

Gunnison Valley Transportation Authority (RTA) Transit System

Procurement Policies and Standards

9/9/2016

Overview

As a grantee of Federal Financial Assistance Funds (FFAF), through a pass-through recipient of FFAF through the Colorado Department of Transportation (CDOT), the Gunnison Valley RTA Transit System is required to have procurement policies and procedures in place

In order to meet the mandatory standards of the FTA Circular 4220.1F, a grantee's policies and procedures must direct staff to perform all procurements in a manner compatible with the federal standard. It is the express goal of the Gunnison Valley RTA to enact and exercise Procurement Policies and Standards that are in line with the federal standards, complies with all Federal and State regulations (specifically Federal Title 49 - Part 18 Subpart C, Section 18.36 Procurement & the State of Colorado Procurement Code and Rules), and satisfies all of the requirements of a grantee of FFAF.

Procurement Standards

- 1) Maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of the contract or purchase order.
- 2) Maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. (Refer to State of Colorado Code of Ethics and the Gunnison Valley RTA Code of Ethics as adopted).
- 3) Maintain procedures that provide for the review of proposed procurements to avoid purchase of unnecessary or duplicative items.
 - a) Enter into state or local intergovernmental agreements for procurement use of common goods and services.
 - b) Use surplus property and equipment (federal and/or state) whenever such use is feasible and reduces project cost.
- 4) Use value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
- 5) Make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- 6) Maintain records sufficient to detail the significant history of the procurement, to include:
 - a) Rationale for the method of procurement
 - b) Selection of contract type
 - c) Contractor selection or rejection

- d) Basis for the contract price
- e) Other items as applicable

7) Maintain protest procedures to handle and resolve disputes relating to procurements

8) All procurement transactions shall be conducted in a manner providing full and open competition.

9) Maintain written selection procedures for procurement transactions.

10) Ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

11) Method procurements to be followed:

- a) Micro-purchases - \$3,000 or less. Purchases below \$3,000 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. Documentation must show that the price is fair and reasonable and how this determination was derived. This can include an informal research of the Internet for similar goods, buyer experience for usual and customary pricing of certain items, etc.

Note: the Davis-Bacon Act applies to construction contracts of \$2,000 or more.

- b) Small Purchase - \$3,001 – \$99,999. These require relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than \$100,000. If small purchase products are used, price or rate quotation shall be obtained from at least three sources. Quotations will be in writing for goods in excess of \$10,000 and for services in excess of \$25,000.
- c) Formal Sealed Bids - \$100,000 or more. Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. This method is preferred for procuring construction. If this method is used the following requirements apply:
 - i) Must be publicly advertised.
 - ii) Must give at least 4 days for bidders to respond.
 - iii) Must include any specifications and pertinent attachments to all bidders to respond properly.
 - iv) All bids will be publicly opened at the time and place prescribed in the invitation for bid.
 - v) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.
 - vi) Any or all bids may be rejected if there is a sound documented reason.
- d) Competitive Proposals. Generally used when conditions are not appropriate for the use of sealed bids. If this method is used the following requirements apply:
 - i) Request for proposals will be publicized.

- ii) Identify all evaluation factors and their relative importance.
- iii) Proposals will be solicited from an adequate number of qualified sources.
- iv) Have a method for conducting technical evaluation of the proposals received and for selecting awardees.
- v) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with the price and other factors considered.
- vi) May be used for qualifications-based procurement of architectural and engineering (A&E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected. Note – the method, where price is not used as a selection factor, can only be used in procurement of A&E professional services. It cannot be used to purchase other types of services through A&E firms.

e) Noncompetitive Proposals. This method may only be used when the award of a contract is infeasible under the other three methods and the following circumstances apply:

- i) The item is available only from a single source.
- ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- iii) The awarding agency authorizes noncompetitive proposals.
- iv) After solicitation of a number of sources, competition is determined inadequate.

12) Small, Minority, and Women owned business enterprises and labor surplus area firms. Take affirmative steps to assure that minority and women business enterprises and labor surplus area firms are used when possible.

- i) Placing qualified firms on solicitation lists.
- ii) Assuring that firms are solicited whenever they are potential sources.
- iii) Dividing total quantities to permit maximum participation.
- iv) Establishing delivery schedules, where the requirement permits, which encourages participation by Small, Minority and Women owned firms.
- v) Using the services of the Small Business Administration, Minority Business Development Agency of the Department of Commerce, and/or other agencies that qualify disadvantaged business enterprises.

13) Bonding Requirements – For construction or facility improvement contracts of subcontracts exceeding \$100,000.

Policies & Procedures for FTA Related Procurement

This document has been prepared in accordance with the Federal Transit Administration's (FTA) procurement policies. Please reference the FTA's Master Agreement for changes, assistance, and clarification. The Master Agreement contains standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported through a loan, loan guarantee, or line of credit provided by FTA. Also, please refer to The FTA's Best Practices Procurement Manual for procurement assistance, contract clauses and provisions.

Written Record of Procurement History

The Purchasing Agent shall maintain records detailing the history of each FTA associated procurement.

These records shall be placed in the master file and include:

- The rationale for the method of procurement;
- Selection of contract type;
- Reasons for contractor selection or rejection; and
- The basis for the contract price.

Procurement documentation files

Where appropriate, the file contains:

- Purchase request, acquisition planning information, and other pre-solicitation documents
- Evidence of availability of funds
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- Description of work/scope of services
- Copies of published notices of proposed contract action
- Copy of the solicitation, all addenda, and all amendments
- Liquidated damages determination
- An abstract of each offer or quote
- Contractor's contingent fee representation and other certifications and representations
- Source selection documentation if applicable
- Contracting Officer's determination of contractor responsiveness and responsibility
- Cost or pricing data
- Determination that price is fair and reasonable including an analysis of the cost and price data,
- Purchase Requisition indicating availability of funding
- Notice of award
- Notice to unsuccessful bidders or offerors and record of any debriefing,
- Record of any protest
- Bid, Performance, Payment, or other bond documents, and notices to sureties
- Required insurance documents, and
- Notice to proceed

Contract Administration File

Where appropriate, the file contains:

- Purchasing Tracking Progress Sheet
- Executed purchased order contract and notice of award
- Bond-related documents (if applicable)
- Insurance documentation
- Post-award correspondence
- Notice to proceed
- Approvals or disapprovals of waivers and deviations
- Modifications and changes in the terms or conditions of the contract, including a rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases.

In order to ensure a sound and complete agreement, the Purchasing Agent will ensure the *Contract/Purchase Order File Index* is accurate, complete, and included in the master file.

Awards to Responsible Contractors

The Gunnison Valley RTA shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Methods of Solicitation and Selection

The methods of solicitation and selection allowed within the Federal contractual sphere¹ are listed in § 9 of FTA Circular 4420.1E

You may choose:

- micro purchases only for contract amounts less than \$3,000;
- small purchase procedures only for contract amounts less than the simplified acquisition threshold (currently \$100,000);
- sealed bids where:
 - you have a complete, adequate, and realistic specification or purchase description
 - two or more responsible bidders are willing and able to compete
 - the procurement lends itself to a firm fixed price contract and the selection can be made primarily on the basis of price
 - no discussion with bidders is needed after receipt of offers;
- competitive proposals; or
- noncompetitive proposals (sole source) procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4420.1E §9f.
- best value for contracts which indicate that the best value or the proposal which offers the greatest business value based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposals represents the “best value” to the Gunnison Valley RTA’s procurement.

Micro-Purchases

Procurement by micro-purchases are those purchases under \$3,000. Purchases below that threshold may be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers, and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts over \$2,000. Minimum documentation required: A determination that the price is fair and reasonable and how this determination was derived must be completed prior to the issuance of an award. This determination shall be placed in the master procurement file for the project or procurement.

Small Purchases

Small purchase procedures are to be used if the services, supplies, or other property cost between \$3,000 and \$100,000. If small purchases procedures are used, price or rate quotations shall be obtained from at least three qualified sources and documentation placed into the master procurement file for the project or procurement prior to the issuance of an award.

Sealed Bids/Invitation for Bid (IFB)

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

Note: Sealed bids are evaluated by the procuring department for compliance with bid specifications, responsible and responsive bidders, verification of pricing, fund availability, etc.

- (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business;
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - d. No discussion with bidders is needed.

- (2) If this procurement method is used, the following requirements apply:
 - a. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
 - b. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
 - c. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - d. The *Bid Summary Sheet*, *Bid Checklist*, and *Bid Cost Factors Forms* will be placed in the master file;
 - e. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

- (3) Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

- (4) The procuring department may reject any and/or all bids, if there is a sound documented business reason. The procuring department rejecting lower bids than the bid being accepted for award must provide a detailed written Determination of Findings outlining the reasons for rejection for inclusion in the master file.
- (5) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph (1) above apply. In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value” to the Procuring Agency. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a “best value” basis.

Competitive Proposal/Request for Proposals (RFP)

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids (i.e. when descriptions of experience, education, expertise, availability of services, etc, are necessary for evaluation).

If this procurement method is used the following requirements apply:

- (1) Requests for proposals will be publicized.
- (2) All evaluation factors will be identified and included along with their relative importance in the RFP. If scores are based on a uniform scale (i.e. 1-10, or 1-100), it is best to define in advance levels of compliance, skills, or proximity to the ideal that each step of the scale represents. (i.e a bachelor’s degree is worth 25 points, a master’s degree is worth 50 points, and a doctorate is worth 100 points)
- (3) Proposals will be solicited from an adequate number of qualified sources.
- (4) Departments must have a written method in place for conducting technical evaluations of the proposals received and for selecting awardees. This documentation must be submitted to the master file for inclusion.
- (3) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered. Other factors may include labor rates, specifications, labor hours, and delivery schedule. Documentation of the award justification should clearly identify key determination factors.

Architectural and Engineering Services (A&E)

Departments shall use competitive proposal procedures based on the Brooks Act, paragraph 9-5e, when contracting for A&E services as defined in 40 U.S.C. §541 and 40 U.S.C. §5325(d).. The Brooks Act is federal policy relating to the selection of firms individuals to perform architectural, engineering, and related services. Other types of services considered A&E services include program management, construction management, feasibility studies,

preliminary engineering design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer.

The Brooks Act requires that:

- (1) An offeror's qualifications are evaluated;
- (2) Price must 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 the grantee. This "qualifications based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

National Intelligent Transportation Systems Architecture and Standards.

When requesting services for transportation system architecture, the Gunnison Valley RTA must ensure all offerors/bidders agree to conform, to the extent applicable, to the Intelligent Transportation System Architecture and Standards under the FHWA final rule, and with FTA Notice, "FTA National (ITS) Architecture Policy on Transit Projects and other subsequent Federal directives that may be issued.

Noncompetitive Proposals (Sole Source).

Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

- (1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and **at least one** of the following circumstances applies:
 - (a) The item is available only from a single source;
 - (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (c) FTA authorizes noncompetitive negotiations;
 - (d) After solicitation of a number of sources, competition determined inadequate; or
 - (e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.
- (2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

Best Value

Best Value is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and /or management plan. The award selection is based upon consideration of a

combination of technical and price factors to determine the offer deemed most advantageous and of the greatest value to the Gunnison Valley RTA.

The Traditional Construction Process - Design/Bid/Build

It has been traditional in the construction industry to employ an *architect/engineer (A/E)* to complete a detailed design of the entire project before soliciting bids from construction contractors. This traditional approach is known as *sequential design and construction*. This sequential design/construction approach requires that a detailed design package of the entire project be complete before bids are solicited from construction contractors. Following award of the construction contract, the A/E is often retained by the owner for the construction phase, and acts as the owner's agent, to inspect the construction work to ensure that the structures are built according to the designs and specifications.

Advantages - A major advantage of the sequential design and construction approach is that complex or one-of-a-kind projects can be thoroughly planned and thought through before construction begins. The traditional approach thus produces, in the design phase of the project, the most accurate estimate of final project costs, and this is an advantage of the traditional technique. If problems are encountered with design aspects for the latter stages of the project, the earlier design features or phases can be modified before any construction work has been done, thus avoiding construction contractor claims and delays.

Another advantage is that the Agency is given a fixed price for completion of the entire project before construction begins. There may also be advantages in obtaining the necessary financing and project approvals. Overall management of the project should also be simplified by this approach.

Disadvantages - *Sequential design and construction* requires a longer time to complete the project than *phased design and construction ("fast tracking")*. And since time pressures are often the most intense issues confronting the Agency, the sequential method may not be feasible. Alternative contracting approaches have arisen to shorten the project completion time. These include *phased design and construction ("fast tracking")*, which often involves the use of a *construction manager*, and *turnkey (design-build)* contracting.

A *Noncompetitive Procurement Justification* and the *Sole Source Cost Analysis* must be completed and submitted for inclusion in the project master file prior to proceeding with this type of procurement.

Protest Procedures

1. The procedures established hereunder shall be available to contractors for the purpose of handling and resolving disputes relating to procurements hereunder. A protestor must exhaust all administrative remedies hereunder before pursuing a protest in any court of law. Where applicable, any information received under such procedures shall be disclosed to the Federal Transit Administration ("FTA") and a protestor must exhaust all administrative remedies before pursuing a protest with the FTA.
2. The term "contractor" means any person, firm, or corporation, which has contracted or seeks to contract (bidder or proposer) with the Gunnison Valley RTA.
3. The term "hearing officer" shall mean a person, appointed by the Mayor, to hear and decide allegations made by any contractor relating to procurements hereunder.

Hearing Procedure

1. Any contractor may file a written protest of the procurement procedures involved herein, with the Gunnison Valley RTA's procuring agent, within ten (10) days of the date of the Gunnison Valley RTA's Decision regarding a selection of a contractor with respect to a Bid/RFP/RFQ.
2. A hearing shall be conducted by the Gunnison Valley RTA. The hearing officer shall issue a written decision within ninety (90) days of the last date of such hearing and state in the decision the reasons for the action taken.
3. Where applicable, review of protests by FTA will be limited to the Gunnison Valley RTA's failure to have or follow its procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation.

See the RTA's supplemental written protest procedures document attached as Attachment 1.

Costing and Pricing

Ensuring Most Efficient and Economic Purchase

Departments, during their annual budget process, should determine the procurement actions necessary to sustain their operations through the fiscal year. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase and to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The Gunnison Valley RTA considers various procurement sources to ensure economical purchases including, but not limited to GSA, State of Colorado, the Colorado Association of State Transit Agencies, and municipal cooperatives.

Independent Cost Estimates

Departments must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation (FTA Circular 4420.1E Sec.10). Departments must make independent estimates before receiving bids or proposals. These estimates may be obtained from published competitive prices, results of competitive procurements, historical prices and trends, or by Purchasing Department estimates or outside estimators.

The *Cost and Price Analysis Form* must be completed prior to issuing any solicitation.

1. Cost Analysis

- a. A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and architectural and engineering services contracts.
- b. A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

2. Price Analysis

- a. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

3. Profit

- a. Departments will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
- b. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Federal Cost Principles

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. The Purchasing Agent may reference their own cost principles that comply with applicable Federal cost principles.

Cost Plus Percentage of Cost Prohibited

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Full and Open Competition

The principle of full and open competition has one primary and two secondary purposes. The primary purpose is to obtain the best quality and service at minimum cost. In other words, to get the best buy. The secondary purposes are to guard against favoritism and profiteering at public expense and to provide equal opportunities to participate in public business to every potential offeror.

Departments must conduct all procurement in a manner providing full and open competition. This policy assures that all responsible bidders are permitted to compete for the procurement. In the case of sole or single source procurement, justification for use of the source must be documented. Also see Sole Source Contracting Section.

Contracts with a value of more than \$100,000 shall be awarded by sealed bid or by the competitive and noncompetitive proposal process unless there is an explicit exception.²

Departments must refrain from the following practices, which are deemed restrictive of competition:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business;
- b. Unnecessary experience and excessive bonding requirements;
- c. Noncompetitive pricing practices between firms or between affiliated companies;
- d. Noncompetitive awards to any person or firm on retainer contracts;
- e. Organizational conflicts of interest;
- f. Restrictive use of brand names;
- g. Any arbitrary action in the procurement process; and
- h. Geographic preferences.³

² - FTA Circular 4220.1E §9, 49 CFR

- 3- Geographic preference is permitted in certain narrow situations, including principally where part of a legal licensing requirement and for architects and engineers; FTA Circular 4220.1E, §8.b.

Departments must keep meticulous procurement and contract files.

Bonding Requirements

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest. Please refer to the FTA Bonding Requirements paragraph 11, as cited below.

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:
 - (1) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) Two and a half million dollars if the contract price is more than \$5 million.
- d. A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

Brand Name or Equals

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features unduly restricting competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used.

Departments shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a department wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

Conflicts of Interest

Employees or agents of the Gunnison Valley RTA are prohibited from participating in the selection, award, or administration of contracts or sub-agreements supported by federal funds if a real or apparent conflict of interest exists.

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

“In order to prevent real or apparent conflicts of interest, the Gunnison Valley RTA prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work”

Geographic Preferences

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

Written Selection Procedures

To ensure all procurements are awarded in a fair and equitable manner, all solicitations shall:

- a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- b. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Evaluators and reviewers must follow the established criteria when rating the proposals.

Prequalification of Bidders

The procuring department shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, the Gunnison Valley RTA shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

Advertising and Publicizing Solicitation

IFBs and RFPs must be publicly advertised and publicized (respectively) at least fourteen (14) days prior to the solicitation's due date. A longer time period is suggested for larger, more complex procurements.

Outreach efforts must be made using diverse resources such as the Internet and mailing lists coupled with widely circulated publications.

IFBs must be issued with sufficient time to prepare bids prior to the date set for opening the bids. Further, the invitation for bids will include any specifications and pertinent attachments and shall properly define the items or services sought in order for the bidder to properly respond. RFPs must identify all evaluation factors along with their relative importance.⁴ The Purchasing Agent shall place copies of all advertising and publicized solicitation material in the related master file.

4 - While the IFB requirements of § 9.c.(2) are good practices for both IFBs and RFPs, the evaluation criteria requirement of §9.d.(1) is relevant only to RFPs and is discussed in Section 4.5.1, "Solicitation & Receipt of Proposals."

Contractor Information Form

In accordance with 40 CFR §26.11, the Gunnison Valley RTA shall collect information on the availability of Disadvantaged Business Enterprise (DBE) contractors that seek to work on federally assisted contracts.

Each contractor responding to such a solicitation shall complete the Contractor's Information Form, providing the following data on each contractor and subcontractor:

- a. Firm name;
- b. Firm address;
- c. Firm's status as a DBE or non-DBE;
- d. Age of the firm; and
- e. Annual gross receipts of the firm.

Pre-Bid and Pre-Proposal Conferences

Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective offerors and explaining complicated specifications and requirements to them as early as possible after the solicitation has been issued and before offers are received. This is also an open forum for potential respondents to address ambiguities in the solicitation documents that may require clarification. Notice of the conference is included in the solicitation at the time of issuance.

Evaluations of Bid Alternates

When bid alternates are included in a bid or proposal document, these alternates must be evaluated as part of the overall bid. This evaluation must be in a written narrative detailing the contract award and takes the alternate into account in reaching a procurement decision. This evaluation must be documented prior to proceeding with the procurement.

Exercise of Bid Alternates

Bid Alternates may not be exercised unless it is in accordance with the terms and conditions stated in the initial contract. In addition, the requesting department must have made a

determination that the alternate price is better than the market price or that the option price is more advantageous. Full written documentation supporting this determination must be submitted to the master file.

Types of Contracts

General

All FTA related procurements must use the *Contract/Purchase Order File Index Forms* as provided in the appendix. These checklists will be used by the Purchasing Agent to ensure contract clauses and federal flow-down language are included in each contract as required.

Fixed Price v. Cost Reimbursement

Procurement by the Sealed Bid/Invitation For Bids (IFB) method when certain conditions are present.

Among those listed is the condition that:

- a. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- b. Paragraph 9.d of FTA Circular 4420.1E authorizes procurement by the Competitive Proposal/Request for Proposals (RFP) method and either a fixed price or cost reimbursement type contract may be awarded.
- c. Paragraph 7.i of FTA Circular 4420.1E requires that departments must document their reasons for selecting the contract type as a part of the written record of procurement history.
- d. Paragraph 10.e of FTA Circular 4420.1E prohibits the cost plus a percentage of cost method of contracting.

There are two broad categories of contract types: fixed-price contracts and cost-reimbursement contracts. Within these two families of contract types there are a number of subtypes offering differing degrees of incentives. At the extremes are the firm-fixed-price contract, in which the contractor has complete responsibility for the costs of performance and the resulting profit or loss, and the cost-plus-fixed-fee contract, in which the contractor has virtually no risk for performance costs and the fee (profit) is fixed.

Between these two extremes are the various incentive-type contracts where the degree of cost risk and profit incentive can be tailored to meet almost any specific program situation.

Fixed-price contracts

These contracts are appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications or design specifications, and where performance uncertainties do not impose unreasonably high risks upon the contractor.

Cost-reimbursement contracts

These contracts are one in which the Gunnison Valley RTA does not contract for the performance of a specified amount of work for a predetermined price, but agrees instead to pay

the contractor's reasonable, allocable and allowable costs of performance regardless of whether the work is completed. The Gunnison Valley RTA/Department assumes a high risk of incurring cost overruns, while the contractor has almost no risk of financial losses.

Cost-type contracts are suitable when (a) you are unable to accurately describe the work to be done, or (b) there is an inability to accurately estimate the costs of performance. If either of these conditions is present, the cost-reimbursement contract is the proper type of contract.

Cost-type contracts are ideally suited to complex requirements because the parties can devote their attention to accomplishing the work rather than on the claims process, which will be significant on larger, complex projects.

Time and Materials Contracts

Departments will use time and materials contracts only:

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

Labor / Hour Contracts

Labor / hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

Cost Plus Percentage of Cost Contracts (CPPC)

The FTA Circular 4420.1E clearly prohibits the use of this contracting method.

Out of Scope Changes

An "out of scope change" is a contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement. Please use the sole source policies for this type of action. FTA Circular 4220.1E, paragraph 9(f).

Contract Term Limitation

The Gunnison Valley RTA shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception.

Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change, will require a sole source justification.

Revenue Contract

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection

procedures and principles. The extent of and type of competition required is within the discretionary judgment of the Gunnison Valley RTA.

Tag-ons

The use of tag-ons, or the addition of work including supplies, equipment or services, that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals, is prohibited and applies to the original buyer as well as to others. In scope "tag-on" changes are not considered tag-ons.

Piggybacking

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services.

Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, completed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represents the reasonably foreseeable needs of the party(s) to the solicitation and contract. If the Gunnison Valley RTA and another party jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

If the Gunnison Valley RTA desires to contract with another party on a Piggyback assignment, the option must be requested in advance in writing and an approval letter for the Option received from the Contract Holder confirming the option assignment into the master file prior to the procurement advancing.

E-Commerce

E-Commerce is an allowable means to conduct procurements. If an E-Commerce solicitation will be utilized, full and open competition must be addressed in compliance with the Federal Circular 4200.1E. A written procedure will be required prior to use of E-Commerce.

Payments

Advance Payments

FTA does not authorize, and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

Progress Payments

Grantees may use progress payments provided the following requirements are followed:

- (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- (2) The grantee must obtain adequate security for progress payments adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

Contract Provisions

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

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
- b. Termination for cause and for convenience by the Gunnison Valley RTA or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

Liquidated Damages Provisions

The Gunnison Valley RTA may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. In order to obtain liquidated damages, the Gunnison Valley RTA must suffer an actual loss. The amount of liquidated damages must be reasonable in light of the loss suffered. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

Architectural and Engineering Services Conflicts of Interest

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

“In order to prevent real or apparent conflicts of interest, the Gunnison Valley RTA prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work.”

Buy America

As a condition of responsiveness to bidding for procurements of rolling stock, iron, steel, or manufactured products greater than \$100,000 the bidder must submit with the bid or offer, a completed Buy America certificate in accordance with Part 661.6 for steel, iron, and manufactured products, or Part 661.12 for rolling stock (including train control, traction power, and communication equipment). Once submitted the bidder is bound by the certification provided. If the bidder does not submit a certification, the bid shall be considered non-responsive. If the bidder executes certification that it cannot comply but may be eligible for an exception, then the Gunnison Valley RTA shall review the circumstances and determine if it should request a waiver from the FTA. There are specific instances included in the regulations for waiver of Buy America provisions including that it is in the public's best interest, that there are no U.S. products available, or there is a 25 percent price difference between the foreign and domestic products. See FTA's Buy America web page for additional information on requirements.

http://www.fta.dot.gov/legal/buy_america/14456_ENG_HTML.htm

Lobbying

Contractors who apply or bid for an award of \$100,000 or more must file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each level of FTA fund recipient certifies to the level above it that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each FTA fund recipient must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that specific Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from each level of fund recipient to the next level of fund recipient until it reaches the grantor. See "Lobbying" as provided in <http://www.fta.dot.gov/library/admin/BPPM/appA1.html#BM10>.

Attachment 1

Gunnison Valley Transportation Authority (RTA) Transit System Procurement Policies and Standards September 9, 2016

WRITTEN PROTEST PROCEDURES

A. GENERAL . DEFINITIONS

1, The procedures established hereunder shall be available to contractors for the purpose of handling and resolving disputes relating to procurements hereunder. A protestor must exhaust all administrative remedies hereunder before pursuing a protest in any court of law. Where applicable, any information received under such procedures shall be disclosed to the Federal Transit Administration ("FTA") and a protestor must exhaust all administrative remedies before pursuing a protest with the FTA.

2. The term "contractor" means any person, firm, or corporation, which has contracted or seeks to contract with the Gunnison Valley RTA.

3. The term "hearing officer" shall mean a person, appointed by the Board of Directors of the RTA, to hear and decide allegations made by any contractor relating to procurements hereunder.

4. A "pre-bid or solicitation phase protest" is a written protest received prior to the bid opening or proposal due date.

5- A "pre-award protest" is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.

6. A "post-award protest" is a protest received after award of a contract.

7. A "performance protest" is a protest received during or after the execution of a contract.

B. FILING OF PROTESTS

1. Pre-Bid Protest

Any Contractor may file a written protest of the procurement procedures involved herein, with the RTA's Executive Director at least five (5) working days before the bid opening or proposal due date.

2. Pre-Award Protest

Any Contractor may file a written protest against the RTA's making of an award after the RTA's receipt of bids or proposals within ten (10) working days after the notification of a conditional award of a contract by the RTA.

3. Post-Award Protest

Any contractor may file a written protest of the procurement procedures involved herein, with the RTA's Executive Director, at least five (5) working days after the date of the RTA's issuance of a contract award to a contractor with respect to any Bid/RFP/RFQ.

4. Performance Protest

Any contractor may file a written protest of the procurement procedures involved herein, with the RTA's Executive Director, at least five (5) working days after the date of the RTA's Decision regarding an issue with respect to the vendor's ability to perform under the terms of the contact.

5. Each protest must clearly state:

- a, The name, address, and telephone number of the protester;
- b. The solicitation/contract number or description thereof.
- c, A statement of all of the grounds upon which the protest is made.

6. Protests are to be in written form and filed by certified mail, return receipt requested or by personal delivery by 4:30pm on or before the due date at:

Executive Director
Gunnison Valley RTA
PO Box 39
507 Maroon Ave.
Crested Butte, CO 81224

If protests are filed by personal delivery, the protestor must obtain a time-stamped receipt copy of the protest from the Department as proof of the date and time of the filing of the protest. It is the Protester's sole responsibility to provide said copy at the time of filing.

C. HEARING PROCEDURE

1 . A hearing shall be conducted in accordance with Article 109 of the Colorado Procurement Rules Section R-24-109-101 through R-24-109-404-05, as amended, which are incorporated herein, provided that if there is a conflict between Article 109 et al. and these Written Protest Procedures, the latter will prevail. The hearing officer shall issue a written decision within twenty (20) calendar days of the last date of such hearing and state in the decision the reasons for the action taken, The Hearing Officer shall respond in detail to each substantive issue raised in the protest.

2. The Hearing Officer shall be the responsible official who has the authority to make the final determination of the protest.
3. The Hearing Officer shall address, in his/her determination, each material issue raised in the protest.
4. The Hearing Officer's determination shall be final and binding upon all parties upon issuance.
5. Within (5) working days from its receipt of the decision of the Hearing Officer, a protester may request reconsideration of the decision, using the same procedure described in Section B.5 above. The request for reconsideration shall be addressed to the Executive Director, Gunnison Valley RTA, PO Box 39, 507 Maroon Ave., Crested Butte, CO 81224. The request for reconsideration shall set forth all of the grounds upon which the request is made.
6. The Hearing officer shall issue a written decision on the request for reconsideration within ten (10) calendar days of receipt thereof and state in the decision the reasons for the granting or denial of the request.

D. REVIEW OF PROTEST BY FTA

1. Where applicable, review of protests by FTA will be limited to the RTA's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation and/or five (5) days after the protestor knows or has reason to know that the RTA has failed to render a final decision. Such appeal must be filed in accordance with all FTA rules and regulations, and Section 7(i j of FTA Circular 4220.1D., as periodically updated. The FTA may allow a request for reconsideration if data becomes available that was not previously known, or if there has been an error of law or regulation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of state or local regulations will be under the jurisdiction of state or local authorities.
2. Post-determination protests may include allegations that the RTA failed to have or follow written protest procedures.