable to obtain a responsive bidder.
  - b. The grantor agency providing the federal funds has approved sole source procurement.
  - c. The service is only available from a single source because the contractor will be required to use confidential information, intellectual property, or trade secrets owned by the contractor.
  - d. The federal grantor agency made the award of funds being used based on RTPA's use of a particular team of contractors, and the contractor to be sole sourced is one of the team members identified in the funding application.
  - e. The work is necessary to continue development or production of highly specialized equipment or components thereof, and it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition or when it is likely that award to another contractor would result in unacceptable delays in fulfilling RTPA's needs.
  - f. The sole source is authorized by statute, or only one contractor can comply with specific statutory requirements.
  - g. A national emergency exists and a particular facility or contractor is needed to achieve mobilization.
  - h. The disclosure of RTPA's needs in a public procurement process would compromise national security.
  - i. A particular expert or neutral person's services are needed for a current protest, dispute, claim, or litigation.
  - j. A competitive procurement is precluded by the terms of an international agreement or treaty or the written directions of a foreign government providing reimbursement for the cost of the supplies or services.
  - k. To establish or maintain an educational or other nonprofit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.
6. All procurements over \$5,000 must have a documented RON that establishes that the project manager made the effort to obtain the best price for RTPA for the goods or services with quality, level of effort, and other relevant factors taken into consideration. The Contracts Officer is responsible for documenting the RON when it takes the lead on the negotiations, and the project manager is responsible for the RON if he/she takes the lead on negotiating with the contractor.
7. Sole source procurements require approval by the Executive Director.

### *Appendices*

- Procurement Requisition Form (Appendix 2)
- Method of Procurement Selection Form (Appendix 10)
- Sole Source Approval Form (Appendix 1)
- Record of Negotiation (Appendix 27)

## **SECTION 022H– PROCUREMENT BY NONCOMPETITIVE PROPOSALS (SOLE SOURCE) WITHOUT FEDERAL FUNDS**

1. Regardless of funding, sole source procurements are accomplished through solicitation or acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract also is considered a sole source procurement that must comply with this section. A sole source cannot be justified when the need for the sole source is due to either a failure to plan or a lack of advance planning, or due to concerns about the amount of assistance available to support the procurement (for example, expiration of funding assistance available for award). Board consent in a public meeting may also be required if the procurement is of the type and amount the Board has directed that staff bring it for pre-procurement and/or pre-contracting approval. RTPA staff should work with the Contracts Officer to determine if a particular contract amendment could be considered a sole source. Procurement via the limited scope procurement method described in Section 022J also should be explored prior to utilizing the sole source method.
2. When there are no federal funds involved, one of the following additional factors may be utilized to justify a sole source acquisition in addition to the factors in Section 022I:
  - a. Only one (1) contractor/consultant/vendor who can provide unique/highly specialized item/ service.
  - b. Economy or efficiency supports award to existing contractor/consultant as a logical follow-on to work already in progress under a competitively awarded contract.
  - c. Cost to prepare for a competitive procurement exceeds the cost of the work or item.
  - d. The item is an integral repair part or accessory compatible with existing equipment.
  - e. The item or service is essential in maintaining research or operational continuity.
  - f. The item/service is one with which staff members who will use the item/service have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.
3. A cost analysis (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit (ICE) is required.
4. The Contracts Officer should not commence noncompetitive negotiations unless a Method of Procurement Selection Form indicates a sole source is needed and the procurement requisition includes a sole source approval form that:
  - a. justifies the use of such actions in writing;
  - b. certifies the accuracy and completeness of the justification; and
  - c. approval by the Executive Director .
5. The project manager is responsible for providing and certifying as accurate and complete necessary data to support their recommendation for noncompetitive procurements.
6. All procurements must have a documented RON that establishes that staff made the effort to obtain the best price for RTPA for the goods or services with quality, level of effort, and other relevant factors taken into consideration. A template exists for documenting the RON for task orders. The Contracts Officer is responsible for documenting the RON when it takes the lead on the negotiations, and the project manager is responsible for the RON if he/she takes the lead on negotiating with the contractor.
7. The sole source approval form must accompany each procurement requisition requesting a sole source procurement

### ***Appendices***

- Procurement Requisition Form (Appendix 2)

- Method of Procurement Selection Form (Appendix 10)
- Sole Source Approval Form (Appendix 1)
- Record of Negotiation (Appendix 27)

## **SECTION 022I – PROCUREMENT BY LIMITED COMPETITION**

1. Generally, RTPA must provide for full and open competition in solicitations. The Common Grant Rule for governmental recipients of federal funding, however, permits RTPA to limit the number of sources from which it solicits bids or proposals when RTPA has such an unusual and urgent need for the property or services that it would be seriously injured unless it were permitted to limit the solicitation. A limited competition procurement cannot be justified when the need for foregoing the full and open competition requirement is due to either a failure to plan or a lack of advance planning or due to concerns about the amount of assistance available to support the procurement (for example, expiration of federal assistance available for award). Only under certain circumstances can RTPA conduct a procurement using limited competition requirements. A small purchase procurement procedure in which only three quotes are sought on a shorter time frame could be used even for a procurement exceeding the normal applicable thresholds if a justification for limited competition exists. Prior consultation with the Contracts Officer is required in order to utilize a limited competition procurement method.

The justifications in Sections 022G and 022H may be sufficient. Additionally, one of the justifications below may be sufficient.

- a. Documentation is provided establishing that full and open competition in connection with a particular acquisition is not in the public interest.
  - b. Documentation is provided establishing that an unusual and urgent need for the services exists and RTPA would be seriously injured unless it is permitted to limit the competition.
  - c. Documentation is provided establishing that public exigency or emergency will not permit a delay resulting from a full formal competitive procurement for the supplies or services.
  - d. Acquisition of an expert or neutral person's services is needed for a current or potential protest, dispute, claim, or litigation.
2. The Contracts Officer should not commence a limited competition procurement unless the procurement requisition justifies the use of limited competition, certifies the accuracy and completeness of the justification, and is approved by a department director or higher level of authority. The project manager is responsible for providing and certifying as accurate and complete necessary data to support the recommendation for limited competition procurements.
  3. The limited competition request form must accompany each procurement requisition requesting this kind of procurement.
  4. All procurements over must have a documented RON that establishes that the project manager made the effort to obtain the best price for RTPA for the goods or services with quality, level of effort, and other relevant factors taken into consideration. A template exists for documenting the RON for task orders. The Contracts Officer member is responsible for documenting the RON when it takes the lead on the negotiations, and the project manager is responsible for the RON if he/she takes the lead on negotiating with the contractor.
  5. Limited competition procurements require approval by the Executive Director

### ***Appendices***

- Procurement Requisition Form (Appendix 2)
- Limited Competition Approval Form (Appendix 25)
- Record of Negotiation (Appendix 27)

## **SECTION 022J – OPTIONS**

1. In compliance with FTA Circular 4220.1F options must be evaluated as part of the price evaluation of offers before award is made on FTA-funded procurements if an option will be included in the solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, RTPA may elect to purchase additional equipment, supplies, or services called for by the contract or may elect to extend the term of the contract. If RTPA chooses to use options, the requirements below apply:
  - a. Evaluation of Options: The option quantities or periods contained in the contractor’s bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
  - b. Exercise of Options
    - i. The project manager and the Contracts Officer must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
    - ii. An option may not be exercised unless the project manager has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.
2. The terms for the options and for the exercising of them should be defined in each contract. For service contracts the basic plus option periods should not exceed five years unless a documented justification is approved by the Contracts Officer.
3. The bid price form used in an IFB and the cost proposal form used in an RFP should state that the option prices will be included in the total price for evaluation purposes.

### *Appendices*

- Sample Cost Proposal (Appendix 9)

## **SECTION 022K – CONTRACTS WITH OTHER GOVERNMENT AGENCIES**

RTPA may contract with any department or agency of the United States or the State of California and local governmental authorities within or outside of the region, including those in Mexico, any city, county, public district, public corporation, or joint powers authority formed pursuant to the provisions of the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code upon those terms and conditions as RTPA finds are in its best interests without conducting a competitive procurement. Such contracts are known as “intergovernmental agreements” and do not require a competitive procurement process.

### *Appendices*

- None



## SECTION 022L – USE OF ON-CALL MULTIPLE-AWARD PROCUREMENTS

When RTPA has a need to procure services within a particular genre, such as A&E, transit planning, environmental, or legal services, but the specific project assistance that will be needed from consultants is not known in a sufficient amount of detail, an RFQ can be used to select a short-list of prequalified firms for a specific period of time. The procedure used is similar to that of a two-envelope RFQ procurement, for which more details are provided in Section 22D of this manual. In addition to those procedures, the following additional items should be considered:

1. A determination of whether any applicable DBE goal should be set at the [master] contract stage or at a later point in time when task orders are issued will need to be made prior to issuance of the RFQ. The Small Business Manager and Office of General Counsel should be consulted for advice on DBE goals and the timing of DBE documentation deadlines that will be applicable to proposers.
2. Within the RFQ, RTPA will need to identify the criteria that will be used to select from among the firms on the on-call list and an on-call consultant selection form including those criteria will need to be prepared prior to issuance of each task order.

### *Appendices*

- On-Call Consultant Selection Form Sample (Appendix 28)

## SECTION 023 – COST AND PRICE ANALYSIS

1. RTPA staff should perform a cost or price analysis in connection **with every procurement action** that will result in expenditure of funds, **including contract modifications and amendments that call for additional funds, sole sources, change orders, exercise of options, use of a purchasing schedule or the piggybacking method and must be completed prior to the procurement.** The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the procurement requisition originator must create an ICE before receiving bids, cost estimates or proposals.
2. Task Order Contracts. If the ICE prepared prior to the solicitation was sufficiently detailed by task to allow a determination of the reasonableness of the price for a particular task, an additional ICE may not be required. If, however, the level of detail in the original ICE is insufficient or there is a reason to believe the amounts used in the original ICE are no longer reasonable or accurate, an ICE should be completed by the Project Manager considering the level of effort needed as well as other factors such as direct materials needed before a cost estimate or proposal is requested from the contractor in order to ensure the ICE is independently prepared and the Project Manager has not relied on the contractor to determine the starting point for negotiations.
3. Cost Analysis. A cost analysis must be performed when the bidder is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and A&E services contracts. **A cost analysis will also be necessary when adequate price competition is lacking and for sole source procurements, limited competition procurements, and 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.
4. Price Analysis. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

5. Profit/Fee. RTPA will negotiate profit/fee as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis should be performed, including amendments, task orders, job orders and change orders. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
6. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles on federally funded procurements.
7. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used on federally funded procurements. This includes fixed mark-ups on equipment rentals and subcontractors. A maximum mark-up amount may be specified which should be negotiated based upon the risk involved, level of supervision needed, complexity of the work, and other factors. Documentation of this decision making should be included in the contract file in each instance.
8. Establishing Indirect Cost Rates. For contracts other than A&E contracts that are federally funded, if the contractor or subcontractor does not have an approved government agency indirect cost rate agreement, the contract's dollar value should determine how that rate is verified.
  - a. Contracts of \$5 Million or Less. The audit recommendations of the contractor's certified public accountant or indirect cost information in the contractor's annual statement to their stockholders, shareholders, or owners, or examples of acceptance of their rates by other governmental agencies within the last six months may be accepted.
  - b. Contracts Exceeding \$5 Million. The Defense Contract Audit Agency, another federal cognizant audit agency, or an accounting firm approved by the federal government to perform audits for the federal government, must verify the contractor's rates.

### ***Appendices***

- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23a)
- Cost Analysis Form (Appendix 33)
- Price Analysis (Appendix 34)

### **SECTION 024 – BONDING REQUIREMENTS**

1. For non-federally funded construction or facility improvement contracts or subcontracts less than \$50,000 in value, bonding may be required at the discretion of the Executive Director. For construction or facility improvement contracts or subcontracts exceeding \$100,000, it is the policy of RTPA to impose these minimum requirements:
  - a. A bid guarantee from each bidder equivalent to ten (10) percent of the bid price must be issued by a bonding company registered in California. The "bid guarantee" shall consist of a firm commitment such as a bid bond executed by an admitted surety insurer and made payable to RTPA, cash, cashier's check, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid shall not be considered unless accompanied by one of the forms of bidder's security. On the failure or refusal of any bidder to execute the contract, its bidder's security shall be forfeited to RTPA. RTPA may withhold the bidder's security of the second- and third-lowest, responsive and responsible bidders until the

contract has been finally executed. RTPA shall, upon request, return cash, cashier's checks, and certified checks submitted by all other unsuccessful bidders within ten (10) days after the contract is awarded, and their bidder's bonds shall be of no further effect.

- b. A performance bond on the part of the contractor for at least 50 percent of the contract amount for contracts without federal funds, 100 percent of the contract price for federally funded contracts, or for such percentage as may be required by law or funding agencies. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond in the amount of 100 percent of the contract price is required unless the award is less than \$100,000 or the Board grants a variance.
  - d. A cash deposit, certified check, or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of the grantor agency is adequately protected.
2. At the discretion of the Contracts Officer and project manager, bonding of higher limits than the minimum may be imposed if the project risk warrants such.

### ***Appendices***

- Responsive Bidder/Proposer Checklist for RFP/RFQ (Appendix 11)

## **SECTION 025 – PAYMENT PROVISIONS IN THIRD-PARTY CONTRACTS**

1. Advance Payments
  - a. For non-federally funded contracts, the use of advance payments is strongly discouraged and will only be agreed to if no other option is available.
  - b. For federally-funded contracts, the federal funding agencies do not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from the federal funding agency(ies).
2. Progress Payments. The risk associated with use of progress payments is that RTPA may make payment for contract work that has not been completed. RTPA should only use progress payments if the following conditions are met, as applicable:
  - a. The percentage of completion method for progress payments can only be used on construction contracts if the procurement is FTA funded.
  - b. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
  - c. RTPA obtains adequate security for the progress payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment.
  - d. RTPA obtains sufficient documentation to demonstrate completion of the amount of work for which progress payments are made.
3. Pursuant to prompt payment provisions in state law, terms and conditions in grants to RTPA from state and federal agencies, and federal regulations applicable to procurements with DBE requirements, payment is

typically required by RTPA prime contractors to their subcontractors within 15 days. RTPA monitors payments to DBE subcontractors through use of monthly progress reports from contractors.

***Appendices***

- U/DBE &SB Monthly Participation Progress Report (Appendix 14d)

**SECTION 026 – LIQUIDATED DAMAGES PROVISIONS**

1. RTPA may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine.
2. The use of liquidated damage provisions is at the discretion of the Executive Director.
3. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time, and the rate must be specified in the third-party contract. Any liquidated damages recovered shall be credited to the project account involved unless the grantor agency permits otherwise. Documentation establishing how the liquidated damages amount was determined will be provided by the project manager for the contract file.

***Appendices***

- None

**SECTION 027 – CONTRACT AWARD ANNOUNCEMENT**

Once the contract terms have been negotiated, a post-award notice should be sent to those bidders/offerors who were not selected for the award. The Contracts Officer will send a notice to proceed to the successful proposer/bidder following execution of a contract. If RTPA implements a contract award announcement procedure for federally funded procurement for goods or services (including construction services), the announcement should specify the amount of federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services.

***Appendices***

- Post-Award Notice to Unsuccessful Proposers (Appendix 21)
- Notice to Proceed (Appendix 22)

**SECTION 028 – CONTRACT PROVISIONS**

All contracts should include provisions to define a sound and complete agreement. In addition, contracts and subcontracts should contain contractual provisions or conditions that allow for:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate, for all contracts in excess of the small purchase threshold.
2. Termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.

## *Appendices*

- None

### **SECTION 029 – CARDINAL CONTRACT CHANGE**

1. A cardinal contract change is a significant change in contract work (goods or services) that causes a major deviation from the original purpose of the work or the intended method of achievement or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Such practices are sometimes informally referred to as “tag-ons.” A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a tag-on or a cardinal change.
2. A cardinal change cannot be identified easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases. The following guidance should be used, however, in order to determine if a change is a cardinal change and if such a change will therefore constitute a sole source. Legal Counsel should be consulted to make a final determination regarding whether a particular contract change will constitute a cardinal change.
  - a. Changes in Quantity. To categorize virtually any change in quantity as a prohibited cardinal change (sometimes referred to as an “out-of-scope” change) fails to account for the realities of the marketplace and unnecessarily restricts a recipient from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. The U.S. Supreme Court decision in *Freund v. United States*, 260 U.S. 60 (1922) supports this policy.
  - b. Customary Marketing Practices. Marketing practices can influence the determination of which changes will be “cardinal.”
  - c. Balancing Test. Based on the nature and extent of the work to be performed; the amount of effort involved; whether the change was originally contemplated at the time the original contract was entered into; or the cumulative impact on the contract’s quantity, quality, costs, and delivery terms, is the change significant? Generally, a change that causes the contract value to exceed the advertised potential contract value by more than 25 percent will be considered a cardinal change.
  - d. Rolling Stock. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.
  - e. Federal Procurement Standards. The broader standards applied in federal contracting practice reflected in Federal court decisions, federal boards of contract appeals decisions, and comptroller general decisions provide guidance in determining whether a change would be treated as a cardinal change. RTPA will not necessarily treat these federal procurement decisions as controlling, however, RTPA intends to consider the collective wisdom within these decisions in determining the nature of third-party contract changes along the broad spectrum between permissible changes and impermissible cardinal changes.
  - f. Managing A&E Contracts and Task Orders. When maximum values are set forth in a contract or TO, the contract manager must carefully track the dollar value capacity to avoid exceeding the stated maximum

amount(s). The Contracts Officer will verify capacity of funds and time prior to preparation of the amendment or TO. Amendments or task orders issued in excess of the stated maximum time or amount in the contract may be treated as sole source procurements. The intent of the parties at origination of a contract or TO that is intended to cover a phased project should contain a description of the plan for future deliverables or services by amendment or additional TOs in order to avoid the need for sole source documentation. Such a plan should be described in the contract or TO so as to clearly establish that such future deliverables and/or services are conditioned upon applicable matters within RTPA's discretion such as availability of funds, budget, contractor performance, and RTPA's best interest.

#### *Appendices*

- None

### **SECTION 030 – STATUTORY AND REGULATORY REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS**

1. A current (but not all-inclusive) list of statutory and regulatory requirements applicable to RTPA procurements (such as Davis-Bacon Act, DBE, Clean Air, and Buy America) is contained in RTPA contract templates. RTPA is responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel, and manufactured goods will be subject to the “Buy America” requirements in 49 C.F.R. Part 661 if there is FTA funding, but different Buy America provisions will apply if there is FHWA funding in a procurement.
2. It is the responsibility of each person in the procurement process to ensure that all required clauses specific to the type of procurement and funding type are included in the contract boilerplate, that those federal clauses accompany all bid or proposal documents, that the bidder/offeror completes the required certifications and that the PO or contract includes reference to the clauses and contains signed certifications.

#### *Appendices*

- None

### **SECTION 031 – PURCHASE ORDERS AND BLANKET PURCHASE ORDERS**

1. The Contracts Officer will determine if a BPO is feasible. A PO or BPO may not exceed the applicable small purchase threshold. A PO or BPO may not be used if the standard purchase order terms and conditions are not sufficient to protect RTPA's interests. If tailored terms and conditions are needed due to the nature of the goods or services being purchased or the risks of the project, a contract is required. POs and BPOs are only intended to be used for goods and services that are ordered routinely and repeatedly.
2. POs must include applicable standard terms and conditions, which must be selected based on funding types and the items or services being procured.
3. Before a PO is selected as the method of procurement, a purchase order checklist will be used to ensure a PO is appropriate.
4. BPOs are intended to enable the rapid and routine procurement of various items without processing each order on a separate PO.

5. The requestor may suggest potential vendors if the simplified procurement process has been utilized. The Contracts Officer is ultimately responsible for reviewing the simplified procurement process used for a PO or BPO, including the ICE and record of negotiation (RON).
6. If a BPO is used, the vendor is given the BPO number assigned and the dollar limit which covers a fiscal-year period. A BPO may be requested at any point during the year, but will only be in effect for the fiscal year. Additional years may be approved by the Contracts Officer so long as the approval is consistent with Board policies concerning procurements.
7. Once a BPO is established, the requestor will place each individual order, ensure proper expense account coding, and approve the amount to be paid from the BPO. The Executive Director or his/her designee should confirm that goods or services have been received by signing the packing slip received with each order and include a copy with the invoice to be paid.

#### *Appendices*

- Procurement Requisition Form (Appendix 2)
- Method of Procurement Selection Form (Appendix 10)
- Purchase Order Checklist (Appendix 31)
- Notice of Intent to Award (Appendix 16)

### **SECTION 032 – DELEGATION OF AUTHORITY AND APPROVALS**

All procurements MUST be approved by the RTPA Executive Director.

All procurements exceeding \$15,000.00 must be approved by the Executive Director and by the Board of Directors. Transactions approved by persons without authority are void.

In the event of an emergency or urgent need, the Executive Director is authorized to take all necessary actions to prevent significant unnecessary loss to RTPA, a shut down of public services, or to address a situation threatening the health or safety of persons or property, including but not limited to, authorization to contract with a contractor or consultant on a sole sources basis, consistent with applicable state or federal law without prior approval from the Board of Directors. In the event such an emergency or urgent need occurs, the Executive Director will consult with the President of the Board and submit a report to the Board of Directors at its next regular meeting in order to obtain ratification for those actions.

#### *Appendices*

- None

### **SECTION 033 – PROCUREMENT CARDS**

RTPA will maintain credit cards under the control of the Director of Finance and Administration which will allow for cost- and time-effective procurements. Use of credit cards is subject to the procurement requirements applicable to micro and small purchases as detailed in Section 22.

#### *Appendices*

- Credit Card Charges Summary (Appendix 35)

## **SECTION 034 – CLOSEOUT OF CONTRACT AND TASK ORDERS**

At the conclusion of the work assigned to a contractor in a contract or task order, the project manager is responsible for notifying the Contracts Officer that the contract or task order is being closed out. An evaluation of the contractor should also be completed by the project manager and a copy provided to the Contracts Officer to include in RTPA's records. When a contract or task order is being terminated, the project manager also must notify Director of Administration and Finance that the remaining funds in the contract or task order can be liquidated and unencumbered.

### ***Appendices***

- None

## **SECTION 035 - DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL OPPORTUNITY**

1. DBEs should have the maximum opportunity to participate in the performance of RTPA's federally funded procurements and contracts. RTPA will fulfill its DBE obligations in its DBE plan by ensuring fair and full utilization of DBEs in the purchase of equipment, materials, and supplies and in the performance of contracts and subcontracts.
2. The required DBE clauses will be included in any and all DOT-financed agreements executed by RTPA. It is the policy of the DOT and RTPA that DBEs as defined in 49 CFR Part 26 should have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to such procurements. Contractors must agree to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. Contractors must not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.
3. DBE Accountability
  - a. RTPA should monitor DBE payments under POs, contracts, or any other method used to expend funds with a certified DBE firm.
  - b. A DBE directory should be maintained.
  - c. The Contracts Officer will request a listing of DBE vendors from the directory for all federally funded procurements when a formal solicitation is used. The Contracts Officer is to supplement RTPA's bid list by adding a sufficient number of DBE firms so that the notice to offerors/bidders can be distributed to all firms on the bid list created for the specific procurement activity. When there is a subcontract opportunity or it is deemed appropriate, a contract goal should be defined and documented.
  - d. RTPA will monitor POs and contracts on an ongoing basis to assure compliance with the applicable DBE program(s).
  - e. The establishment of one or more contract goals for a formalized procurement will be documented by the Contracts Officer based on the availability of the Underutilized DBEs (UDBEs) in the geographical area for the specific type of procurement and the judgment that the goal can reasonably be met by the bidder/proposer.
  - f. If at the time of bid or proposal submittal the DBE/UDBE goal is not met and if required by law, the bid or proposal will be requested for review by the Contracts Officer or a consultant to assure that a good faith effort has been met. The Contracts Officer will document that the bidder/proposer was either found



responsive to the DBE/UDBE requirements of the RFP/IFB or has been deemed non-responsive by completing the “responsive checklist” if DBE/UDBE provisions are applicable.

4. Records and Reports

RTPA provides data about its DBE programs as directed by DOT operating administrations. RTPA creates and maintains a bidders list by collecting the data from bidders or through surveys. This list provides accurate data about DBE/UDBE and non-DBE contractors and subcontractors who seek to work on RTPA’s federally assisted contracts for use in setting overall goals. RTPA will obtain the following information about these DBE/UDBE and non-DBE contractors and subcontractors:

- a. Firm name;
- b. Firm address;
- c. Firm's status as a DBE/UDBE or non-DBE;
- d. Age of the firm; and
- e. The annual gross receipts of the firm – information is obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000 to \$1 million; \$1 to 2 million; \$2 to 5 million; etc.) rather than requesting an exact figure.

5. DBE Requirements

- a. RTPA has to fulfill the DBE requirements for all DOT-funded projects receiving planning, capital, and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in funds in a federal fiscal year.
- b. RTPA must submit a DBE program to the concerned operating administration. Once the operating administration has approved the program, the approval counts for all DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for DOT-assisted contracts). RTPA also will enter into an implementation agreement for its DBE program when required by a funding agency.
- c. Additional information regarding RTPA’s DBE programs can be found in its FTA and FHWA DBE programs documentation.

***Appendices***

- Responsive Bidder/Proposer Checklist for RFP/RFQ (Appendix 11)
- Subconsultant List (Appendix 13)
- Bidders List (Appendix 14a)
- Local Agency U/DBE Commitment Form (Appendix 14b)
- DBE/UDBE Information – Good Faith Efforts Form (Appendix 14c)
- U/DBE & SB Monthly Participation Progress Report (Appendix 14d)
- Final Report – Utilization of U/DBE and SB, First-Tier Subconsultants (Appendix 14e)

**SECTION 036 – PROCUREMENT REQUISITIONS**

6. The procurement process formally begins with the preparation and submission of a procurement initiation packet to the Contracts Officer. The procurement requisition packet consists of the following forms:

- a. Scope of work/statement of work (SOW)
- b. ICE or Engineer’s Estimate

- c. Project schedule
  - d. Specification (if available)
  - e. RON (for task orders)
  - f. Sole Source or Limited Competition Justification form (if applicable)
7. The project manager will complete the procurement initiation form by providing the following information:
    - a. Entering the requestor name, department, project number, procurement value, date the service is needed, justification for procurement, and ICE value, description of services or goods, funding source, (if it will be a sole source or agreement with another government agency) vendor information, and any other applicable information that is required on the procurement requisition.
  8. The procurement will be assigned to the Contracts Officer who will be responsible for the following:
    - a. Completing a draft document such as a task order, amendment, memorandum of understanding (MOU), etc. per the request
    - b. Determining if a DBE/UDBE contract goal needs to be set or re-evaluated and arranging for the goal setting documentation to be prepared internally or by a consultant.
    - c. Determining whether a pre-award is required and arranging for an auditor to carry out the audit.
    - d. Setting the estimated procurement schedule when a formal procurement method is used.
    - e. Reviewing any grants or agreements concerning the funding that will be used for the procurement and incorporating necessary provisions or referencing any pass-through obligations in the draft contract, task order, MOU, etc. so that document provisions can be tailored accordingly.
    - f. Sending the final formatted contract to the consultant/contractor for signature.
    - g. Once the signed contract is received, routing the signed document for final signature per the Director Delegation and/or Red Flag approval process.
    - h. Sending a copy of the executed contract to the consultant/contractor.
  9. When a credit card is used, a sales receipt must be attached with the signature of the person taking possession of the goods attesting to such receipt.
  10. The MOP form is intended to assist project managers and the Contracts and Procurement Department in determining the rationale for the selection of procurement method and cost type of a solicitation and should be filled out in accordance with Section 042 of this manual.

### ***Appendices***

- Procurement Requisition Form (Appendix 2)
- Method of Procurement Selection Form (Appendix 10)
- Limited Competition Approval Form (Appendix 25)
- Sole Source Approval Form (Appendix 1)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23a)
- Independent Cost Estimate, Scope of Work, Summary, and Staffing Plan (Appendix 24)

### **SECTION 037 – INDEPENDENT COST ESTIMATE (ICE)**

1. In the FTA Circular 4220.1.F, it is specified that grantees should perform a cost or price analysis in connection with every procurement action including change orders, contract modifications and sole source procurements.

2. The intent of the Circular 4220.1.F, with respect to cost and price analysis (which logically begins with an in-house cost estimate) is to capture every procurement, not just “major” procurements. The degree of the analysis and the degree of detail of the in-house cost estimate depend on the size and complexity of the procurement. An ICE or EE should be developed for every procurement and the estimate must be documented using the appropriate standardized RTPA form. A consultant not otherwise involved in the procurement, who has signed appropriate conflict of interest forms including a Form 700 and does not have a conflict, may prepare and sign the ICE if RTPA staff member will be involved in negotiating the final price, level of effort, or other cost issues.
3. A cost analysis should be used when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. For example, when the offeror submits elements (such as labor hours, overhead, materials) of the estimated cost, (such as professional consulting and A&E contracts); when price competition is inadequate; when only a sole source is available, even if the procurement is a contract modification or; in the event of a change order. RTPA, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
  - a. Establishing Indirect Cost Rates. For contracts other than A&E contracts, if the contractor or subcontractor does not have an approved government indirect cost rate agreement, the contract’s dollar value should determine how that rate is verified.
    - i. Contracts of \$5 million or less. The audit recommendations of the contractor’s certified public accountant or indirect cost information in the contractor’s annual statement to their stockholders, shareholders, or owners or examples of acceptance of their rates by other governmental agencies within the last six months should be used.
    - ii. Contracts exceeding \$5 million. If federal funding is being used, the Defense Contract Audit Agency, another federal cognizant audit agency, or an accounting firm approved by the federal government to perform audits for the federal government must verify the contractor’s rates.
  - b. Profit. Profit should be negotiated as a separate element of the cost for each contract or task order in which there has been no price competition and in all acquisitions in which RTPA performs or acquires a cost analysis. To establish a fair and reasonable profit, RTPA considers the complexity of the work to be performed, the risk undertaken by the contractor, the contractor’s investment, the amount of subcontracting, the quality of the contractor’s record of past performance, and industry profit rates in the surrounding geographical area for similar work.
4. If RTPA determines that competition was adequate, a price analysis (rather than a cost analysis) should be used to determine the reasonableness of the proposed contract price. RTPA may use an abbreviated price analysis for micro and small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which the Contracts Officer can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

### ***Appendices***

- Procurement Requisition Form (Appendix 2)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23a)
- Independent Cost Estimate, Scope of Work, Summary, and Staffing Plan (Appendix 24)

## **SECTION 038 – INSURANCE REQUIREMENTS**

It is the policy of RTPA to require that third-party contractors or consultants maintain insurance coverage to meet insurance standards contained in specific contract boilerplate. Proof of insurance coverage shall be documented by the Contracts Officer.

### *Appendices*

- None

## **SECTION 039 – METHOD OF PROCUREMENT SELECTION (MOPS) FORM**

The Contracts Officer is responsible for attaching and completing all required sections of a MOPS Form, and related memos if needed to ensure satisfactory documentation of the competitive procurement decision making process is enclosed in the contract folder.

### *Appendices*

- Method of Procurement Selection Form (Appendix 10)

## **SECTION 040 – PROCUREMENT DOCUMENTS**

At a minimum the contract folder should include:

1. Solicitation document (IFB, RFQ, or RFP)
2. Contract (agreement/MOU/lease/letter agreement/PO/etc.)
3. Amendments
4. Task orders
5. Documentation establishing reasonableness of procurement method (MOPS, procurement requisition, Purchase Order Checklist, Sole Source Approval form, Limited Competition Approval form)
6. Documentation establishing reasonableness of amount paid (ICE, RON, evaluation committee score sheets)
7. Documentation of required federal forms and U/DBE compliance
8. Documentation establishing selection of payment method.

### *Appendices*

- None

## **SECTION 041 – REVISIONS TO MANUAL**

Unless otherwise noted in this manual, revisions or waivers to any of the procedures in this manual may only be approved by the:

9. The Executive Director; or
10. The Board (if such revisions conflict with current Board policy).

## **SECTION 042 – ADVERTISING OF SOLICITATIONS**

1. All RFPs, RFQs, and IFBs (collectively “solicitations”) will be advertised, at a minimum, as set forth elsewhere in this manual depending on the type and amount of the procurement. If the complexity or the specialized nature of the procurement warrants additional advertising, the Contract Officer should be consulted. All solicitations in excess of the applicable small purchase threshold, which are not sole source or limited competition procurements, will be advertised on RTPA’s webpage.
2. A notice of solicitation will be sent to all firms identified as interested in the type of project being advertised. If no clear category for the type of project is maintained, then the project manager and Contracts Officer should use their best judgment in selecting multiple categories to ensure an adequate response to the solicitation.
3. The preferred publication for the advertisement of construction and A&E procurements is the County Trade Journal. Additional publications, in a newspaper of general circulation and at least one DBE/small business directed or trade newspaper published in the county, is required for competitive procurements over \$100,000.

### ***Appendices***

- Solicitation Notification (Appendix 15)

## **SECTION 043 – DISTRIBUTION OF ADVERTISED SOLICITATION DOCUMENTS**

1. All of RTPA’s solicitation documents for procurements in excess of the applicable small procurement threshold are made available on its website including map, drawings, and other documents. At the time that the solicitation documents are posted, businesses that have requested notice of solicitations of the type being posted via registration on RTPA’s website, as well as any other qualified business RTPA staff desires a proposal from, should be sent a solicitation notification.
2. When RTPA staff provides solicitation documents to someone not currently in RTPA’s online vendor database, RTPA should request the proposer to register in RTPA’s online vendor database.
3. For construction bids, RTPA staff will add the contractor to the bidders list and request that the contractor register in RTPA’s online vendor database.

### ***Appendices***

- Solicitation Notification (Appendix 15)