



PROCUREMENT MANUAL

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Attachments

- A. List of Procurement File Contents (Recordkeeping Standards)
- B. Independent Cost Estimate
- C. Cost Analysis Worksheet
- D. Price Analysis Worksheet
- E. Procurement Process Checklist

F. Sample Evaluation Score Sheet

Appendices: Procurement Process Flowcharts

Small Purchase Procedures

Purchasing Procedures for Procurements \$250,000 or More

A - Request for Proposals

B – Invitation for Bids

C – Architect & Engineering

D – Design/Build

E – Design/Bid/Build

INTRODUCTION

RFTA:

The Roaring Fork Transportation Authority (RFTA) is a body corporate and political subdivision of the State of Colorado created pursuant to the Regional Transportation Authority Law, Title 43, Article 4, Part 6 of the Colorado Revised Statutes (CRS) and Intergovernmental Agreements between its constituent entities. RFTA is a recipient of state and federal grant funds.

Policy Statement:

It is the policy of RFTA to ensure that there be full and open competition in its procurement process, and that awards resulting from its procurement process be based on sound costing principles and ensure fair and reasonable prices and or best value to the authority.

Purpose:

The purpose of this Procurement Manual (the “Manual”) is to guide RFTA personnel in fulfilling their obligations to the public, grantors, vendors, and contractors in the expenditure of public funds. This Manual is a comprehensive reference book for RFTA personnel and outside parties having an interest in RFTA’s procurement and contracting processes. It is intended as a guide to good procurement practices and is to be used as a supplement to sound business judgment in procurement and contracting.

This Manual reflects applicable state and local laws and regulations and provides a process that ensures competitive procurement and procedures that conform to applicable federal laws. Sources utilized in the preparation of this Manual include:

- Third Party Contracting Guidance - Federal Transit Administration (FTA) Circular 4220.1F
- Uniform Administrative Requirements For Grants And Cooperative to State and Local Governments (49 CFR Part 18)
- FTA Master Agreement
- Office of Management and Budget (OMB) Uniform Administrative Requirements (Super Circular)
- Fixing America’s Surface Transportation (FAST) Act, effective October 1, 2015, as may be amended.
- FTA Best Practices Procurement Manual, October 2016, as may be amended.
- Colorado Department of Transportation (CDOT) Quick Procurement Handbook, 2019, as may be amended.
- RFTA’s Governing Policy Manual adopted by its Board of Directors
- State of Colorado Procurement Rules dated August 9, 2017, as may be amended.

Singular-Plural and Gender Rules. In this manual, unless the context requires otherwise:

1. words in the singular number include the plural, and those in the plural include the singular; and

2. words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

This Manual is divided into four sections.

- Section I is an overview of the process and answers basic questions that grantees may have about the procurement process.
- Section II includes more detailed information on the procurement process and ethics.
- Section III addresses components all grantees should include in their procurements, regardless of the dollar amount.
- Section IV comprises the Appendices, and includes a Glossary of Terms.

Contacts:

Questions and comments about the application and implementation of this Manual and specific contract(s) shall be directed to:

RFTA Procurement Department
1517 Blake Avenue, Suite 201
Glenwood Springs, Colorado 81601
970-384-4869
procurement@rfta.com

Revisions:

Only the Chief Executive Officer (CEO), as described in Section 2.1.2 below, may authorize revisions to this Manual and only the CEO or Director of Procurement shall have the authority to publish the approved revisions.

Recordkeeping:

All RFTA staff with procurement related responsibilities shall maintain procurement records in accordance with the standards identified in Attachment A of this Procurement Manual.

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SECTION 1

1.1 OVERVIEW

This section describes when this Manual does and does not need to be utilized and provides fundamental guidance about its application.

1.1.1 To What Does This Manual Apply:

This Manual applies to:

1. All Third-Party Contracts solicited by RFTA, regardless of whether RFTA is paying or receiving funds;
2. Every expenditure of public funds by RFTA, irrespective of the source of such funds set forth in Section 1.1.6 below;
3. The acquisition/disposal of any RFTA property, including rights in real estate such as leases, and permits; and
4. The right to use RFTA property for commercial purposes.

1.1.2 To What Does This Manual Not Apply:

This Manual does not apply to:

1. Grant applications and awards;
2. Intergovernmental agreements;
3. Service Contracts pursuant to which RFTA provides transit services to any other entity; or
4. Interests in real estate for a period of one year or less provided that:
 - i. such term is not set in order to evade the procurement requirements of this Manual, and
 - ii. the Responsible Director provides a prior written determination that the acquisition is in RFTA's best interest.

1.1.3 Good Faith:

This Manual requires that all parties involved in the solicitation, negotiation, performance or administration of RFTA contracts act in good faith.

1.1.4 Severability:

If any provision of this Manual or its application to any person or circumstances is found to be invalid, outdated, or inapplicable by RFTA's CEO, Director of Procurement, Legal Counsel or by a court of law, such invalidity or applicability shall be noted in writing and shall not affect any other provision of this Manual that can be given effect without the invalid or inapplicable provision.

1.1.5 Effective Date:

This Manual became effective as of January 1, 2010, and was most recently revised effective September 1, 2023.

1.1.6 Public Access:

Procurement information shall be a public record to the extent provided by law and shall be available to the public as provided by law.

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SECTION 2

2.1 WHAT IS RFTA’S ROLE IN THE PROCUREMENT PROCESS:

2.1.1 RFTA Board of Directors

RFTA’s Board of Directors serves as the Procurement Appeals Board. The RFTA Board of Directors shall not exercise any authority over the award or administration of any specific contract. As provided by C.R.S. § 43-4-604, the Board has the power to: (1) approve final roadway alignments; (2) ratify acquisition of land by negotiated sale; (3) institute eminent domain actions (which may be at a public hearing or in executive session); initiate or continue legal action except traffic or toll violations; and (4) establish fee policies.

In accordance with the Board’s Governing Policies (Board Policies), Policy 4.0, the RFTA Board of Directors is required to ensure that RFTA achieves appropriate results at an appropriate cost and avoids unacceptable actions and situations.

2.1.2 Chief Executive Officer (CEO)

RFTA’s CEO is responsible for determining RFTA’s procurement policies, approving all purchases over \$250,000, protecting RFTA’s assets, resolving disputes from and challenges to RFTA’s Procurement practices. RFTA’s CEO or at the direction of or in the absence of the CEO, the Chief Operating Officer (COO), or if the COO is unavailable, the Chief Financial and Administrative Officer (CFAO) shall sign all contracts for which funds have been appropriated or which have been otherwise approved by the Board of Directors. The CEO’s participation in the Procurement process needs to take into consideration the CEO’s varied roles and demonstrate the measures taken to avoid any conflict of interest or appearance thereof.

It is the CEO’s responsibility to:

1. Promulgate all policies concerning the procurement, management, control, and disposal of all goods, services, and construction projects undertaken by RFTA. This responsibility is consistent with the Board of Directors’ Governing Policies Manual and in particular (see Board Policies 2.4, 2.5, 2.6, 2.7, 2.9, and 3.3).
2. Consider and decide matters of policy within the provisions of this Manual including those referred by Department Heads.
3. Authorize all expenditures over \$250,000, following review by RFTA General Counsel, and the COO or CFAO as appropriate, per the Board Policy 2.3.
4. Sign all contracts in amounts over \$250,000 and any other contracts for which funds have been appropriated or otherwise authorized by the Board of Directors.
5. Delegate signing authority, as appropriate, on a per project basis to project managers.

6. Shall promulgate regulations governing:
 - a. the management of property during its entire life cycle;
 - b. the sale, lease, or disposal of surplus property by public auction, competitive sealed proposals, or other appropriate method designated by regulation;
 - c. the transfer of property;
 - d. the donation or sale of property to non-profit or other governmental organizations for public benefit as approved by the RFTA Board.

2.1.3 Legal Counsel

As of January 1, 2010, RFTA will require approval from RFTA’s General Counsel of all procurement and contracting templates, and contract terms before any contract is signed.

2.1.4 Chief Operating Officer (COO) and Chief Administrative and Financial Officer (CAFO)

1. Authorize expenditures from \$150,000-\$250,000, following review by RFTA Attorney, per the Board Policy 2.3.
2. Sign all contracts in amounts between \$150,000 and \$250,000 for which funds have been appropriated or otherwise authorized by the Board of Directors.

2.1.5 Department Heads

RFTA is organized into departments that are managed by one or more directors who report directly to the RFTA CEO Department. Each department director, referred to in this Manual as the “Department Head”, is responsible for ensuring that RFTA’s “program” needs are met and thus for the goods and services purchased on behalf of the department.

It is the Department Head’s responsibility to:

1. Follow the requirements for micro-purchases for expenditures of \$10,000 or less as set forth in Section 2.10.1 below.
2. Commence the Procurement process for all expenditures over \$10,001 by submitting a written summary of the goods or services required by the Procurement Policy. This written summary shall include the following mandatory information:
 - a. The Technical Specifications or Scope of Work for all goods, supplies, services, construction projects, property, and/or leases required by the department.
 - b. Documentation that the price is fair and reasonable.

- c. The source of funding (federal grant, state grant, or existing fund) and whether the purchase is reflected in the current budget or has been approved through other appropriate means, which shall be stated.
 - d. All appropriate signatures approving the purchase.
3. Sell, trade, or otherwise dispose of surplus supplies belonging to RFTA by notifying the Director of Procurement in writing of the surplus and obtaining guidance and support in planning, completing, and documenting the sale, trade or disposal.
4. Coordinate with the Director of Procurement to:
 - a. Provide additional information as needed for the purchase or sale;
 - b. Determine source selection methodology and criteria;
 - c. Determine contract type;
 - d. Determine appropriate publication sources;
 - e. Select successful bidder;
 - f. Negotiate terms of final contract.
5. Sign all contracts up to \$150,000 for which appropriations have been made and obtain the signature of the CEO on all contracts over that amount.
6. Conclude the procurement of goods or services exceeding \$10,000 or the disposal of assets by preparing a written summary of the selection and award process.

2.1.6 Managers

RFTA Division Managers, as authorized by their Director or supervisor, may have spending authority for micro-purchases, not to exceed \$10,000.

2.1.7 Procurement Department

RFTA's Director of Procurement is responsible for ensuring that the process of all RFTA's procurement activity is followed. Plans, organizes, directs, and controls activities related to the procurement process, documentation, and retention or records.

It is the Director of Procurement's responsibility to:

1. Ensure that RFTA's solicitation and contract templates remain up to date and properly reflect all applicable laws and regulations and to submit any material changes to any template to the RFTA General Counsel for review prior to adoption.
2. Facilitate the Procurement process of all expenditures commenced upon receipt of the written summary submitted by any Department Head by:

- a. Follow the established protocols and flowcharts that will ensure prompt response to the Department Head with the following information:
 - i. Requirement of cost estimate, budget review, and scope of work for the project;
 - ii. A timeline of events through contract award;
 - iii. Publication of advertisement;
 - iv. The recommended Method of Source Selection;
 - v. The recommended Contract Type;
 - vi. Selection Committee process;
 - vii. Ensures that the applicable requirements are properly followed;
 - viii. Finalizing the procurement documentation process for the final review of RFTA's General Counsel if applicable.
 - b. Ensure that the applicable requirements set forth in Section 3 of this Manual are properly followed.
3. Facilitate the sale, trade, or other disposal of surplus supplies belonging to RFTA when notified in writing by a Department Head, or their designee, by preparing the appropriate documentation, coordinating appropriate publication and solicitation.
 4. Establish and maintain a system for ensuring complete and proper documentation of the history of each procurement, including Contractor's name, amount and type of contract, award date, expiration date and services contracted for.
 5. Acknowledgements of RFTA's Code of Ethics and Standards of Conduct by all RFTA Department Heads, Managers, CEO, COO, CFAO and anyone else who may have authority or apparent authority to make expenditures on RFTA's behalf are maintained by RFTA's Human Resources Department.
 6. Ensure that any procurement approval required from the FTA, CDOT, or other grant provider is timely and properly obtained.
 7. Retain and dispose of all procurement records in accordance with record retention guidelines and schedules approved by the law. All retained records shall be made available for audit upon request.
 8. If for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to RFTA's Attorney.

2.1.8 Project Managers

RFTA Project Managers are responsible for managing the Contracts upon execution, in accordance with Procurement Policy.

It is the Project Manager's responsibility to:

1. Be familiar with Contract Terms and Conditions.
2. Monitor Contractor/Supplier Performance and involve Procurement, as necessary.
3. Review Invoices for accuracy and approve for payment.
4. Ensure the work or goods provided by the Contractor/Supplier are included in the Scope of Work.
5. Manage the project and scope of work, to avoid deviations from Scope of Work.
6. Involve Procurement in Changes to Contract and any amendments and/or Change Orders Needed.

2.2 ETHICS IN PUBLIC CONTRACTING

2.2.1 Statement of Policy - Public employment is a public trust. It is the policy of RFTA to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by RFTA. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees and RFTA Board members must discharge their duties impartially so as to assure fair, competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the RFTA procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with RFTA also observe the ethical standards prescribed herein.

2.2.2 General Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the Employee's duties is a breach of a public trust. In order to fulfill this general prescribed standard, Employees shall also meet the specific standards set forth in Section 2.2.4 (Employee Conflict of Interest); Section 2.3 (Employee Disclosure Requirements); Section 2.4 (Prohibition Against Contingent Fees); Section 2.5 (Restrictions on Employment of Present and Former Employees); and Section 2.6 (Use of Confidential Information).

2.2.3 General Ethical Standards for Non-employees. Any effort to influence any public Employee to breach the standards of ethical conduct set forth of this Manual is also a breach of ethical standards.

2.2.4 Employee Conflict of Interest. It shall be a breach of ethical standards for any Employee to participate directly or indirectly in procurement when the employee knows that:

1. The Employee or any member of the Employee's immediate family has a financial interest pertaining to the procurement;
2. A business or organization in which the Employee, or any member of the Employee's immediate family, has a financial interest pertaining to the procurement; or
3. Any other person, business, or organization with whom the Employee or any member of the Employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
4. Financial Interest in a Blind Trust. Where an Employee or any member of the Employee's immediate family holds a financial interest in a blind trust, the Employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that prior disclosure of the existence of the blind trust has been made to RFTA's General Counsel.
5. Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon the discovery of an actual or potential conflict of interest, an Employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The Employee may, at the same time, apply to the RFTA Board in accordance with Section 3.21.2 for an advisory opinion as to what further participation, if any, the Employee may have in the transaction.

2.3 EMPLOYEE DISCLOSURE REQUIREMENTS

2.3.1 Disclosure of Benefit Received from Contract. Any Employee who has, or obtains, any benefit from, any RFTA contract with a business in which the Employee or member of an Employee's immediate family has a financial interest shall report such benefit to RFTA General Counsel and the Director of Procurement; provided, however, this Section shall not apply to a contract with a business where the Employee's interest in the business has been placed in a disclosed blind trust.

2.3.2 Failure to Disclose Benefit Received. Any Employee who knows or should have known of such benefit, and fails to report such benefit to RFTA's General Counsel and the Director of Procurement, is in breach of the ethical standards of this Section.

- 2.3.3 Notice.** Notice of this requirement shall be provided in the Personnel Policy and Procedures Manual.
- 2.3.4 Gratuities.** It shall be a breach of ethical standards for any person to offer, give, or agree to give any Employee or former Employee, or for any Employee or former Employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.
- 2.3.5 Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- 2.3.6 Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

2.4 PROHIBITION AGAINST CONTINGENT FEES

- 2.4.1 Contingent Fees.** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a RFTA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of a bona fide employee or bona fide established commercial selling agencies for the purpose of securing business.
- 2.4.2 Representation of Contractor.** Every person, before being awarded a RFTA contract, shall represent in writing, that such person has not retained anyone in violation of Section 2.4.1 of this Policy. Failure to do so constitutes a breach of ethical standards.
- 2.4.3 Contract Clause.** The representation prescribed in Section 2.4.2 shall be conspicuously set forth in every contract and solicitation therefore.

2.5 RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES

- 2.5.1 Contemporaneous Employment Prohibited.** Except as may be permitted by regulations or rulings of the RFTA Board, it shall be a breach of ethical standards for any Employee who is participating directly or indirectly in the procurement process to become or be, while such an Employee, the Employee of any person contracting with the governmental body by whom the Employee is employed.

2.5.2 Restrictions on Former Employees in Matters Connected with Their Former Duties.

1. Six Months Representation Restriction Regarding Matters in Which a Former Employee Was Directly Involved. It shall be a breach of ethical standards for any former employee, within six months after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than RFTA, in connection with any:
 - i. judicial or other proceeding, application, request for a ruling, or other determination;
 - ii. contract;
 - iii. claim; or
 - iv. charge or controversy, in matters in the former employee was directly involved.

2.5.3 Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an Employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than RFTA, in connection with any:

1. judicial or other proceeding, application, request for a ruling, or other determination;
2. contract;
3. claim; or
4. charge or controversy, in which the Employee or a member of the employee's immediate family either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise under the provisions of this Manual, or which is the subject of the Employee's official responsibility under the provisions of this Manual, where RFTA is a party or has direct or substantial interest.

2.6 USE OF CONFIDENTIAL INFORMATION

- ### **2.6.1 It shall be a breach of ethical standards** for any Employee or former Employee, or RFTA Board member knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of another person.

2.7 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST EMPLOYEES WHO BREACH ETHICAL STANDARDS

2.7.1 Existing Remedies Not Impaired. Civil and administrative remedies against employees, which are in existence on the effective date of this Manual or any amendment hereto, shall not be impaired.

2.7.2 Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, the RFTA Board may impose any one or more of the following:

1. oral or written warnings or reprimands;
2. suspension with or without pay for a specified period or time; and
3. termination of employment.

2.7.3 Right to Recover from Employee Value Received in Breach of Ethical Standards. The value of anything received by an employee in breach of the ethical standards of this Article or regulations promulgated hereunder shall be recoverable by RFTA as provided in Section 2.9 (Recovery of Value Transferred or Received in Breach of Ethical Standards).

2.7.4 Due Process. All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

2.8 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST NON-EMPLOYEES WHO BREACH ETHICAL STANDARDS

2.8.1 Existing Remedies Not Impaired. Civil and administrative remedies against non-employees, which are in existence on the effective date of this Manual, shall not be impaired.

2.8.2 Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, the RFTA Board may impose any one or more of the following:

1. written warnings or reprimands;
2. termination of transactions; or
3. debarment or suspension from being a contractor or subcontractor under RFTA contracts.

- 2.8.3 Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards.** The value of anything transferred in a breach of ethical standards of this Article or regulations promulgated hereunder by a non-employee shall be recoverable by RFTA as provided in Section 2.9 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
- 2.8.4 Right of RFTA to Debar or Suspend.** Debarment or suspension may be imposed in accordance with the procedures set forth in Section 3.15 (Authority to Debar or Suspend) for breach of the ethical standards of this Article, provided that such action may not be taken without the concurrence of RFTA’s General Counsel.
- 2.8.5 Due Process.** All procedures under this Section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a RFTA contract.

2.9 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

- 2.9.1 General Provisions.** The value of anything transferred or received in breach of the ethical standards of this Article or regulations promulgated hereunder by an Employee or a non-Employee may be recovered from both the Employee and non-Employee.
- 2.9.2 Recovery of Kickbacks by RFTA.** Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by RFTA and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from the other offending parties.

2.10 WHEN MUST THE PROCUREMENT PROCESS BE USED

When procuring goods and services with federal, state or local funds, it is expected that RFTA follows all federal, state and local procurement regulations. It is important to note that when state or local regulations are more restrictive than the federal regulations, or if the regulations should differ, RFTA shall follow the regulation that is most restrictive. Below is a summary of the procurement requirements for RFTA purchases based on state and federal regulations for the purchase of goods and services. Flowcharts outlining the steps involved in different types of procurements are presented in the Appendix to this manual.

Note: some requirements here may be more stringent than FTA based on the State of Colorado’s procurement rules. RFTA staff with procurement responsibilities are expected to adhere to the standards for recordkeeping identified in Attachment A.

2.10.1 Micro-Purchases - \$10,000 or less. Purchases below \$10,000 may be made without obtaining competitive quotations and are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. Note: Projects utilizing State of Colorado Grant Funding are more restrictive, with a threshold of \$5,000 for micro-purchase.

1. General Rule. Micro Purchases may be made on the open market without public notice or competitive quotes when the price paid is objectively consistent with the price that would be paid by a member of the general public. Documentation must show that the price is fair and reasonable and how this determination was derived.
2. Micro purchases shall require:
 - i. Budget: Only those purchases that are authorized in an approved budget will be procured.
 - ii. Authorization: Department Heads are authorized to make micro purchases when the amount to be spent is within an approved budget.
 - iii. Scope of Work or Specifications: Not Required
 - iv. Solicitation Standard: Each Department Head is responsible for defining the standard by which the Department will demonstrated that the method by which the vendor selected for a Micro Purchase contract follows the principals of objective fairness, cost reasonableness and best use of public funds.
 - a. Appropriate solicitation standards could include evidence that price comparisons were conducted or evidence of what a member of the general public would pay when purchasing a like good or services, such as an internet price sheet, catalog price list, or newspaper advertisement.
 - v. Contract Award: Each Department Head is responsible for ensuring that all purchases are properly documented and signed.
 - a. Examples of acceptable contract forms for Micro Purchases include: P-Card Statement, Letter of Agreement, RFTA Terms and Conditions¹, Purchase Order, Service Contract, Vendor Invoice, Proof of Purchase, or Vendor Contract Form².
 - vi. Payment Processing: No Contract Number is required for payment of Micro Purchase Contracts. Invoices for payment shall be attached, coded, and submitted to Accounts Payable.

¹ Contractors doing work on RFTA property must agree to terms and conditions, as well as meet insurance requirements.

² Any vendor Contract Form, must be reviewed and approved by Procurement Department and RFTA General Counsel prior to execution.

- a. The Procurement Department is not involved in processing payment of Micro-Purchase contracts; it does, however, monitor such payments and will notify the Department if a payment history suggests that the Micro-Purchase criteria no longer apply.
- vii. Decentralized Documentation and Contract Management: The User Department is responsible for retaining documentation sufficient to establish that the price was fair and reasonable.

Note: the Davis-Bacon Act, a federal law that requires federally funded construction projects pay workers no less than the local prevailing wages and benefits, applies to construction contracts of \$2,000 or more.

- 2.10.2 Small Purchases - \$10,001 - \$250,000.** Small purchase procedures call for written price or rate quotations from an adequate number of qualified sources (minimum of two). Definition of qualified sources includes soliciting bids from those with proper experience and skills, proper credentials, etc. The solicitations must be written and adequate documentation must be maintained to explain how the determination was derived. Many times, a Request for Quotes (RFQ) document is created by the procuring agency to solicit the proper written price or rate quotations. RFTA's Small Purchase Thresholds are tied to the Federal and State Simplified Acquisition Threshold of \$250,000. Note that Buy America Requirements ((49 U.S.C. § 5323 (j)(13)) are in effect for purchases over \$150,000, per the FAST Act. Procurements shall not be split to stay under the threshold.
- 2.10.3 Large Purchases - \$250,001 or more.** Formal sealed bids or competitive proposals are required. Procurement files should include rationale for procurement, legal notices, solicitation documents, specifications, evaluation documents, contracts, correspondence and a written procurement history.
- 2.10.4 Revenue Contracts Involving FTA-Funded Facilities or Assets.** These contracts must be awarded on a competitive basis. Income derived from such contracts must be used to offset program costs.
- 2.10.5 Sole Source - Procurement by Noncompetitive Proposals.** Sole source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is also considered sole source procurement.

- 1. All sole source procurements must comply with the following:

- a. *Adequate Competition* – After soliciting several sources, RFTA shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After RFTA determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the recipient may determine the competition adequate. A cost analysis must be performed in lieu of a price analysis when this situation occurs.
- b. *Sole Source* – When RFTA requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified under one of the bases below.
- c. *Unique Capability or Availability*. The property or services are available from one source if one of the conditions described below is present:
- d. *Unique or Innovative Concept* – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
- e. *Patents or Restricted Data Rights* – Patent or data rights restrictions preclude competition.
- f. *Substantial Duplication Costs* – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- g. *Unacceptable Delay* – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient’s needs.
- h. *Single Bid or Single Proposal* – Upon receiving a single bid or single proposal in response to a solicitation, the RFTA should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- i. *Adequate Competition* – RFTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient’s control. Many unrelated factors beyond the recipient’s control might cause potential sources not to submit a bid or proposal. If competition can be determined adequate, competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award.
- j. *Inadequate Competition* –R FTA acknowledges competition to be inadequate when, caused by conditions within the its control. For example, if the specifications used were within the RFTA’s control and those specifications were unduly restrictive, competition will be inadequate.

- k. *Unusual and Compelling Urgency* – RFTA is permitted to limit the number of sources from which it solicits bids or proposals when the recipient has such an unusual and urgent need for the goods or services that the recipient would be seriously injured unless it were permitted to limit the solicitation. RFTA may also limit the solicitation when the public exigency or emergency will not permit a delay that would result from competitive solicitation for the property or services.
2. *Authorized by FTA* – Recipients are permitted to use noncompetitive proposals under the following circumstances:
- a. *Consortium, Joint Venture, Team, Partnership* – With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a consortium, joint venture, team, or partnership, or provides assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects the recipient to use competition, as feasible, to select other participants in the project.
 - b. *Federal Acquisition Regulation (FAR) Standards* – To ensure the recipient has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the following circumstances authorized by the FAR part 6.3:
 - c. *Statutory Authorization or Requirement* – To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.
 - d. *National Emergency* – To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.
 - e. *Research* – To establish or maintain an educational or other non-profit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.
 - f. *Protests, Disputes, Claims, Litigation* – To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.
 - g. *International Arrangements* – When precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or when prohibited by the written directions of a foreign government reimbursing the recipient for the cost of the acquisition of the supplies or services for that government.
 - h. *National Security* – When the disclosure of the recipient’s needs would compromise the national security.

- i. *Public Interest* – When the recipient determines that full and open competition in connection with a particular acquisition is not in the public interest.

- 2.10.6 Architectural and Engineering Services (A&E).** RFTA shall use qualifications-based competitive proposal procedures (Brooks Act) for this type of contract, for projects involving federal funds. The services subject to this requirement are: program management; construction management; feasibility studies; preliminary engineering; design, architectural, engineering; surveying; mapping; and related services. Qualifications-based competitive proposal procedures require that:
1. An offeror’s qualifications be evaluated;
 2. Price be excluded as an evaluation factor;
 3. Negotiations be conducted with only the most qualified offeror; and
 4. Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to RFTA.
- 2.10.7 Design-Build.** Grantees must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act when the preponderance of work is considered to be for architectural and engineering (A&E) services. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of work to be performed is not of an A&E nature.
- 2.10.8 Design-Bid-Build Services.** Contracts for design-bid-build services shall be solicited through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this Manual relates to the method of procurement used and all other applicable federal requirements.
- 2.10.9 Emergency Procurements.** Notwithstanding any other provision of this Manual, the Director of Procurement may authorize emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.
- 2.10.10 Lease Versus Purchase.** To obtain the best value, the recipient should review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. The recipient may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before the recipient may lease an asset, FTA regulations, “Capital Leases,” 49 CFR Part 639, Subpart C, require the recipient to make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison must be

reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.

2.10.11 Single Bids. In circumstances when only a single firm submits a bid or proposal RFTA will take the following steps before making an award:

1. Examine the IFB, RFP, or RFQ to ensure that there were no exclusionary provisions and/or specifications that would have restricted competition;
2. Contact firms that did not submit bids, or proposals to determine their reasons for not submitting a response; and
3. Conduct a cost/price analysis to ensure that the bidder's/proposer's prices are fair and reasonable.

SECTION 3

3.1 METHODS OF PROCUREMENT Using the following guidance, the Director of Procurement may determine method of procurement which best fits the current need:

3.1.1 Invitation for Bid (IFB)³ This is the most common method used in the public sector to obtain specific goods, such as vehicles and equipment. This method is typically used when complete specifications or purchase descriptions are available or could be easily developed. The IFB process must involve two or more bidders, and the award is given to the lowest responsive and responsible bidder. The specifications for goods and/or services to be procured under an IFB are not subject to negotiation. Bids that deviate from the specifications are deemed unresponsive and thus rejected. Typically, the IFB includes two parts, technical and financial. Bidder responses to each part are evaluated separately. Bids that deviate from the specifications would not be rejected if the deviations have been accepted through an approved equal process in the procurement.

3.1.2 Request for Proposal (RFP) The RFP is a competitive procurement method used when a general, rather than specific, description of goods and/or services is used. This method allows for the procurement of goods and/or services without detailed design specifications. The primary consideration in awarding a contract need not be price. Equitable communication with proposers may be used (such as interviews, presentations, and negotiations) to reach an optimal contractual agreement, in which both price and quality are used in the contractor selection. In this way, the technical expertise and the experience of the proposer can be evaluated. When using an RFP method, bidders typically submit a Statement of Work and separate Cost Proposal.

³ Note C.R.S. 24-103-908 (2) When a construction project for a public project is awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country in which the nonresident bidder is a resident. This is not applicable where federal monies are involved.

3.1.3 Request for Qualifications (RFQ)/Multi-Step Sealed Proposals: A Request for Qualifications, also known as a Multi-Step Sealed Proposals, is a variation of the RFP method and always requires a two part solicitation: first, a solicitation of information on the background and experience of the proposer; second, an RFP.

3.1.4 Request for Quotes (RFQ): FTA procurement requirements for small purchases are limited, mainly requiring competition in the form of quotations.

1. A RFQ is a solicitation document that seeks documented quotations and can be used for professional services, including both contracted transit services and consulting services, or goods with the title of “Request for Quotes”. The basic format for a RFQ provides a solicitation schedule, evaluation criteria, terms of the procurement contract, including applicable federal required clauses, qualifications and/or specifications, and any signature pages required. The RFQ is distributed to at least two (2) potential vendors or contractors to garner competition.

3.1.5 Request for Information (RFI): This solicitation is used strictly for gathering information and data about a proposed project. When there is conflicting information or a general lack of informed input, a Request for Information may generate sufficient data to allow creation of a scope of work with adequate details for competitive procurement.

3.1.6 Piggybacking: “Piggybacking” is the post award practice of allowing an organization that was not included in the original procurement to purchase the same supplies or equipment through the original contract. Piggybacking is only allowed under certain circumstances, including the following:

1. The original solicitation must include an assignability clause that provides for the assignment of all or part of the deliverables as originally advertised and competed to other parties.
2. The original solicitation and contract must contain both a minimum and maximum quantity.
3. No additional quantities can be added.
4. Units must be originally specified with no “cardinal changes”.

When conducting a piggyback procurement, RFTA will obtain a copy of the original solicitation and award documents to ensure that all applicable procurement requirements were met. Following a decision to place an order under such an arrangement, RFTA will treat the purchase as though it were a competitive proposal (see Section 3.3.2) conducted in-house under RFTA’s purchasing procedures.

3.1.7 Unsolicited Proposals: Agencies will occasionally receive proposals from a company that is not in response to a formal solicitation. Most will not meet the criteria described in Federal Acquisition Regulation (FAR) 15.603(c) for acceptance for review. To be accepted for review, the proposal must be 1) innovative and unique, 2) independently originated and developed by the proposing company, 3) prepared without any agency supervision, endorsement, direction, or direct agency involvement, 4) detailed enough to show that review and consideration could benefit the agency’s mission, and 5) not an “advance” proposal for known agency needs that could be competed.

3.2 GENERAL PROCUREMENT REQUIREMENTS

All federally funded purchases shall comply with general procurement standards applicable to Third Party Procurements as described in FTA Circular 4220.1F, Third Party Contracting requirements and FTA Best Practices Procurement Manual. The Director of Procurement shall ensure that all FTA requirements are met. In addition to ensuring adequate and open competition for federally funded purchases of goods and services, grantees must ensure bidders/proposers comply with applicable federally required clauses, requirements and regulations.

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf>; see Appendix A for Federally Required Clauses.

3.2.1 Federal Cost Principles: The Common Grant Rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient. As a government entity RFTA’s cost principles will comply with “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 CFR Part 225.

3.2.2 Disadvantaged Business Enterprise:

Each federal aid contract signed by RFTA with a contractor, and each subcontract the prime contractor signs with a subcontractor must include the following assurance exactly as it is stated:

“The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.”

- 3.2.3** "(Agency Name), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
- 3.2.2** **Evaluation of Options:** To be eligible for Federal funding, options must be evaluated as part of the initial price evaluation of offers. If options are not evaluated as part of the initial price evaluation the options shall be treated as sole source procurements.
- 3.2.3** **Exercise of Options:** The exercising of an option must adhere to the terms and conditions of the option stated in the contract. Prior to exercising any option, a cost or price analysis must be conducted and a written determination must be made that the option price is better than prices available in the market or that the option was a more advantageous offer at the time the option was exercised.
- 3.2.4** **Prohibitions:** The Common Grant Rules prohibit solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325(h) from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be restrictive of competition include, but are not limited to, the following:
1. Excessive Qualifications. Imposing unreasonable business requirements for bidders or offerors.
 2. Unnecessary Experience. Imposing unnecessary experience requirements for bidders and offerors.
 3. Improper Prequalification. Using prequalification procedures that conflict with the prequalification standards.
 4. Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
 5. Excessive Bonding. To encourage greater contractor participation in FTA assisted projects, FTA does not require the recipient to impose bonding requirements on its third party contractors other than construction bonding specified by the Common Grant Rules and the circular for construction. FTA discourages unnecessary bonding because it increases the cost of the contract and restricts competition, particularly by Disadvantaged Business Enterprises (DBEs). Bond companies exercise their discretion and assure their profits primarily by declining to undertake excessive risks. Consequently many bidders have limited "bonding capacity." Unnecessary performance bonding requirements reduce a prospective bidder's or offeror's capability to bid or

offer a proposal on bonded work. Small businesses with short histories may have particular difficulty obtaining bonds as may be specified.

6. Brand Name Only. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
7. In-State or Local Geographic Restrictions. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers. Exceptions expressly mandated or encouraged by Federal law include the following:
 - i. Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
 - ii. Licensing. A State may enforce its licensing requirements, provided that those State requirements do not conflict with Federal law.
 - iii. Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.
8. Organizational Conflicts of Interest. Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules.
9. Arbitrary Action. Taking any arbitrary action in the procurement process.
10. Tag-ons. A significant change in contract work (property 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, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons.”

3.2.5 Payment Provisions: When using FTA assistance in a contract, RFTA will adhere to the following payment provisions:

1. Advance Payments. Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic pre-award authority for its project, then advance payments made with local share

funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

- i. Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.
 - ii. Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.
2. Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential precondition to FTA's concurrence in the use of FTA or local share funds.
3. Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.
4. In summary, if there are sound business reasons justifying the advance payment and adequate security for the payment, FTA will generally concur in a written request for an exception.
5. Progress Payments. Progress payments are payments for contract work that has not been fully completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.
 - i. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the

practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

- ii. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
- iii. Percentage of Completion Method. The Common Grant Rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

3.2.6 GRANTEE PROCUREMENT PROCESS CHECKLIST

Attachment F includes a checklist of basic steps involved in the procurement process. Timeline information is also included to help the agency understand when it is appropriate to begin various steps of the procurement process. Not all of the items in the checklist are required for every procurement, however, the checklist can serve as a useful framework for RFTA's procurement process or a user can refer to checklist(s) and flow chart(s) made as an attachment to the Terms and Conditions document.

3.2.7 CANCELLATION OF SOLICITATION

A Request for Proposal, Invitation for Bid, or other solicitation may be cancelled, or any or all proposals may be rejected in whole or in part, as may be specified in the solicitation when it is determined to be in the best interest of RFTA. The reasons therefore shall be made a part of the contract file.

3.3 METHODS OF SOURCE SELECTION

3.3.1 Unless otherwise authorized by law, all RFTA contracts shall be awarded by competitive sealed proposals, pursuant to Section 3.3.2. (Invitation for Bids), except as provided in:

- 1. Section 3.3.3 (Request for Proposals);
- 2. Section 3.3.4 (Small Purchases);
- 3. Section 3.3.5 (Sole Source Procurement);

4. Section 3.3.6 (Emergency Procurements);
5. Section 3.3.7 (State Bid/Cooperative Agreements).
6. Section 3.3.8 (Design-Build)
7. Section 3.3.9 (Architect & Engineering Services)

3.3.2 Invitation for Bids: Conditions for Use. Contracts shall be awarded by competitive sealed bids except as otherwise provided in Section 3.3 (Method of Source Selection.)

1. Invitation for Bids. Bids shall be solicited through an Invitation for Bids. The Invitation for Bids shall seek to promote overall economy and quality for the purpose intended and encourages competition in satisfying RFTA's needs, and it shall not be unduly restrictive. The solicitation shall include a proposed draft contract for the proposal received. A bid bond may be required if it is determined to be in the best interest of RFTA.
2. Public Notice. Public notice of the Invitation for Bid shall be given at least 14 calendar days prior to the date set forth therein of the opening of the proposals.
3. Receipt of Bids. Bids shall be publicly opened and the apparent low bidder announced. A bid summary shall be provided upon determination of responsiveness and responsibility of the apparent low bidder.
4. Award. Award shall be made to the lowest responsive, responsible bidder whose bid is determined in writing to be the most advantageous to RFTA. The contract file shall contain the documentation demonstrating the basis on which the award is made (see Attachment A: List of Procurement File Contents).

3.3.3 Request For Proposals: Conditions for Use. When, with the approval in advance by RFTA's CEO or designee, the Director of Procurement determines that the strict application of the requirements for Invitation for Bids is either not practical or not advantageous to RFTA, a contract may be entered into by Request for Proposals.

1. Request for Proposals. Proposals shall be solicited through a Request for Proposals. The request shall seek to promote overall workmanship and quality for the purpose intended and encourage competition in satisfying RFTA's needs, and it may not be unduly restrictive. The solicitation shall include a proposed contract for the proposal received.
2. Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3.3.2 (2) (Invitation for Bids, Public Notice).

3. Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing officers prior to the process of negotiation. A register of Proposers shall be prepared by the Director of Procurement, and shall be open for public inspection after contract award.
4. Selection Committee. The Selection Committee will conduct an independent review of each submission. After all documents have been reviewed and scored independently, the committee will meet and make a final selection. The Selection Committee may elect to hold discussions or ask for answers to specific questions. Any discussion is to include, and be held strictly between the Selection Committee and proposer. Any clarifications to the proposal must be submitted to the Selection Committee in writing. The Selection Committee may elect to have those proposers whose proposals are deemed by the Selection Committee to be most responsive to the evaluation factors give oral presentations.
5. Evaluation Factors. The Request for Proposals shall state the relative importance of the evaluation factors. The initial stage(s) of the selection shall focus on quality or contractor responsibility issues, but not to the exclusion of cost or revenue as a consideration and the final stage(s) of the selection shall focus on cost or revenue issues and may exclude further consideration of quality or responsibility. An initial cost or price analysis will be included in the evaluation initial evaluation in order to determine which firms are in the competitive range. An example of an evaluation score sheet is included in Attachment F.
6. Discussion with Responsible Proposers and Revisions to Proposals. As provided in the Request for Proposals, discussions may be conducted with responsible proposers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers.
7. Best and Final Offer - It may be determined to be in RFTA's best interest to select a proposal that best meets RFTA's requirements and negotiate that proposal so that the project may be completed under the constraints facing RFTA for that project.
8. Award. Award shall be made to the responsible proposer whose proposal is determined in writing to be the most advantageous to RFTA taking into consideration price or revenue generated, as determined by a cost or price

analysis, and other evaluation criteria set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain documentation demonstrating the basis on which the award is made (see Attachment A: List of Procurement File Contents).

3.3.4 Small Purchases. Any procurement not exceeding \$250,000 may be made in accordance with small purchase procedures provided. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section. Department Heads shall use these procedures to meet purposes and policies of the Procurement Manual provided in Section 2.10.2

1. All purchases between \$10,000 and \$250,000 shall require informal proposals or quotes.
2. Projects between \$10,001 and \$150,000 will only require the approval of the department head, where funds have been appropriated.
3. Projects between \$150,001 and \$250,000 will require the approval of the department head and RFTA's COO, CFAO, if funding for the procurements have been appropriated. (The RFTA CEO is limited to \$50,000 for signing contracts without budget and/or Board authorization).
4. Written documentation shall include proposed scope of solicitation, price proposed conditions for that proposed price, and time line for completion. RFTA shall solicit as many proposals and practical, but no less than two.

3.3.5 Sole Source Procurement: A contract may be awarded for a property, service, or construction item without competition when the Director of Procurement and RFTA's CEO or the CEO's designee determines in writing that there is only one acceptable source for the required property, service, or construction item (i.e., a sole-source justification). A cost/price analysis for procurements over \$250,000 must also be completed to ensure that the contract costs/prices are fair and reasonable and the documentation of such must be retained in the procurement file.

3.3.6 Emergency Procurements: Notwithstanding any other provision of this Manual, the Director of Procurement may authorize emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. A cost/price analysis must also be completed to ensure that the contract costs/prices are fair and reasonable and the documentation of such shall be retained in the procurement file.

3.3.7 State Bid/Cooperative Price Agreements: A contract may be awarded for a property, service, or construction item on the terms and to the contractors that have been selected under the State of Colorado's or other governmental jurisdictions with competitive procurement process with department head and RFTA's CEO or CEO's designee's

approval. The other jurisdiction's process must maintain the spirit of RFTA's procurement standards in order for the proposal to be accepted by RFTA. This process must be documented. RFTA will be required to conduct a cost/price analysis, and meet all pre-award and post award requirements (e.g., Buy America Post-Delivery Audit requirements). Following award of such a contract, RFTA will treat the purchase as if it had been conducted in-house under RFTA's purchasing procedures.

3.3.8 Design-Build: The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expressly authorizes the use of FTA capital assistance to support design-build projects "after the recipient complies with Government requirements," 49 U.S.C. Section 5325(d)(2). Design-build procurements shall follow the process of either Invitation for Bid (see Section 3.1.1.), Request for Proposals (see Section 3.1.2), or multi-step, sealed proposals (see Section 3.1.3).

3.3.9 Architect & Engineering Services: For projects involving federal funds that are related to or leading to construction, RFTA shall use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (Brooks Act procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

1. Request for Qualifications. Statements of Qualifications (SOQs) shall be solicited through a Request for Qualifications (RFQ). The request shall seek to promote overall workmanship and quality for the purpose intended and encourage competition in satisfying RFTA's needs, and it may not be unduly restrictive. The purpose of the RFQ is to make a determination as to which firm is the most qualified, with all other firms being ranked according to the qualifications presented. The RFQ shall include a proposed contract for the proposal received. Costs, prices, and billing rates will not be requested and cannot be considered in making a determination of the most qualified firm.
2. Public Notice. Adequate public notice of the RFQ shall be given in the same manner as provided in Section 3.3.2 (2) (Invitation for Bids, Public Notice).
3. Receipt of Statements of Qualifications. SOQs shall be opened so as to avoid disclosure of contents to competing officers ensuring the process of negotiation. A register of Proposers shall be prepared by the Director of Procurement, and shall be open for public inspection after contract award.
4. Selection Committee. The Selection Committee shall conduct an independent review of each submission. After all documents have been reviewed and

scored independently, the committee will meet and rank each firm according to the qualifications from most qualified to least qualified. Firms deemed to be NOT qualified will be eliminated from the list. The Selection Committee may elect to hold discussions or ask for answers to specific questions. Any discussion shall be held strictly in confidence between the Selection Committee and proposer. Any clarifications to the proposal must be submitted to the Selection Committee in writing. The Selection Committee may elect to have those proposers who are deemed qualified give oral presentations.

5. Evaluation Factors. The Request for Qualifications shall state the evaluation factors, and the relative importance of each factor. The initial stage(s) of the selection shall focus on quality or contractor responsibility issues; cost will not be considered. An example of an evaluation score sheet is included in Attachment F.
6. Negotiation with the Most Qualified Firm. After ranking the firms, RFTA will open discussions with the most qualified firm to establish costs. The most qualified firm will be asked to submit a cost proposal, which will be evaluated by RFTA (i.e., cost/price analysis) and compared to the independent cost estimate for the project. RFTA will negotiate with the most qualified firm as needed in order to establish an agreeable price (i.e., fair and reasonable). If an agreeable price is established, RFTA will begin the process of making an award. If an agreeable price cannot be established with the most qualified firm, RFTA will end negotiations with that firm and proceed to negotiate with the next, most qualified firm. If necessary, this process will continue until an agreeable price can be established with one of the firms deemed to be qualified. If an agreeable price cannot be established with any of the qualified firms, RFTA will withdraw the procurement and begin the entire process again. Prior to re-solicitation, RFTA shall evaluate the RFQ to determine if clarifications or changes are needed in order to ensure that its specifications, and scope of work are consistent with the independent cost estimate.
7. Award. Award shall be made to the most qualified firm whose cost proposal is determined to be fair and reasonable. The contract file shall contain documentation demonstrating the basis on which the award is made (see Attachment A: List of Procurement File Contents).

3.4 TYPES OF CONTRACTS

Subject to the limitations of this Section, any type of contract which will promote the best interests of RFTA may be used; with the exception that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such a contract is likely to be less costly to RFTA than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

1. Cost Plus a Percentage of Cost—Prohibited. The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost and cost plus a percentage of construction cost methods of contracting.
2. Time and Materials—The Common Grant Rule for governmental recipients permits the use of time and material contracts under the following circumstances only:
 - i. When to Use. After determining that no other contract type is suitable; and
 - ii. Firm Ceiling Price. If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

3.4.1 Multi-Term Contracts

1. Specified Period. Unless otherwise provided by law, a contract for property or services may be entered into for any period of time deemed to be in the best interests of RFTA provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for the succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore, and the contract shall explicitly so state.
2. Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - i. that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - ii. that such a contract will serve the best interests of RFTA by encouraging effective competition or otherwise promoting economies in RFTA procurement.

3.4.2 Task Order & Work Order Contracts - These contracts can be used when a vendor may be needed on an “as needed” basis. Performance of the work shall begin only when the Contractor has received a fully executed Task Order or Work Order. These contracts may be for one year or may be a multi-term contract. These contracts have a “not to exceed” amount and a scope of work, but actual work is defined in and performed under a Task Order or Work Order.

3.4.3 Letter of Agreement – As RFTA does not have a Purchase Order system, a Letter Agreement serves as a vehicle. This agreement is to be used for one-off goods and supplies, as well as an agreement to purchase off previously competed cooperative agreements.

3.4.3 Five-Year Limitation – RFTA may not enter into a multi-year contract to buy rolling stock (buses) with an option that exceeds five (5) years to buy additional rolling stock or replacement parts, 49 U.S.C. Section 5325(e)(1)(A). Options may not be exercised later than five (5) years after the date of its original contract.

Per FTA C 4220.1F, FTA interprets this five year period as covering the recipient’s “material requirements” for rolling stock and replacement needs from the first day when the contract becomes effective to its “material requirements” at the end of the fifth year. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that a recipient’s “material requirements” for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement parts than a recipient’s material requirements for the applicable five year period. This does not mean the recipient must obtain delivery, acceptance, or even fabrication in five years. Instead it means only that FTA limits a contract to purchasing no more than the recipient’s material requirements for rolling stock or replacement parts for five years based on the effective date of the contract..” (FTA C 4220.1F, Ch. IV, Section 2. e(10))

3.5 CONTRACT CLAUSES AND THEIR ADMINISTRATION

3.5.1 Terms and Conditions. RFTA’s General Counsel shall provide guidance on regulations requiring the inclusion in RFTA contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

1. The unilateral right of RFTA to order in writing:
 - i. changes in the work within the scope of the contract; and
 - ii. changes in the time of performance of the contract that do not alter the scope of the contract work.
2. Variations occurring between estimated quantities of work in a contract and actual quantities.
3. Suspension of work ordered by RFTA.
4. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions need not be included in a contract;
 - i. when the contract is negotiated;
 - ii. when the contractor provides the site or design; or
 - iii. when the parties have otherwise agreed with respect to the risk of differing site conditions.

5. Insurance and indemnification requirements.
6. All contracts shall include a specific contract term with a start and ending date and the ceiling price (i.e., not to exceed amount).

3.5.2 Price Adjustments

1. Adjustments in price pursuant to clauses promulgated under Section 3.5.1 shall be computed in one or more of the following ways:
 - i. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - ii. by unit prices specified in the contract or subsequently agreed upon;
 - iii. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon; in such manner as the contracting parties may mutually agree; or
 - iv. in the absence of agreement by the parties, by a unilateral determination by RFTA of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by RFTA and subject to the provisions of Section 3.13 (Legal and Contractual Remedies).

3.5.3 Additional Contract Clauses. RFTA's General Counsel may promulgate regulations requiring the inclusion in RFTA contracts of clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate - The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.
2. Specified excuses for delay or nonperformance;
3. Termination of the contract for default; and

4. Termination of the contract in whole or part for the convenience of RFTA.

3.5.4 Modification of Terms and Conditions. The Director of Procurement may vary the clauses promulgated by RFTA's General Counsel under this Section 3.5 with the approval of RFTA's General Counsel and RFTA's designated Risk Manager for insurance related issues.

3.6 CONTRACT CHANGES

3.6.1 Every contract modification, change order, or contract price adjustment under a contract with RFTA, over the simplified acquisition threshold of \$250,000, shall be subject to a cost/price analysis to ensure that the cost/price is fair and reasonable.

3.6.2 Every contract modification, change order, or contract price adjustment under a contract with RFTA in excess of an amount established by the RFTA Board shall be subject to prior written certification by the Procurement Department as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, the Director of Procurement shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefore, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration.

3.7 RIGHT TO INSPECT PLANT

3.7.1. RFTA may at reasonable times inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded or to be awarded by RFTA.

3.8 RIGHTS TO AUDIT RECORDS

3.8.1 Audit of Cost or Pricing Data. RFTA may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books or records relate to such cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such costs or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

3.8.2 Contract Audit. RFTA shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

3.9 RESPONSIBILITY AND RESPONSIVENESS OF PROPOSERS

3.9.1 Determination of Non-responsibility and Non-responsiveness The unreasonable failure of a proposer to promptly supply information in connection with an inquiry with respect to responsibility or responsiveness may be grounds for a written determination of non-responsibility or non-responsiveness with respect to such proposer.

3.9.2 Right of Nondisclosure. Information furnished and designated as confidential by a proposer pursuant to this Section shall not be disclosed outside of the Selection Committee and Director of Procurement (prior to contract award) without prior written consent by the proposer.

3.9.3 Pre-qualification of Suppliers. Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

3.9.4 Responsibility Determinations. RFTA shall include a written responsibility determination in the contract files for all successful bidders/proposers. Factors that will be considered in making a responsibility determination will include:

1. contractor integrity (including a check of the System for Award Management at <https://www.sam.gov/SAM/>) and a Certificate of Good Standing;
2. compliance with public policy;
3. record of past performance; and
4. financial and technical resources.

3.10 SURETY

3.10.1 Requirement for Surety. Surety may be required for any procurement at the discretion of the Director of Procurement. Surety shall be a bond provided by a surety company authorized to do business in the state of Colorado, or otherwise supplied in a form satisfactory to RFTA's General Counsel

3.10.2 Rejection of Offers for Noncompliance with Surety Requirements. When the solicitation requires surety, noncompliance requires that the offer be rejected unless it

is determined that the offer fails to comply in a non-substantial manner with the surety requirements.

3.10.3 Withdrawal of Offers. After the Offers are opened, they shall be irrevocable for the period specified in the solicitation. If an offeror is permitted to withdraw its offer before opening, no action shall be had against the offeror or the surety.

3.11 CONTRACT PERFORMANCE AND PAYMENT BONDS

3.11.1 When Required Amounts. When required by federal, state or local statutes, the following bonds or security shall be delivered to RFTA and shall become binding on the parties upon the execution of the contract:

1. a performance bond satisfactory to RFTA, executed by a surety company authorized to do business in the state of Colorado or otherwise secured in a manner satisfactory to RFTA, in accordance with state and/or federal requirements.
2. a payment bond satisfactory to RFTA, executed by a surety company authorized to do business in the state of Colorado or otherwise secured in a manner satisfactory to RFTA, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bonds shall be in compliance with state and/or federal requirements.

3.11.2 To Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of RFTA to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Section 3.11.1.

3.12 BOND FORMS AND COPIES

3.12.1 Bond Forms. RFTA's General Counsel or the RFTA General Counsel's designee shall review the form of the bonds required by this Part.

3.12.2 Certified Copies of Bonds. Any person may request and obtain from RFTA a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

3.12.3 Bond Location. All bonds shall be stored in a designated secured place.

3.13 LEGAL AND CONTRACTUAL REMEDIES

3.13.1 Authority To Resolve Protested Solicitations And Awards

1. **Right to Protest.** Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract shall first try to resolve the grievance/protest with the Director of Procurement. If the grievance is not satisfied, the prospective proposer or contractor shall then protest to RFTA's CEO. The protest shall be submitted in writing within 5 days after such aggrieved person knows or should have known of the facts giving rise thereto.
2. **Authority to Resolve Protests.** RFTA's CEO shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved proposer or contractor, actual or prospective, concerning the solicitation or award of a contract.
3. **Decision.** If the protest is not resolved by mutual agreement, RFTA's CEO shall promptly issue a decision in writing. The decision shall:
 - i. state the reason for the action taken; and
 - ii. inform the protestant of the right to administrative review as provided in this Article.
4. **Notice of Decision.** A copy of the decision under Section 3.13.1 (3) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
5. **Finality of Decision.** A decision under Section 3.13.1 (1) shall be final and conclusive, unless the protestant appeals administratively to the RFTA Board acting as the Procurement Appeals Board.

In all instances involving FTA funds, RFTA will disclose information regarding the protest to the FTA Region VIII office, and keep them informed about the status of the protest. A protester must exhaust all administrative remedies with RFTA before pursuing a protest with FTA.

3.14 AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES

- 3.14.1 Applicability.** This section applies to conflicts, controversies, disagreements, and disputes between RFTA and a contractor and which arise under or by virtue of, a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- 3.14.2 Authority.** RFTA's CEO delegates authority for resolution of disputes to RFTA's Project Manager, and COO, sequentially, prior to commencement of an action in a

court or arbitration concerning the controversy, to settle and resolve a controversy described in Section 3.14.1.

3.14.3 Decision. If such a controversy is not resolved by mutual agreement, RFTA's COO shall promptly issue a decision in writing. The decision shall:

1. state the reason for the action taken; and
2. inform the contractor of its right to administrative review as provided in this Article, and
3. potentially notify a surety for the contract of the possibility of the contractor's default.

3.14.4 Notice of Decision. A copy of the decision under Section 3.14.3 shall be mailed or otherwise furnished immediately to the contractor.

3.14.5 Finality of Decision. The decision under Section 3.14.3 shall be final and conclusive, unless the contractor appeals administratively to the RFTA Board acting as the Procurement Appeals Board.

3.14.6 Failure to Render Timely Decisions. If RFTA's COO does not issue the written decision required under Section 3.14.4 within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed with other remedies.

3.15 AUTHORITY TO DEBAR OR SUSPEND

3.15.1 Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, RFTA's CEO, after consultation with RFTA's General shall have the authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The same officer, after consultation with RFTA's General Counsel, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

3.15.2 Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

1. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or

any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a RFTA contractor;

3. conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. violation of contract provisions, as set forth below, of a character which is regarded by RFTA's CEO to be so serious as to justify debarment action:
 - i. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - ii. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
5. filing of false or misleading information as part of the procurement process;
6. filing or prosecution of protest or appeal that is groundless or frivolous;
7. collusion with other prospective competitors or any other anti-competitive act, omission or agreement that is contrary to the interest of the taxpayers;
8. any other cause RFTA's CEO determines to be so serious and compelling as to affect responsibility as a RFTA contractor, including but not limited to debarment by another government body for any cause; and
9. for violation of the ethical standards set forth in Section 2.2 (Ethics in Public Contracting).

3.15.3 Decision. RFTA's CEO shall issue a written decision to debar or suspend. The decision shall:

1. state the reasons for the action taken; and
2. inform the debarred or suspended party involved of its right to administrative review as provided in this Article.

3.15.4 Notice of Decision. A copy of the decision under Section 3.15.3 shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

3.15.5 Finality of Decision. A decision under Section 3.15.3 shall be final and conclusive, unless the debarred or suspended person appeals administratively to the RFTA Board acting as the Procurement Appeals Board.

3.16 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

- 3.16.1 Prior to Bid Opening or Closing Date for Receipt of Proposals.** If, prior to the bid opening or the closing date for receipt of proposals, the Director of Procurement determines that a solicitation is in violation of state or federal law, then the solicitation or proposed award shall be cancelled or revised to comply with applicable law.
- 3.16.2 Prior to an Award.** If, after a bid opening or the closing date for receipt of proposals, the Director of Procurement determines that a solicitation or a proposed award of a contract is in violation of federal or state law, the solicitation or proposed award of a contract shall be cancelled.
- 3.16.3 After Award.** If, after an award, the Director of Procurement determines that a solicitation or award of a contract was in violation of applicable law, then the contract is voidable by RFTA.

3.17 CREATION OF THE PROCUREMENT APPEALS BOARD

- 3.17.1 The RFTA Board of Directors shall act as the Procurement Appeals Board.**
- 3.17.2 Acting by one or more of its members,** the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties and RFTA's CEO.
- 3.17.3 Jurisdiction Of The Procurement Appeals Board** unless an action has been initiated previously in court for essentially the same cause of action, or unless within 15 days after the action is brought before the Procurement Appeals Board, written objection is made by either the aggrieved proposer, or contractor, prospective or actual, or RFTA's General Counsel, the Procurement Appeals Board shall have jurisdiction to review and determine de novo:
1. any appeal by an aggrieved party from a determination by RFTA's CEO which is authorized by:
 - i. Section 3.13.1 (Authority to Resolve Protested Solicitations and Awards);
 - ii. Section 3.15 (Authority to Debar or Suspend); and
 - iii. Section 3.14 (Authority to Resolve Contracts and Breach of Contract Controversies)
- 3.17.4 Appeal of Solicitations or Awards**
1. Scope. This section applies to an appeal addressed to the Procurement Appeals Board of a decision under Section 3.13 (4) (Authority to Resolve Protested Solicitations and Awards, Decision).

4. Time Limitations on Filing a Protest or an Appeal;

- i. For an appeal under Section 3.17.4 2.(i), the aggrieved party shall file an appeal within seven days of the receipt of a decision under Section 3.13.1 (Authority to Resolve Protested Solicitations and Awards, Decision).

3.17.5 Decision. On any appeal under 3.17.4 2.(i) of this Section, the Procurement Appeals Board shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The proceedings shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

3.17.6 Finality of Decision. A determination of an issue of fact by the Procurement Appeals Board under Section 3.17.5 shall be final and conclusive.

3.18 SUSPENSION OR DEBARMENT PROCEEDINGS

3.18.1 Scope. This section applies to a review by the Procurement Appeals Board of a decision under Section 3.15 (Authority to Debar or Suspend.)

3.18.2 Time Limitation on Filing an Appeal. The aggrieved party shall file its appeal with the Procurement Appeals Board within 60 days of the receipt of a decision under Section 3.15.3 (Authority to Debar or Suspend, Decision).

3.18.3 Decision. The Procurement Appeals Board shall promptly decide whether, or the extent to which, the debarment or suspension was in accordance with the Constitution, statutes, regulations, and the best interests of RFTA, and was fair. The proceedings shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

3.18.4 Finality of Decision. A determination of an issue of fact by the Procurement Appeals Board under Section 3.18.3 shall be final and conclusive.

3.19 CONTRACT AND BREACH OF CONTRACT CONTROVERSIES

3.19.1 Scope. This section applies to a review by the Procurement Appeals Board of a decision under Section 3.14 (Authority to Resolve Contract and Breach of Contract Controversies).

3.19.2 Time Limitation on Filing an Appeal. The aggrieved contractor shall file its appeal with the Procurement Appeals Board within 60 days of the receipt of the decision under Section 3.14 (Authority to Resolve Contract and Breach of Contract Controversies, Decision).

3.19.3 Decision. The Procurement Appeals Board shall promptly decide the contract or breach of contract controversy. The proceedings shall be de novo. Any prior determination by administrative officials shall not be final or conclusive.

3.19.4 Finality of Decision. A determination of an issue of fact by the Procurement Appeals Board under Section 3.19.3 shall be final and conclusive.

3.19.5 Appeal and Review of Procurement Appeals Board Decisions

1. Appeal. Any person receiving an adverse decision, RFTA, or both may appeal from a decision by the Procurement Appeals Board to the courts under Colorado Rules of Civil Procedure Rule 106.
1. Authorization of Appeal by RFTA. RFTA shall make no such appeal unless recommended by RFTA’s CEO, or the department head involved, and approved by RFTA’s General Counsel.

3.20 DISCONTINUANCE OF CONTRACTOR’S APPEAL

3.20.1 After notice of an appeal to the Procurement Appeals Board has been filed with RFTA’s CEO, a contractor may not discontinue such appeal without prejudice, except as authorized by the Board.

3.21 OPINIONS AND WAIVERS

3.21.1 Advisory Opinions. On written request of employees or contractors, RFTA’s General Counsel may render advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Compliance with requirements of a duly promulgated advisory opinion of RFTA’s General Counsel shall be deemed to constitute compliance with the ethical standards of this Article.

3.21.2 Waiver. On written request of an employee, the RFTA Board may grant an employee a written waiver from the application of Section 2.2.4 (Employee Conflict of Interest) and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of RFTA so require or when the ethical conflict is insubstantial or remote.

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GLOSSARY OF TERMS

The words defined in this Section shall have the meanings set forth below whenever they appear in this Manual, unless:

- a. The context in which they are used clearly requires a different meaning; or
 - b. A different definition is prescribed for a particular Article or provision.
1. Business means any corporation, partnership, individual, sole proprietorship, Joint Stock Company, joint venture, LLP, LLC or any other private legal entity.
 2. Change Order means a written order signed by the Project Manager, directing the contractor to make changes which the changes clause of the contract authorizes the Project Manager to order without the consent of the contractor.
 3. Department Head or Designee means any person elected or appointed to direct the operations of any department of RFTA.
 4. Project Manager means the individual designated to manage the Contract and the Contractor for the project.
 5. Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings, or real property.
 6. Contract means all types of RFTA agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.
 7. Contract Modification means any written alteration in specifications, delivery point, and rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
 8. Contractor means any person having a contract with RFTA.
 9. Cost-reimbursement Contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this manual, and a fee, if any.
 10. Data means recorded information, regardless of form or characteristic.
 11. Designee means a duly authorized representative of a person holding a superior position.

12. Employee means an individual drawing a salary from RFTA, whether elected or not and any non-compensated individual performing a personal service for RFTA, including but not limited to members of the RFTA Board, members of volunteer and/or advisory boards.
13. Excess Property means any property other than expendable property, having a remaining useful life but which is no longer required by the Using Agency in possession of the property.
14. Expendable Property means all tangible property other than fixed assets.
15. Fixed Assets means all tangible property having an original acquisition cost of over \$5,000 per unit and a probable useful life of more than one year.
16. Governmental Body means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government, corporation, or other establishment or official of the executive, legislative, or judicial branch of RFTA.
17. Grant
 - a. “Grant” means a cash payment of public funds made directly to RFTA or an enterprise of RFTA by a governmental unit within the state, or by the federal government or an agency thereof which cash payment is not required to be repaid.
 - b. “Grant” does not include the following:
 - i. Public funds paid or advanced RFTA by a governmental unit in exchange for an agreement by RFTA to provide a regional transportation system or for the use of property included in or in connection with a regional transportation system;
 - ii. Refunds made in the current or next fiscal year;
 - iii. Gifts;
 - iv. Any payments directly or indirectly from federal funds or earnings on federal funds;
 - v. Collections for another government;
 - vi. Pension contributions by employees and pension fund earnings;
 - vii. Reserve transfers or expenditures;
 - viii. Damage awards; or
 - ix. Property sales.
18. Participant means any individual, or firm intending to submit a proposal in response to a formal solicitation by RFTA.
19. Party means any business, individual, union, committee, club, other organization, or group of individuals.

20. Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any property, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
21. Director of Procurement means the RFTA Director of Procurement or any person duly authorized to oversee the negotiation and administration of RFTA solicitations and contracts and make written determinations with respect thereto.
22. Property means all RFTA property, including but not limited to equipment, materials, documents, water rights, insurance, supplies, and leases of real property, excluding land or permanent interest in land.
23. Purchase Description means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made part of, the solicitation, including by reference to other contemporary documents.
24. Regulation means a statement by the RFTA Board, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements.
25. Solicitation means all documents, whether attached or incorporated by reference, utilized for soliciting bids, quotes or proposals.
26. Responsible Proposer means a party that has the capability in all respects to perform fully the contract requirements and the integrity and reliability, which will assure good faith performance.
27. Responsive Proposer means a party that has submitted a proposal which conforms in all material respects to the Request for Proposals.
28. Selection Committee means a group of not less than two individuals designated to review proposals and recommend a selection from the participants. RFTA Board Members and RFTA's CEO are prohibited from serving on a Selection Committee, unless only in an advisory (non-voting) capacity.
29. Services mean the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
30. Surplus Property means any property other than expendable property no longer having any use to RFTA. This includes obsolete property, scrap materials, and fixed assets that have completed their useful life cycle.
31. Using Agency means any aspect or department of RFTA, which utilizes any supplies, services, or construction procured under this Manual.

ATTACHMENTS

- A. List of Procurement File Contents (Record Keeping Standards)
- B. Independent Cost Estimate
- C. Cost Analysis Worksheet
- D. Price Analysis Worksheet
- E. Procurement Process Checklist
- F. Sample Evaluation Score Sheet

APPENDICES

Flow Charts

List of Procurement File Contents

Attachment A

Standard Contents

1. Contacts
2. Rationale for Procurement Method and Contract Type
3. Independent Cost Estimate (Over \$250,000)
4. Solicitation Documents (RFP, IFB, etc.)
5. Proof of Advertisement
6. Pre-Bid Conference Materials (agenda, list of attendees, Q&A)
7. Proposals/Bids
8. Evaluation Materials (score sheets, summary of evaluation)
9. Cost or Price Analysis (Over \$250,000)
10. Negotiations (correspondence and other supporting documentation)
11. Recommendation of Award
12. Procurement Checklist
13. Contract Documents (including Federal clauses)
14. Certificates of Insurance
15. Notice of Award
16. Task Orders/Notice to Proceed
17. Notice of Final Acceptance
18. Notice of Final Payment

Additional Contents

19. Justification for Non-competitive Award (sole source, or single-bid)
20. Progress Reports and Progress Meeting Notes (as applicable)
21. Davis-Bacon Monitoring (construction contracts over \$2,000)
22. DBE Monitoring (awards with a DBE contract goal)
23. TVM Certifications (rolling stock procurements)
24. Pre-Award and Post Delivery Purchaser's Requirements and FMVSS Certifications (all rolling stock procurements)
25. Pre-Award and Post Delivery Audit Materials and Buy America Certifications (rolling stock procurements over \$150,000)
26. Buy America Documents (procurements over \$150,000 involving steel, iron, or manufactured products)

NOTE: Not all items listed are applicable to every procurement. At a minimum, every procurement must include items 2, 3 and 9. Procurements exceeding \$10,000 must include all applicable standard items in the record of procurement history.

Independent Cost Estimate

1. Project Name & Title:

2. Description of Product or Service *(if this is a sole source award, provide a justification)*

3. Size of Procurement *(check one):*

| | |
|--|---|
| Micro-Purchase (\$10,000 or less) | <ul style="list-style-type: none"> no cost estimate required record documentation examined (e.g., document name, issue number, date, and page) |
| Small Purchase (\$10,001 to \$250,000) | <ul style="list-style-type: none"> no independent cost estimate required record documentation examined (e.g., document name, issue number, date, and page) |
| Large Purchase (\$250,000 or more) | <ul style="list-style-type: none"> the cost estimate may be based on catalog prices or recent procurement history of RFTA or another agency record documentation examined (e.g., document name, issue number, date, and page) |

4. Specifications/Scope of Work

(attach specifications/scope of work; at a minimum include the following items):

| | |
|--|--|
| <p>For Materials and Supplies:</p> <ul style="list-style-type: none"> Quantity of items and/or materials required A detailed description of each item required Specifications and/or drawings for materials required Date materials are required Delivery address and RFTA's point of contact | <p>For Professional Services:</p> <ul style="list-style-type: none"> List of responsibilities to be performed by consultant A detailed list of deliverables required from consultant Anticipated contract term and start date Location of project Project manager's name, phone number, fax number and email address |
| <p>For Architect/Engineering/Construction:</p> <ul style="list-style-type: none"> A detailed list of tasks to be performed by the Contractor Specifications, drawings and/or pictures of job site or projected results of contractor's tasks Anticipated Contract Term and Start Date Location of project Project Manager Name, phone number, fax number and email address | |

5. Cost/Price Analysis *(see attached worksheets)*

COST ANALYSIS WORKSHEET – Page 1
(use one worksheet per proposer)

RFP No./Contract Activity: _____

Date Prepared: _____

Prepared by: _____

Firm/Company Name: _____

| LABOR COSTS | | | |
|-----------------------|--------------|-------------|---------------|
| Labor Category | Hours | Rate | Amount |
| 1. | | | \$ - |
| 2. | | | \$ - |
| 3. | | | \$ - |
| 4. | | | \$ - |
| 5. | | | \$ - |
| 6. | | | \$ - |
| 7. | | | \$ - |
| 8. | | | \$ - |
| 9. | | | \$ - |
| 10. | | | \$ - |
| Subtotal | | | \$ - |

| MATERIALS COSTS | | | |
|------------------------|-------------|-------------------|---------------|
| Description | Qty. | Unit Price | Amount |
| 1. | | | \$ - |
| 2. | | | \$ - |
| 3. | | | \$ - |
| 4. | | | \$ - |
| 5. | | | \$ - |
| 6. | | | \$ - |
| 7. | | | \$ - |
| 8. | | | \$ - |
| 9. | | | \$ - |
| 10. | | | \$ - |
| Subtotal | | | \$ - |

COST ANALYSIS WORKSHEET – Page 2
(use one worksheet per proposer)

RFP No./Contract Activity: _____

Date Prepared: _____

Prepared by: _____

Firm/Company Name: _____

| OTHER DIRECT COSTS | | | |
|---------------------------|------|------------|--------|
| Description | Qty. | Unit Price | Amount |
| 1. | | | \$ - |
| 2. | | | \$ - |
| 3. | | | \$ - |
| 4. | | | \$ - |
| 5. | | | \$ - |
| 6. | | | \$ - |
| 7. | | | \$ - |
| 8. | | | \$ - |
| 9. | | | \$ - |
| 10. | | | \$ - |
| Subtotal | | | \$ - |

| OVERHEAD | | | |
|-----------------------|--|------|--------|
| Description | | Rate | Amount |
| 1. Labor Overhead | | | \$ - |
| 2. Materials Overhead | | | \$ - |
| 3. G&A | | | \$ - |
| Subtotal | | | |

| | | | |
|-------------------|--|--|--|
| PROFIT/FEE | | | |
|-------------------|--|--|--|

| | | | |
|--------------------|--|--|------|
| TOTAL COSTS | | | \$ - |
|--------------------|--|--|------|

Solicitation No./Description:

Date Prepared:

| Items Offered | Offeror 1: | Offeror 2: | Offeror 3: | Offeror 4: | Offeror 5: |
|----------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | | | | | |
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Procurement Process Checklist

Attachment E

TO DO BEFORE THE PROCUREMENT PROCESS

Timeline: From decision to procure to selection of procurement method.

- Review RFTA's procurement process and policies
- Implement procurement process and policies if necessary
- Determine scope of procurement
- Complete an Independent Cost Estimate (see Attachment B)
- Identify who needs to be involved
- Plan the procurement process
- Decide on the method of procurement: RFQ, IFB, or RFP

PROCUREMENT PACKAGE PREPARATION

Timeline: From selection of method to Draft Procurement Package.

- Convene Review Committee
- Develop draft RFQ, IFB, or RFP, including all required FTA clauses
- Develop technical specifications and/or Scope of Work
- Identify potential bidders/proposers
- Develop evaluation process and criteria
- Review protest procedures (these should be a part of the procurement package)
- Finalize draft of procurement package (i.e., IFB, RFP, or RFQ)
- Procurement Department review and approval of procurement package

CONDUCTING THE PROCUREMENT

Timeline: From Final Procurement Package to bid/proposal deadline.

- Finalize RFQ/IFB/RFP Package
- Advertising and Notifying of potential bidders/proposers
- Conduct pre-bid or pre-proposal conference (optional)
- Procedures for Review/Acceptance of Approved Equals (if applicable)
- Pre-bid/pre-proposal approved equals protests procedures (if applicable)
- Bid/proposal deadline and acceptance by RFTA.

PRE-AWARD REVIEW AND CONCURRENCE PROCESS

Timeline: From acceptance of bids/proposals to contract award.

- Reconvene review committee
- Review evaluation process and criteria
- Evaluate bids/proposals for required elements/responsiveness
- Conduct cost or price analysis on a responsive bids
- RFTA review and approval of intent to award
- Notify selected and rejected bidders/proposers
- Handle intent to award protests using the local process

POST – AWARD AND POST-DELIVERY ACTIVITIES

Timeline: From award through contract completion.

- Issue purchase order or service contract to selected bidder/proposer
- Monitor contractor activities (if applicable)
- Post-delivery inspection of capital equipment purchases (if applicable)
- Complete required post-delivery audit forms (if applicable)
- Acceptance, warranty and service arrangements made with contractor (if applicable)
- Vehicle Title/Registration – Title must show RFTA as lien holder (if applicable)
- Submission of required forms and certifications to RFTA
- Submit proof of local match contribution to RFTA
- Submit electronic reimbursement form to RFTA for federal share

SAMPLE EVALUATION SCORE SHEET

Attachment F

DO NOT INCLUDE IN PACKET FOR BIDDING

(Project Name)

Proposal Opening Date _____

Contract #:

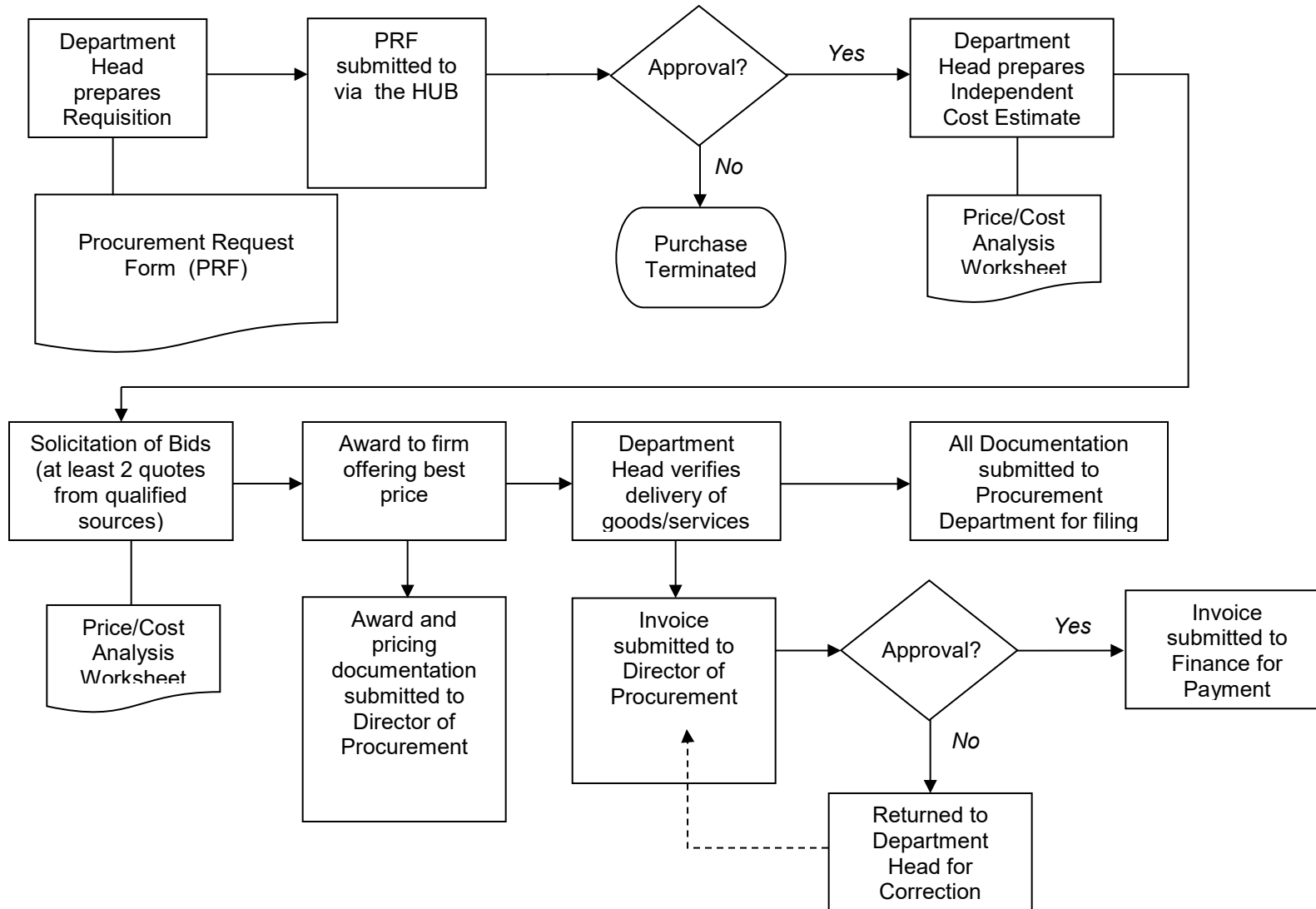
To: (Selection Committee) (List Names)

| | Proposer | Proposer | Proposer |
|------------------------|----------|----------|----------|
| Scoring criteria and % | | | |
| Scoring criteria and % | | | |
| Scoring criteria and % | | | |
| Scoring criteria and % | | | |
| Scoring criteria and % | | | |
| TOTAL | | | |

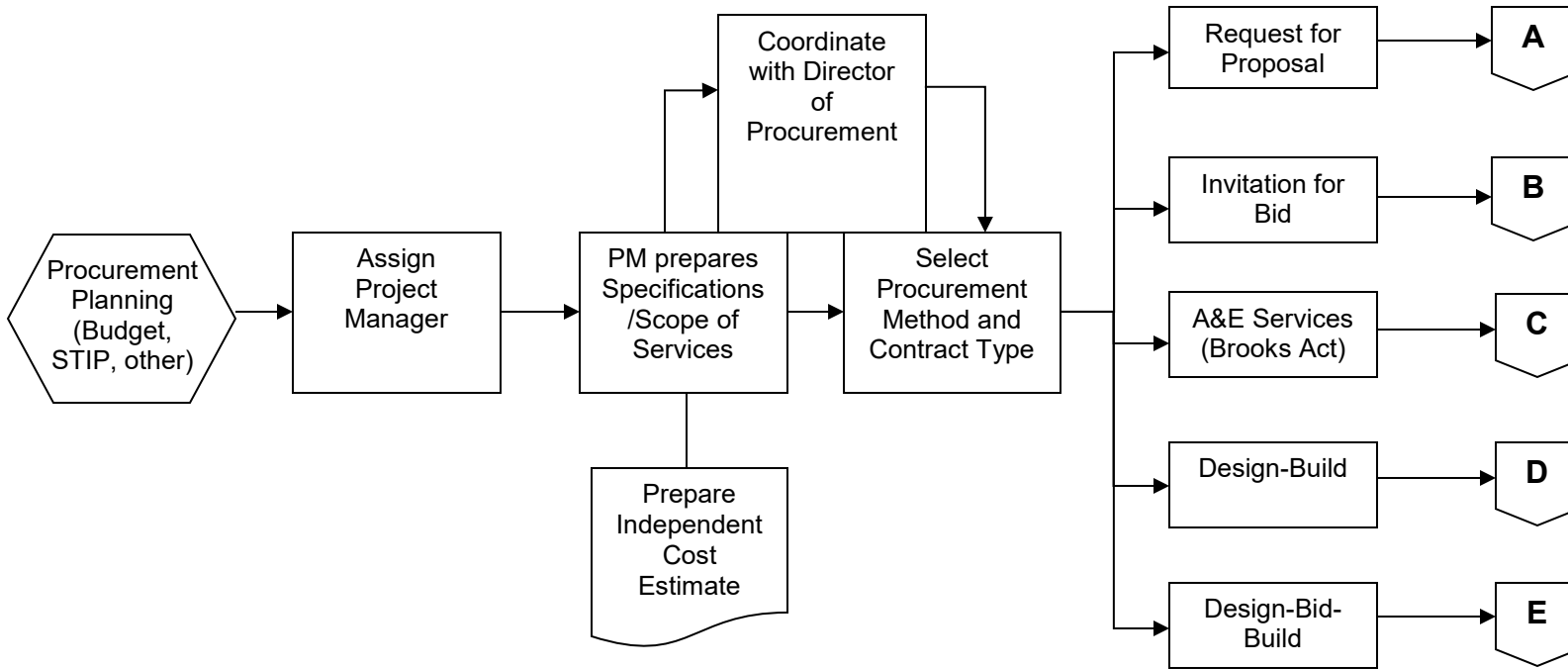
Signature _____ Date: _____

Print Name _____

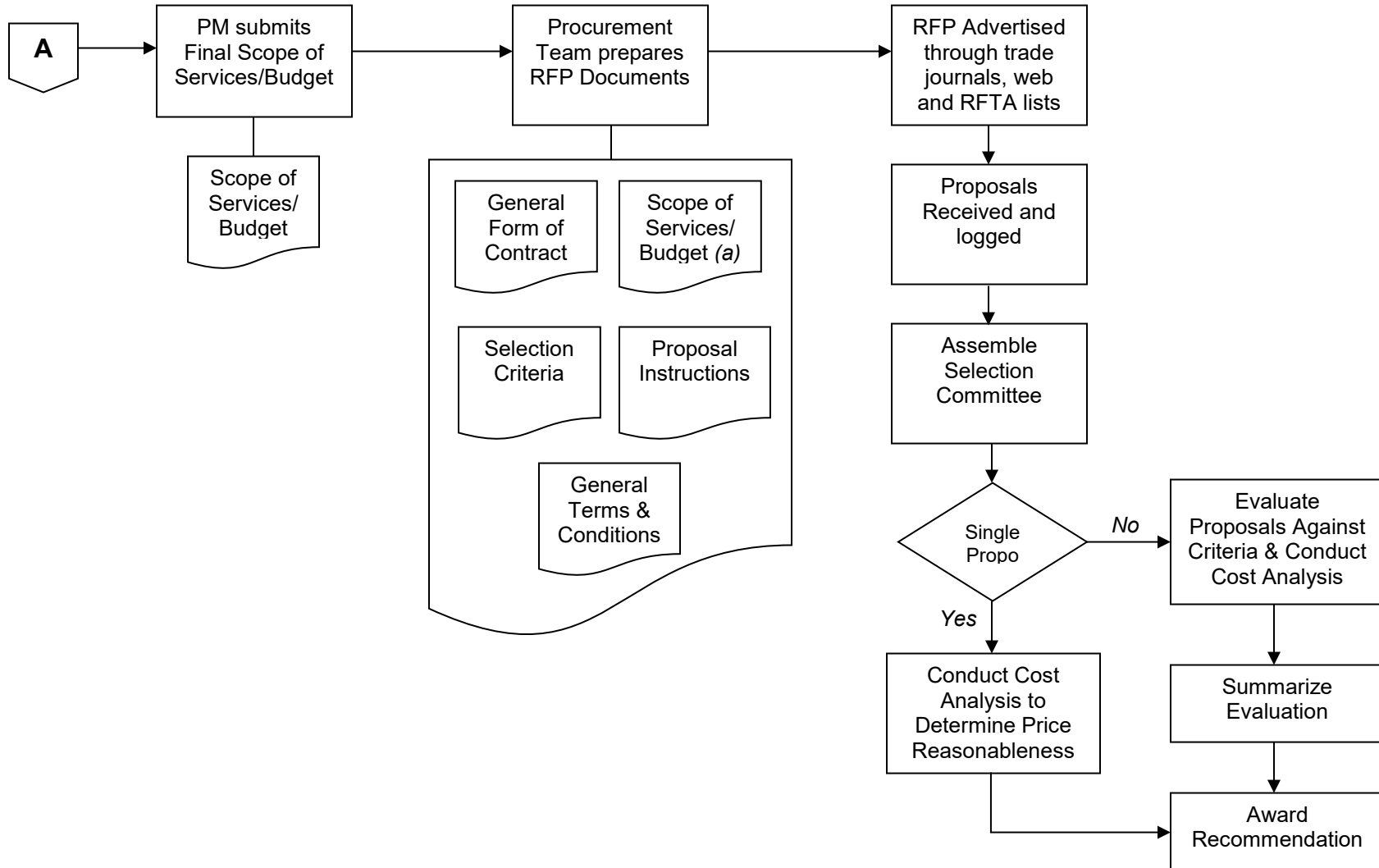
Small Purchase Procedures Flowchart



Purchasing Procedures for Procurements of \$250,000 or More

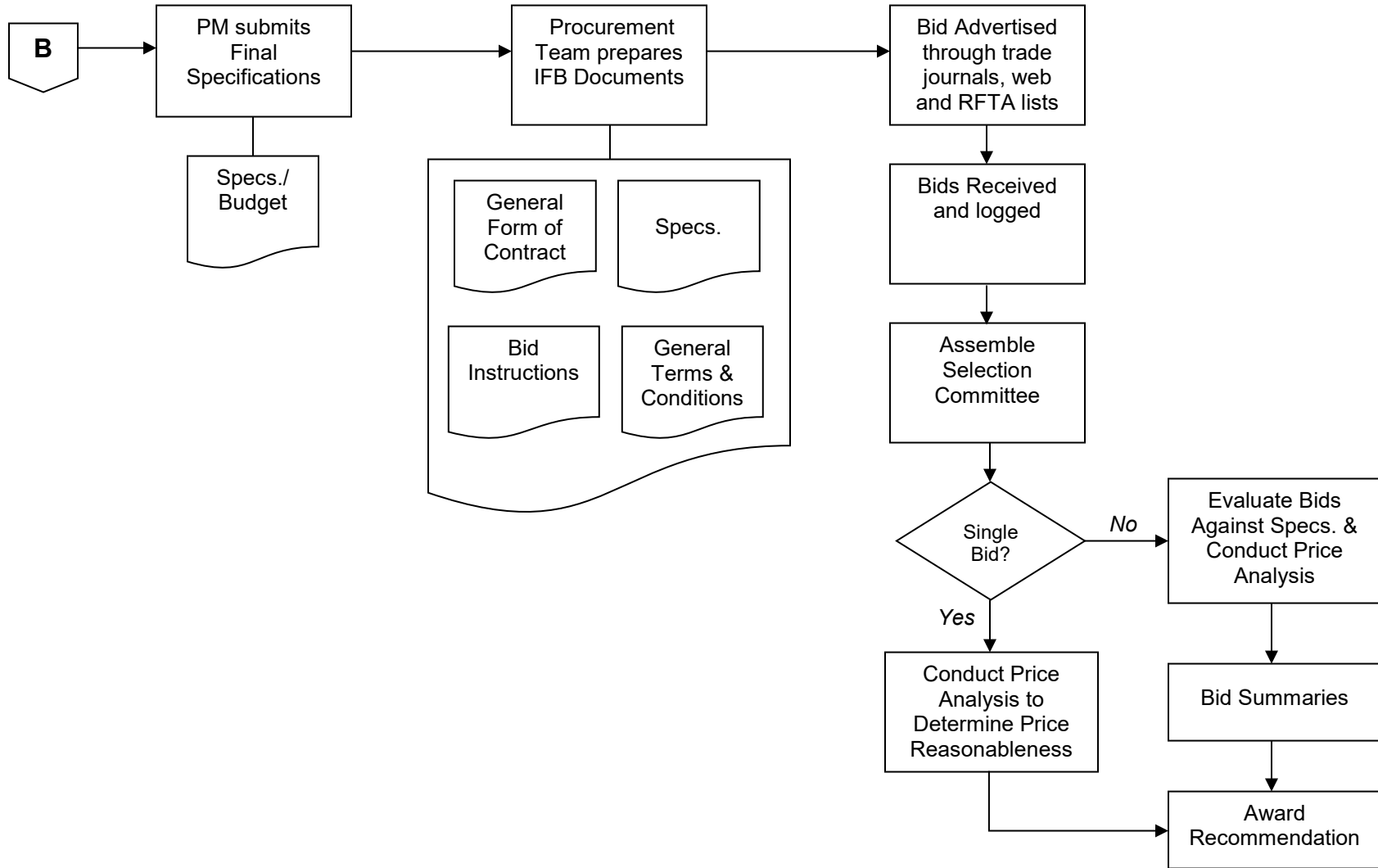


**Purchasing Procedures for Procurements of \$250,000 or More
Request for Proposal (RFP)**

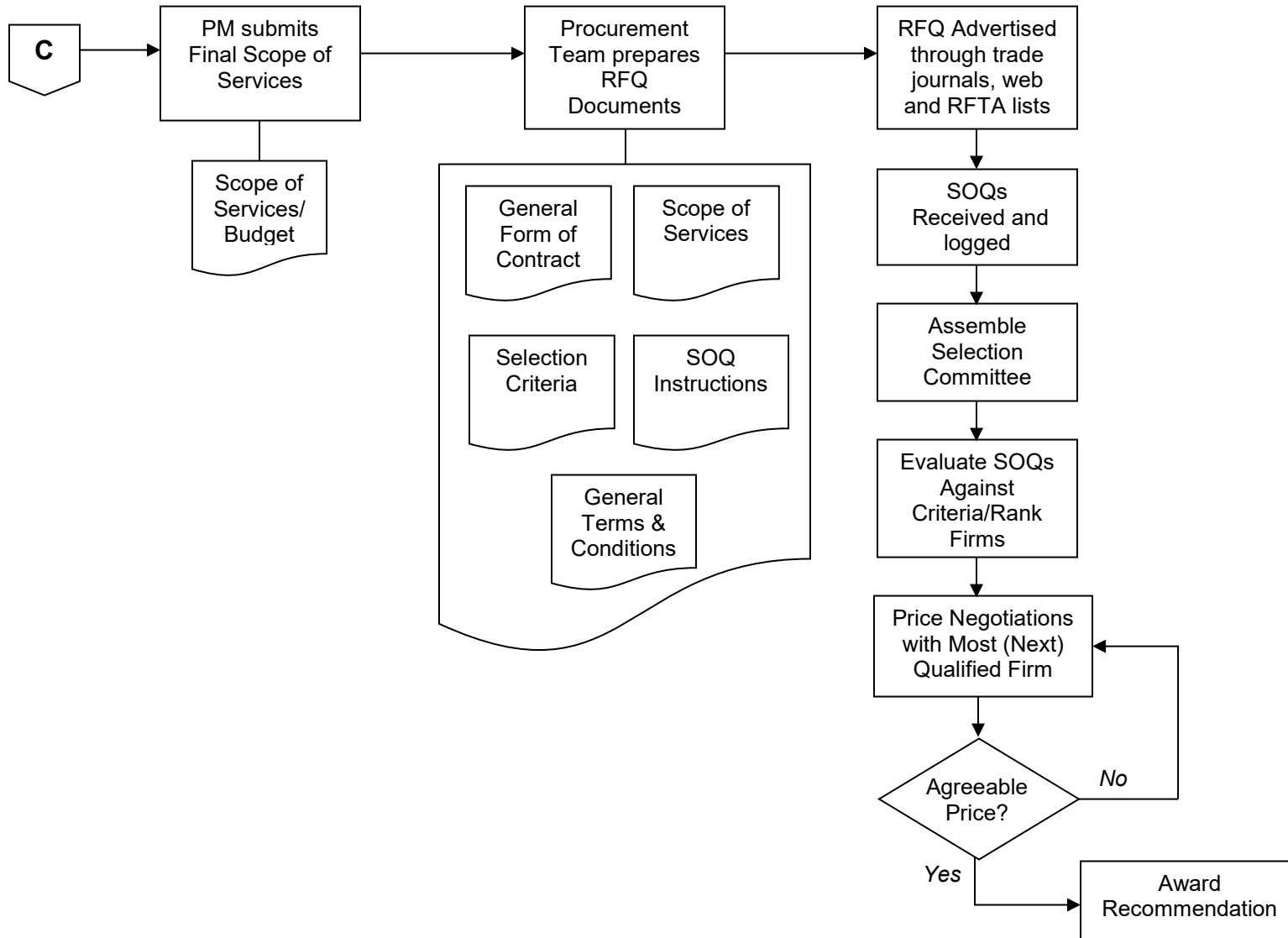


(a) Including a Budget in the solicitation materials is optional.

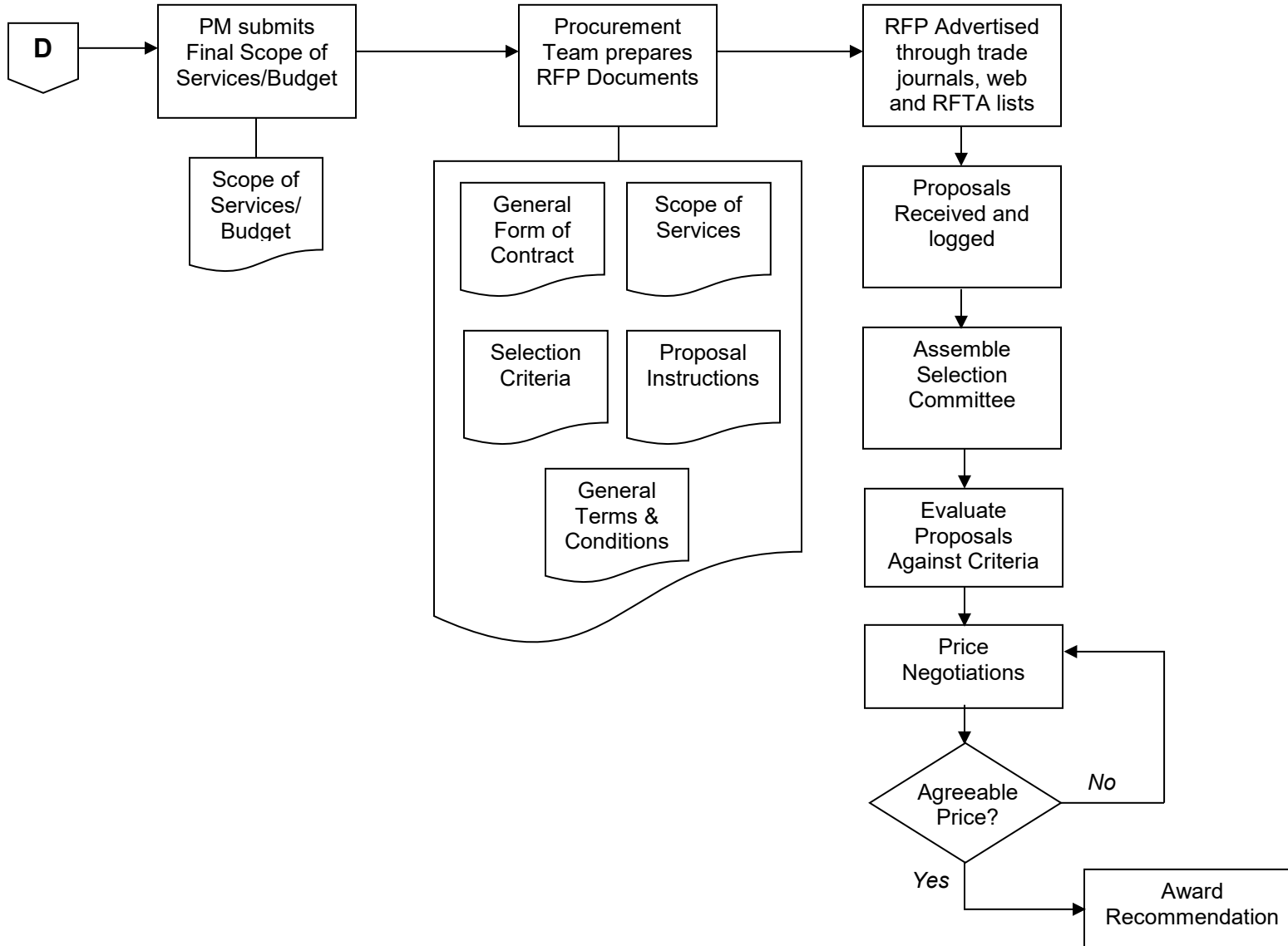
**Purchasing Procedures for Procurements of \$250,000 or More
Invitation to Bid (IFB)**



**Purchasing Procedures for Procurements of \$250,000 or More
Architect & Engineering Services (Brooks Act)**



**Purchasing Procedures for Procurements of \$250,000 or More
Design-Build**



**Purchasing Procedures for Procurements of \$250,000 or More
Design-Bid-Build**

