

Chapter 1 – Purpose and Scope

1.0 Introduction

This Procurement Manual provides definitive instructions and guidance on how to prepare for, conduct and conclude a procurement of goods and services at Amtrak. Procedures are furnished to ensure that such goods and services are obtained in an effective manner and in compliance with Amtrak policies and applicable laws, regulations and contractual requirements. All Amtrak employees responsible for procuring goods and services are expected to comply with the procedures in this Manual, as well as all other corporate policies and procedures. In those instances where an employee encounters difficulty in meeting the requirements of these procedures, the instance should immediately be brought to the attention of the employee's supervisor for resolution.

This Manual will be updated periodically, as appropriate.

1.1 Purpose of the Manual

This Manual is designed to set forth the policies, procedures and standards that govern Amtrak's procurement of goods and services. It is intended to be used as a comprehensive and practical guide to ensure that goods and services are obtained in a timely, efficient and economical manner, while adhering to the basic philosophy of open and free competition to the maximum extent practicable and sound business judgment. The Manual is intended to provide the reader with both an understanding of what steps are required for an Amtrak procurement, as well as the reasons why certain actions are necessary.

In support of Amtrak's overall goal of providing quality inter-city and commuter services to the public, Amtrak's procurement policy objectives are as follows:

1. To promote open and free competition in the procurement of goods and services to the maximum extent practicable.
2. To procure quality goods and services in a reliable and timely manner at a reasonable cost.
3. To make positive efforts to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined in 49 CFR Part 26) in the procurement of goods and services.

4. To require all contractors and subcontractors to take affirmative action in their employment and contracting practices to ensure that applicants and employees are not discriminated against based on race, color, religion, sex, disability, veteran status, or national origin.

Supporting Objectives And Guidelines

1. Awards shall be made to responsible contractors that possess the requisite ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance (particularly with Amtrak) and financial and technical resources.
2. Procurement procedures and practices shall encourage competition. Solicitations shall incorporate clear and accurate descriptions of the technical requirements. In competitive procurements, the descriptions shall not contain features which unduly restrict competition. Some of the situations which may be considered to unduly restrict competition and which should be avoided are:
 - a. Placing unreasonable requirements on firms in order for them to qualify to do business;
 - b. Requiring unnecessary experience and/or excessive bonding;
 - c. Allowing non-competitive pricing practices between firms or between affiliated companies;
 - d. Awarding non-competitive contracts to professionals and other consultants that are on retainer contracts;
 - e. Encouraging organizational conflicts of interest by not restricting future activities of a contractor when it may have an unfair advantage (i.e., retaining a contractor to develop the specifications and then permitting him/her to compete for the contract award);
 - f. Specifying only a “brand name” product when “an equal” product with the same salient characteristics of the brand name product would be sufficient;
 - g. Evaluating a proposal using criteria not listed in the solicitation; and
 - h. Supporting any arbitrary action in the procurement process.

1.2 Manual Organization

This Procurement Manual is comprised of six chapters and three Appendices, as follows

1. Purpose and Scope
2. Procurement Overview and Planning
3. Methods of Solicitation and Selection
4. Award of Contracts
5. Contract Administration
6. Contract Closeout

Appendix A: Governing Documents

Appendix B: Miscellaneous Documents

Appendix C: Glossary and Index

- 1.3 Applicability of Federal Requirements** - As of the date of this Manual, Amtrak is required, as a recipient of Federal Railroad Administration (FRA) grant funds, to follow the applicable procurement provisions found at 49 CFR §19.40-19.48, with the exception of §19.44(b) (“Federal Requirements”) that set forth standards for use by recipients in establishing procedures for the procurement of goods and services with Federal funds. These Federal Requirements are set forth in Appendix A.3 hereof. All Amtrak procurements (except those funded without FRA grant funds) must be in accordance with these Federal Requirements.

Note: Occasionally, Amtrak receives grant funds from agencies other than the FRA, which may subject it to different or additional requirements.

- 1.4 Inclusion of Certain Clauses When Using Federal Grant Funds** – Certain Federally required clauses are to be included in a contract when the procurement is funded with Federal grant funds. The clauses flow down to all levels of the Federal funding chain beginning with Amtrak. Those clauses that must flow down are identified in Amtrak’s Supplementary General Provisions for Construction and Non-Construction Contracts, copies of which are set forth in Appendices A.1 and A.2, respectively.

The flow down clauses do not apply to contracts entered into by Amtrak with any state or local government entity, including any regional transportation or transit agency, because the procurement policies and procedures of these entities are presumed to be consistent with the Federal Requirements or with any private railroad company because these entities typically own the rights-of-way being improved with Federal financial assistance and have in place existing procedures for carrying out such improvements to their property.

Chapter 2 - Procurement Overview and Planning

2.1 Overview of Procurement Functions – The Procurement and Materials Management Department is composed of Automotive, Corporate Services, Material Disposal, Materials Management, Procurement, and Traffic.

2.1.1 Procurement Department Scope – The Procurement organization is responsible for the development of strategic contracts for goods and services in support of Amtrak Engineering, Mechanical and Operations Departments, Corporate Service Centers, and numerous commuter operations.

The achievement of the above objective requires clear definition and assignment of responsibilities as follows:

- **Identification of Need** - The initial identification of need is one aspect of the procurement cycle that is generally the responsibility of Amtrak's internal customers (i.e., program or technical personnel for whom the goods or services are being procured). However, Procurement may be in a position to facilitate the consolidation of procurements of different internal customers with the same need, and Materials Management can often forecast the need for repetitively used inventory items.
- **Procurement Planning** - Preparation of procurement plans is exclusively a Procurement function.
- **Preparation of Specifications** - Preparing specifications or statements of work is usually a function of Amtrak's internal customers. Generally, they have the greatest understanding of functional and performance requirements; however, Procurement may play an advisory role in avoiding exclusionary specifications and encouraging free and open competition.
- **Solicitation of Bids/Proposals** – The solicitation of bids/proposals is often the first external action Amtrak takes, and Procurement is solely responsible for this function. Internal customers are often helpful in compiling lists of potential bidders/offerors, and can participate in this process, but the official action of soliciting bids/proposals is a Procurement function.
- **Communications** - If communication with bidders/offerors were uncontrolled, one bidder/offeror might obtain more information about Amtrak's preferences or evaluation process than the others. It is a general Amtrak practice to restrict communication with bidders/offerors to only Procurement personnel so that no bidder/offeror gains an advantage or apparent advantage over another.

- **Evaluation of Proposals** - Procurement is best qualified to coordinate the evaluation of proposals. The technical evaluation of a vendor's proposal should generally be conducted by qualified members of the requesting department, while Procurement should evaluate the commercial terms.
- **Administration** - Procurement plays a continuing role in the administration of the contracts, particularly in changes and disputes. Acceptance of goods and services and payment approvals sometimes require Procurement review. In simpler or routine situations, a receiving report or Contracting Official acceptance can be matched to the original purchase order to ensure proper control.
- **Decentralization / Oversight** – Procurement has found it more efficient to permit certain customer groups, particularly those with a large number of similar, small procurements, to perform some of the functions normally performed by Procurement (e.g., solicitation and evaluation of bids/proposals up to an appropriate value). However, even these procurements must be conducted in accordance with Amtrak's policies and procedures. Procurement provides a valuable oversight role in supplying forms, explaining procedures, providing technical assistance and reviewing payment requests.

2.1.2 Delegated Authorities - Amtrak Policy 11.39.0, a copy of which is found at Appendix B.1, establishes the level of authorization and approval required for the obligation of funds or other resources for contracts, purchases or expenditures and for entering into agreements or commitments on behalf of the corporation. Any attempt to commit or obligate Amtrak funds or resources without following the procedures and obtaining the approvals set forth in Policy 11.39.0 may result in disciplinary action, including, in appropriate cases, termination of employment.

2.1.3 Procurement Activity Roles and Responsibilities

- a. **Policy** - Amtrak's policy for the procurement of goods and services generally requires that only the Procurement Department commits Amtrak to an expenditure of funds. However, exceptions are granted for small value purchases made with Amtrak's PCard (see P/I 11.37.1) and through Amtrak's eTrax System. The Procurement Department, headed by the Chief Logistics Officer, has been established to take all actions necessary to enable Amtrak to enter into contracts in fulfillment of Amtrak's charge to provide inter-city and commuter service in accordance with all applicable rules and regulations. This responsibility cannot be carried out in vacuum, or without the support of the various other departments within Amtrak.

This section will outline the general responsibilities and delegated authorities of those personnel primarily associated with the procurement process.

- 1. Contracting Official (CO)** - The Chief Logistics Officer is the Contracting Official for all Amtrak procurements. However, signatory

authority is delegated to other Procurement staff, as appropriate. The CO has authority to enter into certain contracts and to make determinations and findings with respect to contractual obligations. The CO has the sole authority to administer all contracts as delegated on behalf of Amtrak. The CO ensures that all Amtrak procurement policies and procedures are adhered to, including all necessary approvals within the levels of authority. Change orders are negotiated and executed by the CO, except as otherwise specifically provided for, or delegated in writing.

- 2. Contracting Agent (CA) -** The CA is a duly appointed individual who is subordinate to the CO and is responsible for all contractual actions other than those specified elsewhere in Amtrak’s procedures. The CA acts as the CO’s business representative and is responsible for the following:
 - a. preparing and assembling solicitation/contract documents;
 - b. obtaining necessary pre-solicitation approvals;
 - c. soliciting bids and proposals;
 - d. advertising IFBs and RFPs, where appropriate;
 - e. issuing addenda;
 - f. serving as chairman of pre-bid and pre-proposal conferences;
 - g. preparing official minutes of pre-bid and pre-proposal conferences;
 - h. opening bids/proposals;
 - i. conducting proposal evaluation and contractor selection meetings;
 - j. conducting contract negotiation sessions;
 - k. conducting investigations of bidders’/offerors’ past performance;
 - l. verifying that any necessary approvals have been secured and that the contract is awarded within the limits of the approvals;
 - m. obtaining approvals for award;
 - n. managing the non-technical aspects of post-award contract administration, including negotiation of modifications and supplemental agreements;
 - o. consulting with the Project Manager (PM) to monitor the contractor’s performance;

- p. managing termination for default or convenience procedures;
- q. consulting with the Supplier Diversity Office on Disadvantaged Business Enterprise (DBE) issues;
- r. providing support to attorneys, consultants and in-house Amtrak personnel in the event of a claim; and
- s. maintaining all official contract files.

The CA should be advised by the PM of any problems with the contractor which need to be addressed and which may constitute an apparent breach of the contract. After investigating the situation, the CA, in coordination with the PM (and if a condition of breach exists, with the Law Department), takes any steps necessary and available to enforce Amtrak's rights under the contract, to include withholding payment, imposing liquidated damages, negotiating and recommending a settlement, terminating the contract for default, or referring the matter for legal action.

3. **Project Manager (PM)** - Depending on the nature of the contract, Amtrak may designate a PM who will be directly responsible for the daily technical and on-site administration of a contract, including monitoring the contractor in its performance of the contract. The PM should be a responsible individual assigned to and familiar with the procedures and requirements of the user department. As such, the PM has the responsibility to ensure contractor compliance with technical requirements of the contract. The PM approves technical acceptability and timeliness of the work completed and the invoices submitted by the contractor. The PM may also be referred to as the Contracting Official's Technical Representative (COTR).

The PM attends pre-bid/pre-proposal conferences as the technical expert, may conduct investigations of proposed contractor's past performance, questions prospective contractor as to its technical capability to perform the contract, joins/supports the CA with contract negotiations, ascertains the availability of funds prior to asking the CA to initiate the negotiation and approval process for change orders, assists the CA with contract modifications and supplemental agreements, and issues directions to correct or replace defective items or work.

Typical tasks performed by PMs or their designees in support of the contract are as follows:

- a. Familiarize themselves with all terms and conditions of the contract, and seek clarification from the CA of any contract provision which is not understood or which is subject to more than one interpretation;
- b. Draft the technical portions of IFBs and RFPs, and chair all project review and progress meetings;
- c. Monitor contract performance to ensure that the technical requirements of the contract are satisfactorily executed by the contractor;
- d. Interpret technical specifications and drawings, and judge the quantity, quality, fitness, and acceptability of all parts of the work;
- e. Bring to the attention of the contractor all performance which is not in compliance with contract requirements, issue guidance on corrective action necessary to bring performance in line with contract requirements and thoroughly document all performance problems;
- f. When deficient performance is not corrected, notify the CA promptly in writing and provide sufficient documentation for appropriate action;
- g. Maintain complete records of all actions taken. These records include documentation of all inspections and should be properly annotated to indicate the contractor's acknowledgment of any notifications of deficiencies;
- h. Ensure that the contractor performs no work outside the scope of the contract and complies with Amtrak's requirements and policies;
- i. Inform the CA whenever a condition exists which may call for a decision resulting in a change in unit price, total contract price, quantity, quality or delivery schedule;
- j. Make final technical inspection of work and submit appropriate acceptance certificates when the specifications of the contract have been properly fulfilled;
- k. Make unannounced spot checks to the job site to verify compliance with applicable labor standards and contract provisions. Report the results to the CA for review and placement in the contract file;
- l. Develop punch lists prior to job close out, if required and/or not performed by the construction manager;
- m. Maintain control of the schedule and budget; and
- n. Seek approval for the project, as required. This responsibility includes

drafting and presenting to the approving authority.

4. **Initiator** - Responsible for preparation and completion of the Purchase Requisition, and for the accuracy and adequacy of the information provided therewith.

2.1.4 Standards of Conduct - Amtrak maintains written standards of conduct that govern the performance of its employees engaged in contract award and administration. These standards are stipulated in Amtrak's Policy 1.3.1, Ethical Conduct and Conflict of Interest, parts of which having special relevance to Procurement are reiterated on the following page (specifically, Section 11.0 – SPECIAL PROCUREMENT GUIDELINES):

11.0 SPECIAL PROCUREMENT GUIDELINES

Policy 1.3.1, Ethical Conduct and Conflict of Interest

- 11.1 Some Covered Individuals, including all members of the Procurement and Materials Management Department, are involved in the procurement of goods and services for the Company either by direct contact with outside entities or indirect relationships in the source selection and/or performance evaluation process. Because Amtrak’s ability to conduct its business in accordance with its best interests and stated policies must not be compromised, all Covered Individuals involved in the procurement process must conduct themselves in the same manner as those with procurement authority.
- 11.2 All Covered Individuals having involvement with present and potential suppliers, or in a procurement process for goods or services, must comply with the following standards:
- Procurement activity shall be conducted fairly and impartially and shall not be influenced by bias or favoritism.
 - Kickbacks, bribes, rewards, loans, or other personal benefits shall not be solicited or accepted in connection with any procurement action.
 - Business and personal activities shall be kept separate. No supplier shall be encouraged or permitted to provide preferential treatment to Amtrak employees on personal transactions, unless the privilege is openly offered to all employees.
 - Proprietary or sensitive information shall not be revealed to suppliers except as may be needed to support Amtrak’s business.
- 11.3 A “Business Courtesy” is a present, gift, hospitality or favor for which fair market value is not paid for by the recipient. A “Business Courtesy” includes tangible or intangible benefits such as meals, drinks, entertainment, door prizes, transportation, discounts or professional items. Accordingly, regardless of the limits set forth in Section 10.3 [of Policy 1.3.1], services, gifts, entertainment, transportation (including transportation passes), lodging, meals, or any other Business Courtesy of any value, shall not be solicited or accepted by Covered Individuals employed in the Procurement and Materials Management Department.

Advertising novelties, unsolicited souvenirs customarily associated with legitimate business relationships, or trinkets of a nominal value, not in excess of \$10.00, are not considered gifts.

2.2 Purchase Requisition Requirements

2.2.1 General Considerations – Procurements will be formulated to minimize unreasonably restrictive requirements and to foster competition to the greatest extent possible.

- a. To ensure that goods and services purchased by Amtrak are necessary, budgeted for and in the best interests of Amtrak, certain pre-solicitation actions are required. They include planning, justification of need, and budgeting for the procurement.

1. Planning

- All requests for procurement actions should be planned and well thought through prior to a request for procurement action being made.
- Where appropriate, an analysis should be made of lease and purchase alternatives to determine which would be more economical and practical. In addition, other alternatives may be explored including performing the work in-house.
- Research should be done to determine if there are any ongoing procurements within Amtrak which would satisfy the requestor's need. Consideration should be given to combining procurements. Such an action may be advantageous both from an administrative, time saving perspective, as well as from a financial perspective.

2. Justification Of Need

- Procurements should be justified by the requestor to ensure that no unnecessary or duplicative items are being procured.

3. Budgeting

- The requesting department must take all the steps necessary to ensure funding for a procurement.
- The budgeting process for a capital project is initiated by the PM. All capital projects must be approved by the Board as part of the annual Capital Budget approval process. Once this approval occurs, the requisitioning process can begin.

In limited circumstances, with the approval of the Chief Logistics Officer, when a project is critical to Amtrak operations, Procurement

may initiate the procurement process prior to confirmation of funding availability. Once funding is confirmed, a fully approved Purchase Requisition will be initiated.

- A Purchase Requisition must be completed for all goods or services to be procured. Once approved, it stands as the official document certifying Amtrak’s need and funds availability for a particular purchase.

2.2.2 Purchase Requisition Procedures - A completed and properly approved Purchase Requisition is required to initiate procurement action except as identified above. The only exception to this rule pertains to negotiated contracts or change orders where a request for procurement action may be submitted to Procurement by written memorandum initiated by the responsible PM. After negotiations have been successfully concluded, a Purchase Requisition must be approved before Procurement can obligate Amtrak.

a. **Purchase Requisition** - To be considered complete, a Purchase Requisition should contain certain elements. These elements may vary in content or format, but generally include the following:

1. For Equipment/Supplies

- Specifications
- Quantity desired
- Suggested delivery date/process
- Shipping instructions

2. For Services

- Statement of work
- Accountability requirements
- Period of performance

3. For Equipment, Supplies and Services

- Cost or price estimate
- Validation of available funds
- Approval by properly authorized individuals
- Justification and/or related documentation
- List of known qualified sources

2.2.3 Types of Purchase Requisitions

a. **Amtrak Accounting Material Purchasing System (AAMPS)** – AAMPS requisitions are utilized for all “inventory” requisitions (i.e., standard catalog items).

- b. **Electronic Transaction Express (eTrax)** – eTrax requisitions are utilized for all “non-inventory” requisitions.

2.2.4 Scope of Work/Specifications

- a. When appropriate, a detailed scope of work/specifications or description must accompany the Purchase Requisition and should:
 1. Incorporate a sufficiently clear and definite description of the technical requirements for the goods and/or services to be procured in order to permit the preparation of bids/proposals on a common basis;
 2. When appropriate, contain quality assurance provisions that provide a means of determining that the goods and/or services meet the stated requirements;
 3. Be written in plain and precise language that avoids the use of vague and ambiguous terms;
 4. Encourage free and open competition to the maximum extent possible by avoiding unreasonably restrictive features;
 5. Promote overall economy for the purpose intended.

Note: Avoid detailed product specifications whenever possible. When it is impractical or not economical to make a clear, accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance requirements of the item. In this instance, all salient features of the brand name must be stated clearly.

2.2.5 Approvals – In general, the following are required before taking action on a specific Purchase Requisition:

- a. The identification of the Initiator, indicating that the goods and/or services are required, that the scope of work/specifications or descriptions are correct, and that funds are available to support the procurement.
- b. The approval of the individual delegated the authority to approve the estimated cost of the requested goods and/or services, indicating concurrence with the Initiator’s request. Required approvals are listed in Appendix B.1.

2.3 Procurement Planning

2.3.0 Overview – All requests for procurement action should be planned and well-thought through prior to a request for procurement action being made. Considerations for the CA include the following:

- Has a fully approved Purchase Requisition been received?
- Is the Scope of Work/Specifications sufficient to conduct a free and open competitive procurement?
- If a Sole Source is requested, has an approved Sole Source Justification been processed?
- Can a sufficient number of potential vendors (including DBE vendors) be identified for solicitation?
- Is public advertisement appropriate?
- What type of contract should be employed?
- What kind of payment structure should be employed?
- Is the overall vendor and acquisition lead time compatible with the requester's need dates?
- Are there existing contracts that can be leveraged for the requirement?
- Is there an independent cost estimate so as to provide a basis for the eventual cost/price analysis?

2.3.1 Types of Contracts

2.3.1.0 Fixed Price versus Cost Reimbursement – The type of contract used must be appropriate for the particular procurement and must be in the best interests of Amtrak, consistent with the requirements of the applicable federal grant. The selection of contract type is probably the single most important decision that the CA will make in the acquisition process. A properly selected contract type will work in the interests of Amtrak to provide a product or service which meets Amtrak's needs at a reasonable price without undue risks to the contractor and without excessive contract administration costs and contractor claims.

- When Amtrak has complex requirements and performance uncertainties make it difficult to predict the costs of performance in advance, some type of flexibly priced contract should be considered.
- Where the length of contract performance extends over a long period of time, some type of economic price adjustment terms may be necessary.

- As requirements are repetitively acquired and a history is established, Amtrak should be able to more clearly define the requirements, and contractors should be able to assume greater risks of performance at fixed prices.

a. Fixed Price Contracts

1. Firm Fixed Price (FFP) - This type of contract establishes a lump sum price, or unit prices and a total contract price, not subject to adjustment on the basis of the contractor's cost experience in fulfilling the contract. The contractor takes full responsibility for the cost and profit outcome, and thus the contractor has maximum incentive to control costs and complete the contract on schedule.

- This contract type represents the least administrative burden upon Amtrak (e.g., it is not necessary for Amtrak to monitor contractor costs or to perform contract close-out audits).
- This type of contract should be used when purchasing commercial-type commodities, goods or services which have definitive or detailed specifications and a reasonable price can be established.
- A FFP contract is recommended when:
 - There is adequate price competition;
 - Price comparisons can be made with prior purchases;
 - Available cost or pricing data permits realistic estimates of the probable cost of performance; or
 - Performance uncertainties and their impact can be identified or anticipated and the risks associated with a firm fixed price are accepted by the contractor.

2. Fixed Price with Price Adjustment - Fixed price contracts may provide for price adjustments (upward or downward) when specified contingencies occur. These contracts are typically used when there is serious doubt about the stability of selected costs or prices over an extended period of contract performance. For example, a five year fixed price contract may present an unusually high cost risk to a contractor for certain commodity prices or labor costs, and the parties may agree to use a price adjustment clause.

- Price adjustments may be based on published indices, actual cost experiences of the contractor for certain materials or labor, or increases or decreases in published prices for specific items.
 - The contract will define the circumstances under which the price adjustment will be made and the means whereby it will be calculated.
 - Using price adjustment clauses is an excellent way to deal with high risk situations and avoid having to price the initial contract on the basis of contingencies which may never occur.
 - This type of contract may also be necessary to get contractors to accept fixed price contracts which have a lengthy performance period. It establishes a lump sum price subject to upward or downward adjustments depending on specific contractual terms such as: established prices; actual costs of materials/labor; and cost indexes of materials/labor.
3. **Fixed Price with Redetermination (FPR)** – This contract provides for an initial contract period with a redetermination (upward or downward) at a stated time during contract performance (prospective) or after contract completion (retroactive). A prospective FPR is usually used only in those circumstances where a fair and reasonable price can be negotiated for initial periods but not for subsequent periods. A retroactive FPR is used in those circumstances where, at the time of negotiation, a fair and reasonable price cannot be established and the amount involved is so small and the performance period so short that use of any other contract type would be impractical.
4. **Fixed Price Incentive Fee (FPIF)** - This type of contract provides the supplier with an incentive to control costs by establishing a target profit, a ceiling price and a final profit formula. The final profit formula allows a supplier to participate in any cost savings that accrue below the target costs, thereby increasing supplier profits.
5. **Fixed Price Award Fee (FPAF)** – This contract is similar to the FPIF, except that the amount of the fee is stated up front.

b. Cost Reimbursement Contracts - The cost reimbursement contract is one in which Amtrak 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. Amtrak assumes a high risk of incurring cost overruns, while the contractor has almost no risk of financial losses.

- Cost-type contracts are suitable when: (1) Amtrak is unable to accurately describe the work to be done, or (2) there is an inability to accurately estimate the costs of performance.
- Cost-type contracts are ideally suited to complex projects 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.

1. Cost Plus Fixed Fee (CPFF) - This contract provides the contractor with a set fee and a reimbursement procedure for all costs allowable under established cost principles. This type of contract should be used when uncertainties in contract performance prevent accurate estimates of costs.

- This type of contract should not be awarded unless: the contractor has the capability of determining costs applicable to the contract and Amtrak will monitor the contractor's performance to assure that cost controls are used.

2. Cost Plus Incentive Fee (CPIF) – Under a CPIF arrangement, an incentive applies over part of the range of cost outcomes. If the supplier's costs are below target, both parties share in the savings and, if above target, the supplier's fee is reduced accordingly. If costs significantly exceed target, the supplier can lose all of its fee but not its costs. A CPIF is used in those circumstances in which the cost risk warrants a cost type arrangement but an incentive can be established to provide the supplier with some motivation to manage costs, such as advanced development efforts and initial production runs.

3. Cost Plus Award Fee (CPAF) - Similar to the FPAF, this type of contract has a "profit" element included in a fee that is stated up front. The award fee may be appropriate for the procurement of software developed for Amtrak and for janitorial, landscaping, and similar services where the ability

to reward the supplier for non-quantitative aspects of its performance on a subjective basis is desired.

- c. **Time and Materials (T&M) Contracts** - Such contracts are used to provide goods or services at specified fixed costs and hourly rates. These hourly billing rates include wages, indirect costs, general and administrative expense, and profit.
 - 1. There is a fixed-price element to the T&M contract - the fixed hourly billing rates. But these contracts also operate as cost-type contracts in the sense that labor hours to be worked, and paid for, are flexible.
 - 2. Materials are billed at cost, unless the contractor usually sells materials of the type needed for the contract in the normal course of its business. In that case, the payment provision can provide for the payment of materials on the basis of established catalog or list prices in effect when the material is furnished.
 - 3. Amtrak must make a determination, before using this type of contract, that no other type of contract is suitable. The reason why this type of contract is the least preferable of all types is that it creates a disincentive for the contractor to complete the contract in a timely manner.
 - 4. Amtrak must specify its maximum obligation (ceiling price) in the contract; i.e., the limitation of Amtrak's financial obligation. The contractor may not exceed this funding limitation without written authorization in the form of a contract modification adding more funds.
- d. **Labor Hour Contracts** - Labor hour contracts are a variation of the T&M contract, differing only in that materials are not supplied by the contractor. This type of contract should only be used when no other would be suitable, a determination which must be documented.
- e. **Cost Plus Percentage of Cost Contracts (CPPC)** – Amtrak shall not use a CPPC type contract. Care must be taken to avoid any kind of agreement whereby the contractor's fee would be increased automatically with increases in a particular cost element.

2.3.1.1 Indefinite Delivery (ID) Contracts - When the exact times or the exact quantities of future deliveries are not known at the time of contract award, or when the shelf life of the product needed is short, Amtrak may wish to consider some form of ID contract. ID contracts offer a number

of advantages that will be discussed below with each type of ID contract. As a general rule, however, ID contracts permit the company to maintain inventories at minimum levels and provide flexibility with respect to shipments to various user locations. They also facilitate decentralized ordering by users at different locations.

a. Definite-quantity Contracts - A definite-quantity contract is one which provides for delivery of a definite quantity of specific goods or services during a time period which is fixed, with deliveries or performance to be scheduled at designated locations at the time each order is placed under the contract.

1. This type of contract is appropriate when Amtrak knows in advance how many total items it will need during the contract period but is uncertain as to the exact time or the exact amount of its needed deliveries to any given location.
2. The goods or services called for by this type of contract must be regularly available from the supplier or available after a short lead time.

b. Requirements Contracts - A requirements contract is one in which Amtrak commits to place all of its requirements for a particular item or service with a particular contractor during a specified contract period, with deliveries or performance to be scheduled at the time each order is placed under the contract.

1. This type of contract is used when quantities and/or the times of needed deliveries are uncertain.
2. It permits flexibility to Amtrak in both quantities and delivery schedules.
3. It may also shorten the delivery time of a product that has a longer production lead time because the contractor knows that Amtrak will obtain all of its requirements under the contract and in this situation contractors may be willing to maintain some level of inventory.
4. A requirements contract also allows for the ordering of goods or services after requirements become known. It differs from the indefinite quantity contract in that it promises the contractor that all of Amtrak's requirements for the particular item will be procured from the contractor.
5. A requirements contract may produce better prices for Amtrak in

that the contractor is assured from the beginning that all goods or services of the type called for will be procured from the contractor during a stated period of time.

6. The disadvantage to Amtrak is that it will be committed to order all of the designated goods at the contracted price even if it later learns that the goods can be ordered elsewhere more cheaply.
 7. **Estimated total quantity** – When this type of contract is used, Amtrak should state a realistic estimated total quantity in the solicitation and in the resulting contract. This estimate is not a guarantee by Amtrak that it will buy the estimated quantity, but is a good faith estimate of what the requirements are likely to be. The estimate should be based on records of previous requirements, as well as the most current information available.
 8. **Maximum and minimum quantities** – The contract should generally specify a maximum limit of the contractor’s obligation to deliver. This maximum limit may be expressed for the entire contract, as well as for each individual order and for any particular period of time within the contract period of performance. Depending on the circumstances, minimum order amounts may also be expressed for each order placed and for the contract as a whole. Minimum order amounts are not required for this type of contract because Amtrak’s commitment to buy its requirements from the contractor represents the legal consideration necessary to make the contract binding.
- c. **Indefinite-quantity Contracts** - An indefinite-quantity contract is one that provides for an indefinite quantity of goods or services, within limits that are stated in the contract, to be provided during a time period that is fixed in the contract. Deliveries of the goods or performance of the services are scheduled by placing orders with the contractor.
1. This type of contract may be appropriate when Amtrak cannot predetermine, above a specified minimum, the precise quantity of goods or services that will be required during the contract period, and it is inadvisable for Amtrak to commit itself for more than a minimum quantity. Indefinite-quantity contracts offer several advantages:
 - Minimum inventory levels of supplies can be maintained,
 - Shipments can be direct to users in various locations,

- They permit flexibility in both quantities and delivery scheduling,
 - Goods or services can be ordered after requirements become known, and
 - Amtrak’s obligation is limited to the minimum quantity specified in the contract.
- 2. Minimum and maximum quantities** – To ensure that the contract is binding, a minimum number of units must be stated in the contract, and it must be more than a nominal quantity. There must also be a stated maximum number of units that may be ordered. Indefinite-quantity contracts should never be “open ended,” where no maximum quantity is stated. The contract may also state maximum or minimum quantities that may be ordered under each task or delivery order and the maximum that may be ordered during a specified period of time within the contract’s period of performance.
- 3. Orders above the stated maximum** – If it becomes necessary to order quantities above the maximum stated in the contract, such orders should generally not be processed as change orders, but should be processed as new procurements.
- These new procurements may either be competed or, if circumstances warrant, processed as non-competitive procurements in accordance with Amtrak’s internal approval process for noncompetitive (“sole source”) procurements.
 - The possibility of needing additional quantities should be anticipated in the initial requirement and, if necessary, include option provisions for additional quantities in the original competitive bidding. This way, if additional quantities are needed, they may be procured under the original contract without having to justify them as “sole source” add-ons.
- 4. Multiple award contracts** – Procurement may wish to consider making multiple contract awards for the same or similar goods or services under a single competitive solicitation. This may be appropriate in order to ensure the quality or timeliness of deliveries by not limiting Amtrak to a single supplier who may not perform according to the Amtrak’s expectations or needs.

- If multiple awards are to be made, Amtrak should advise prospective bidders/offerors of the procedures that will be used in issuing orders to the contractors selected for award, including the criteria that will be used to provide the selected contractors with a fair opportunity to be considered for each order issued. The criteria may include such items as past performance on earlier tasks or orders issued under the contract, quality of deliverables, price, timeliness of deliveries, and other factors considered relevant by Amtrak.
- Multiple awards are not advisable when:
 - More favorable terms will be provided if a single award is made,
 - The cost of administering multiple contracts outweighs any potential benefits from making multiple awards, and
 - Tasks likely to be ordered are so integrally related that only a single contractor can reasonably perform the work.

2.3.1.2 Other Contract Types

a. **Letter Contract** - This is an interim type of contractual agreement which provides the contractor with a “limited” notice of award to provide goods and/or services. The specifics of the letter contract are negotiated by the respective parties when the fixed price or cost-reimbursement contract cannot be accommodated due to time constraints. The letter contract should generally include the following :

- Date to begin work
- Method and amount of payment in the event of termination
- Language requiring the contractor to provide price and cost information upon request
- Language prohibiting the contractor from expending funds or incurring debt in excess of the amount stated in the contract
- The type of anticipated contract
- A clear and definitive statement of the contract’s key provisions

- A declaration of good faith negotiations by the contractor and Amtrak to agree and execute a contract
- Retainage, if required

2.3.2 Payments - Payment is one of the CA's most important contractual obligations. Payments are the principal source of funds during contract performance allowing the contractor to continue working. Delays in payments can have a serious effect on the contractor's ability to continue performance. When less than full payment is made of a contractor's invoice, the terms "withholding" and "setoff" are commonly used to describe the refusal to make full payment. (The CA should request documentation from the PM prior to withholding payment.) The term "final payment" usually implies that both parties to the contract have fulfilled all of their responsibilities.

Pre-Payments – Generally, there are to be no pre-payments to vendors without the written consent of the Chief Logistics Officer. One exception is in the area of software licensing and maintenance.

There are two major types of contract payments: (1) payments for completed items of work (including partial payments), and (2) progress payments based on costs incurred or upon a percentage of completion of the work.

a. Payment of the Price - Payment of the contract price is due upon completion of the work and submission of the contractor's invoice. When the contract authorizes delivery or performance in increments, payment of a portion of the contract price may be made before the contract is completed. Such payments are referred to as partial payments.

Partial payments are not considered to be a financing technique but they can be an important means of providing funds for performance, and they should be used whenever the contract can be structured in terms of incremental stages or deliveries and there are appropriate acceptance criteria for the goods, services or completed subsystems of a larger system.

When Amtrak can safely inspect, test and accept these units and make a "final" payment for those items delivered, without having to worry about their functioning as part of a larger system still under construction, then partial payments should be established in the contract.

b. Progress Payments - There are two major types of progress payments: those based on costs and those based on completion of work. Both types are considered contract financing methods. Progress payments may be appropriate if the contractor will not be able to bill for the first-delivery of products, or other performance milestones, for a substantial time after work begins. The usual time period for using progress payments is four months or more for small businesses and six months or more for others, and the

contractor's expenditures prior to delivery of the first items will have a significant impact on the contractor's working capital.

- c. Progress Payments Based on Costs** – Amtrak’s customary progress payment rate is 90% (excluding A&E contracts, which is 95%) of contract costs. Certain costs may be included in the progress payment invoice only after payment by the contractor (goods and services purchased directly for the contract), while other costs may be included if they have been incurred even though not yet paid for (direct labor, direct travel, indirect costs).
- d. Progress Payments Based on Percentage of Completion** - Amtrak may authorize progress payments on its contracts based on a percentage or stage of completion of the work. This type of progress payment is standard for construction contracts.
- e. Withholding** - A number of contract provisions expressly authorize the withholding of payments. See, for example, the Davis-Bacon Act clause or the Contract Work Hours and Safety Standards Act clause. The standard Federal government clause for the payment of a fixed fee on CPFF contracts calls for a 15% withholding of the fixed fee until the contractor submits a certified final indirect cost rate proposal and otherwise complies with the final deliverable documentation requirements of the contract (e.g., delivery of the final report concerning inventions made under the contract). In the event it is decided to withhold payments on a contract, care must be taken that the amount of money withheld bears a reasonable relationship to the unsatisfactory work; in other words, the amount withheld must represent a reasonable estimate of the contractor's potential liability. Moreover, the amount withheld must not be so great that it impairs the contractor's ability to perform.
- f. Final Payment** - Final payment is made to the contractor when it has satisfied all of the deliverable requirements called for by all provisions of the contract, including all of the required documentation. Final payment signifies that the performance obligations of both parties to the contract have been satisfied. For construction contracts, before making a final payment, a signed release should be obtained from the contractor releasing Amtrak from any further claims by the contractor. A receiving and inspection report should also be obtained certifying that all deliverable items have been received, inspected, and accepted as being in conformance with the contract specifications.

2.3.3 Standard Contract Forms – Amtrak has created standard procurement solicitation/contract documents including RFPs, IFBs, general provisions and other contract documents. For a complete list of such documents, see Appendix B.9.

- a. The use of the standard contract documents is to be encouraged. These forms are to be used as a starting point in the preparation of all contract documents.
- b. The use of contract documents provided by the vendor is not permitted without the approval of the Law Department.
- c. Amtrak has prepared Supplementary General Provisions for Construction and Non-construction Contracts. Use of these provisions is mandatory whenever the procurement is funded by the Federal government under the FRA grant. See Appendix A.1 and A.2 for a copy thereof.
- d. Amtrak's electronic online procurement system templates may be utilized for the creation of Purchase Orders and Blanket Purchase Orders for supplies and spare parts of an inventory or expense nature.

2.3.4 Open and Free Competition – To the maximum extent practicable, all goods and services are to be procured through a competitive process. Procurements are to be designed to minimize unreasonably restrictive requirements.

- a. **Inclusion of Federal Requirements** –Amtrak procurements undertaken with Federal grant funds must include the applicable Federal requirements.
- b. **Open and Free Competition Principle** - Open and free competition is the guiding principle of procurement requirements and practices. CAs must constantly seek to permit and encourage meaningful interest and offers from all entities. Generally, practices should not be selective or rule out bidders/offerors only for business reasons (cost, quality, and delivery).
- c. The principle of open and free 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 Amtrak's expense and to provide equal opportunities to participate in business to potential bidders/offerors.
- d. All procurements should be conducted in a manner providing open and free competition. Thus, contracts using Federal funds with a value of \$100,000 or greater shall be awarded by the invitation for bid or request for proposal process, unless there is an explicit exception. The following practices may be considered restrictive of competition:
 - Placing unreasonable requirements on firms in order for them to qualify to do business;
 - Requiring unnecessary experience and excessive bonding;

- Allowing noncompetitive pricing practices between firms or between affiliated companies;
- Awarding noncompetitive contracts to any person or firm on retainer contracts;
- Encouraging organizational conflicts of interest by not restricting future activities of a contractor when it may have an unfair advantage;
- Specifying only brand name products;
- Supporting any arbitrary action in the procurement process; and
- Imposing geographic preferences.

2.3.5 Liquidated Damages - Liquidated damages are a specific sum (or a sum readily determinable) of money stipulated by the contracting parties as the amount to be recovered for delay in delivery of the product or completion of the contract. They do not represent actual damages but are established in the initial contract as a substitute for actual damages. They should represent, however, the most realistic forecast possible of what the actual damages are likely to be. Liquidated damages clauses are most appropriately used when:

- The time of delivery or performance is of particular importance and Amtrak may reasonably expect to suffer damage if the delivery or performance is delinquent; and
- The extent or amount of such damage would be difficult to prove.

When determining whether to use a liquidated damages clause, the following factors should be considered:

- The probable effect on pricing and competition; and
- The costs and difficulties of contract administration.

Liquidated damages may be used for supplies, services and construction contracts.

a. Rate Determination - The rate of liquidated damages must be a reasonable estimate to compensate for possible damages and not be so large as to be construed as a penalty. If it is construed as a penalty, it may be held unenforceable. The most prudent approach is to formulate the liquidated damages on a case-by-case basis.

- b. Application** - When it is determined that a liquidated damages clause will be included in the contract, the applicable clause and appropriate rate(s) must be contained in the solicitation. For construction contracts, the rate to be assessed can be for each day of delay, and the rate typically, at a minimum, covers the estimated cost of inspection and oversight for each day of delay. If Amtrak will suffer other specific losses due to failure of timely completion, the rate can also include an amount for these items (for example, the cost of substitute facilities or the rental of buildings or equipment). The contract may include an overall maximum dollar amount or period of time, or both, during which liquidated damages may be assessed. This will help ensure that there is not an unreasonable assessment of damages.

Chapter 3 – Methods of Solicitation and Selection

3.0 Overview - Based on procurement plans and the specifications developed with the internal customer, the CA will generally initiate the procurement by soliciting bids/proposals. Depending on the requirements of the method of procurement chosen, they may be solicited by telephone or by other methods, including formal Invitations for Bids or Requests for Proposals.

A solicitation does not bind Amtrak to purchase the goods or services solicited. The bids or proposals submitted by vendors should be firm offers to Amtrak to supply the goods or services in accordance with the material terms in the solicitation.

3.1 Small Dollar Procurements - Small dollar procurement procedures recognize that for up to some level (generally less than \$100,000), it could cost more to conduct a formal competitive solicitation (i.e., Invitation for Bids or Request for Proposals) than the value expected to be yielded thereby. The simplified procurement procedures for small dollar procurements require obtaining only limited competition from an adequate number of qualified sources (at least two). Solicitations for small dollar procurements may be either oral or written (i.e., fax, electronic, hard copy). Requests for Quotations in the form of faxes, phone quotations, etc. are acceptable for small dollar procurements.

3.1.1 Policy - Amtrak's policy for making small dollar procurements is to promote competition and procure goods and services in a timely manner at a reasonable cost, and to provide opportunities for DBEs to compete for procurements.

- Small dollar procurements (less than \$100,000) generally do not justify the administrative time and expense of conducting a formal competitive solicitation.
- Procurements with an estimated value of \$25,000 or less need not be competed and may be awarded on a discretionary basis.
- All prices must be determined to be fair and reasonable. Reasonableness of the proposed price may be determined by comparison of the proposed price with:
 - Prices found reasonable on recent previous purchases
 - Current price lists
 - Catalogs
 - Advertisements
 - Similar items in a related industry

- Documentation of small dollar procurement decisions is necessary to ensure the integrity of the procurement system and must be maintained in the Procurement files.
- In those instances where only one source of supply is available for an item, or sound business reasons require the purchase of an item from a particular vendor, a written justification for a non-competitive small dollar procurement over \$25,000 must be completed and approved. Reference Section 3.6, Non-Competitive (Sole/Single Source) Procurements.

3.2 General Solicitation Requirements

a. Solicitations should:

1. Clearly set forth all requirements that the bidder/offeror must fulfill and the evaluation criteria to be used by Amtrak in the award of the contract.
2. Include a clear and accurate description of the technical requirements of the goods or services, without any wording that will unduly restrict competition.
3. Include, whenever appropriate, a description of technical requirements in terms of the functions to be performed or the performance required, including the range of standards and the minimum acceptable standards.
4. Where appropriate, provide for the specific features of “brand name or approved equal” descriptions that bidders/offerors are required to meet.

b. Amtrak should advertise or otherwise solicit bids/proposals as warranted by the nature of the goods or services to be procured.

- All purchases that are likely to result in an award of \$1 million or greater should be advertised in a generally distributed publication, unless a waiver is approved by the Chief Logistics Officer. In addition, a formal solicitation method (i.e., Invitation for Bids, Request for Proposals) should be used, unless there is an explicit exception.
- Procurements with an estimated value of \$100,000 or greater, but less than \$1 million, should be solicited using a formal solicitation method (i.e., Invitation for Bids, Request for Proposals), unless there is an explicit exception.
- Procurements estimated at less than \$100,000 may be solicited via small dollar procurement processes, which require obtaining competition from an adequate number of qualified sources (at least two).

c. To the maximum extent practicable, Amtrak shall use competitive procedures that are best suited to the circumstances of the contract action and are consistent with the mandate to efficiently fulfill the needs of Amtrak.

- d. Amtrak will seek competitive bids/proposals through the use of small dollar procurement processes, Invitations for Bids (IFBs), or Requests for Proposals (RFPs).
 1. If a competitive procurement is not appropriate, Amtrak reserves the right to make a sole/single source award in accordance with its Sole/Single Source Policy referred to in Section 3.6.
 2. Amtrak will conduct a formal IFB/RFP when the use of a small dollar procurement process is not appropriate.
 3. Awards shall be made to the bidder/offeror whose bid/proposal is most advantageous to Amtrak, considering price, technical quality, and other factors.
 4. Amtrak may reject any or all bids/proposals when it is in Amtrak's best interest to do so.
 5. Amtrak will avoid procuring unnecessary items.
 6. Where appropriate, Amtrak will analyze lease and purchase alternatives to determine which would be the most economical and practical for Amtrak.

3.3 Competitive Procurement Methods – To the maximum extent practicable, Amtrak shall use competitive procedures that are best suited to the circumstances of the contract action and are consistent with the mandate to efficiently fulfill the needs of Amtrak. Formal solicitation procedures apply to transactions for goods and/or services when the resultant contract is expected to be \$100,000 or greater. Strict compliance with this procedure is mandatory for all procurements, except as provided for under Section 3.6 hereof.

3.3.1 Overview – Sealed Bids (Invitation For Bids) versus Competitive Proposals (Request For Proposals) Method – In general, the following should serve as a guide in the selection of an appropriate solicitation method:

- a. The sealed bid method (IFB) should be used where:
 - There is 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 on the basis of price, and
 - Discussion or negotiations with bidders after receipt of bids is not anticipated.
- b. The competitive proposal method (RFP) should be used when any or all of the sealed bid requisites are not present.

3.3.2 Differences Between the Methods of Procurement - The competitive proposal procurement method differs from the sealed bid method in that:

- A complete, adequate and realistic specification or purchase description allowing for competition on the basis of price alone may not be available.
- Discussions or negotiations may be needed to address technical requirements as well as proposed cost or price aspects of the offeror's proposal. Discussions may be conducted with one or more offerors who have submitted proposals.
- An opportunity may be given to revise proposals and to submit a final proposal at the completion of the discussion phase of the process.

3.3.3 Common Elements of Solicitation Process – The CA is responsible for creating the list of prospective bidders/offerors.

- a. Unless constrained by factors beyond Amtrak’s control, the list of prospective bidders/offerors should consist of at least three, but generally five or more.
- b. The bidder/offeror list and the strategy for the solicitation are to be reviewed and approved by the appropriate Director.
 - 1. Solicitations estimated to be \$1 million or greater must be reviewed and approved in writing by a Senior Director or higher authority.
 - 2. The above approval process should not take more than one business day.

3.3.4 Advertising Solicitations – All solicitations that are likely to result in an award of \$1 million or greater shall be advertised in a generally distributed publication, unless a waiver is approved by the Chief Logistics Officer.

- a. The advertisement should appear at least two weeks prior to the bid/proposal close date and should appear for one day.
- b. The Program Analysis Group will be responsible for all advertised bids and proposals, regardless of which Procurement office will be issuing the solicitation.
- c. To arrange for the placement of an advertised IFB/RFP, the CA must complete the Bid/Sales Notification template found in eTrax. (Refer to Appendix B. 4)
- d. Once completed, the CA will save the form and e-mail the form as an attachment to the designated principal and back-up personnel in the Program Analysis Group.

- e. The Program Analysis Group will submit advertisements to the applicable major publication or industrial publication, as appropriate.

3.3.5 Bidder/Offeror List Review

- a. The bidder/offeror list should be generated by the CA, with input from the internal customer. The list should be refreshed periodically in order to provide an opportunity for new firms to participate.
- b. If the award is estimated to be \$15,000 or greater, a review of the bidder/offeror list should be conducted by a Supplier Diversity Office representative, who may recommend additional DBE sources.

3.3.6 Bidder/Offeror Restrictions – Unless a specific exception has been obtained from the Chief Logistics Officer, solicitations shall not be requested from, nor any order placed with:

- a. A company that is owned, controlled, or actively influenced by any Amtrak employee or an immediate relative of said employee.
- b. A company that employs in a management, consulting, or sales capacity any person who is an Amtrak employee or an immediate relative of said employee.
- c. A company that employs in any capacity an Amtrak employee or an immediate relative of said employee who is in a position to influence the selection of, or conduct business with, such supplier.
- d. A former employee of Amtrak, if such solicitation is in conflict with Amtrak’s “Independent Contractor Services” policy, P/I 7.13.1.

3.3.7 Solicitation - The solicitation, whether an IFB or RFP, identifies the procurement, the company and the contact person(s). It contains simple, clear instructions for preparing a bid/proposal. It clearly states the time and manner for submitting the bid/proposal and the length of time the bid/proposal must remain firm. Sample instructions to bidders/offerors are found on the S drive under “Blue Book of Contract Documents.”

3.3.8 Pre-Bid/Pre-Proposal Conferences - Pre-bid/pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective bidders/offerors and explaining complicated specifications and requirements to them as early as possible after the solicitation has been issued and before bids/proposals are received.

- a. Purpose of pre-bid/pre-proposal conference:

1. To allow Amtrak to clarify the procedures for receipt, opening, and evaluation of bids/proposals;
 2. To allow personal contact between Amtrak and bidders/offerors for questions and answers;
 3. To allow Amtrak to explain or expand on complex specifications and/or pertinent requirements;
 4. To allow Amtrak to demonstrate quality of work or product required;
 5. To entertain any questions that might be raised by potential suppliers concerning the plans, specifications or other solicitation documents. Only a formal written addendum will be considered to modify the solicitation.
- b. Usually pre-bid/pre-proposal conferences are conducted for complex services, construction projects and major capital equipment purchases. The more clearly the scope of work, specifications, or problems are understood by the potential bidders/offerors, the higher the likelihood of obtaining well defined bids/proposals. When construction services are being procured, it is also advisable to conduct a site tour.
- c. At the conference, a record should be made of what transpired, including a sign-in list of attendees. Normally, this list is made available to attendees as a matter of information. Attendees should be advised that remarks and explanations at the conference shall not modify the terms of the solicitation, unless a written addendum is furnished.
- d. During the conference, in addition to responding to any questions raised, the CA should explain anything unusual about the solicitation. A technical staff member may give an overview of the specifications or scope of work.
- e. At the conclusion of the conference, the CA should determine which questions will necessitate the issuance of a solicitation addendum.
- f. As soon as possible after the conference, the CA should finalize the record of the conference and promptly furnish it to all prospective bidders/offerors (those on the final solicitation mailing list), whether they were in attendance at the meeting or not.

3.3.8.1 Responsibilities

a. Procurement - The Procurement Department should:

- Determine in consultation with the PM whether a pre-bid/pre-proposal conference is necessary. This determination is usually

made prior to advertisement and the date for the conference is included in the IFB/RFP advertisement.

- If the pre-bid/pre-proposal conference has not been previously arranged, but determined to be necessary, notification is sent to all prospective bidders/offerors urging their participation. If attendance is mandatory, this should be indicated in the notification.
- Schedule the conference, arrange for minutes to be taken (electronic media if deemed appropriate), notify all in-house participants (e.g., Supplier Diversity Office) and moderate the conference.
- Review minutes of conference for accuracy, distribute as appropriate and file.
- Determine if the results of the pre-bid/pre-proposal conference require issuance of an addendum (to include an adjustment of the close date) and prepare any necessary addenda to solicitation documents and distribute to all prospective bidders/offerors (those on the final solicitation mailing list).

b. Project Managers - The PM should:

- Attend pre-bid/pre-proposal conference and answer technical questions, as required.
- Arrange for any additional technical expertise that may be required for the conference.
- Provide Procurement any information of a technical nature, as may be needed for an addendum.

3.3.8.2 Revisions to Solicitations

- a.** Revisions to the IFB/RFP sometimes become necessary to make changes in quantities, specifications, delivery schedules, close dates, etc., or to correct a defective or ambiguous IFB/RFP. Should such changes become necessary, they will be accomplished by issuance of sequentially numbered addenda to the solicitation documents.
- b.** When issuing an addendum, the following will apply:

1. The addendum must be sent simultaneously to each prospective bidder/offeror to whom the IFB/RFP has been furnished and must be added to the file.
2. The addendum must be issued a reasonable time before the scheduled close date to allow bidders/offerors sufficient time to modify their bids/proposals.
3. The addendum must clearly state the changes made and the extension of the close date, if any.
4. The addendum must include instructions to bidders/offerors for acknowledging receipt of the addendum.

3.3.9 Receipt of Bids/Proposals - The culmination of the solicitation process is the receipt of bids/proposals. Regardless of the method used, great importance is attached to the time of receipt. Preparations are made to ensure the receipt of the bids/proposals is properly recorded. The solicitation may contain a checklist of items to be submitted with the bids/proposals.

- a. **Timeliness** - The rationale for having rules governing the consideration of late bids/proposals is tied to the importance of maintaining the integrity of the competitive procurement process versus the value of maximizing competition and resultant efficiency Amtrak might realize in a particular procurement by considering a late bid/proposal. (See Section 3.3.9.3(c)(10) for handling of late bids/proposals.)
- b. **Completeness of Bids/Proposals** - Besides the obvious things (like the bid or price schedule), there are a number of items that are normally submitted with the bid/proposal.

3.3.9.1 Required Submissions with Bids/Proposals - The incorporation of appropriate clauses, bid bond requirements, insurance requirements, instructions to bidders/offerors, and statements regarding award are the sole responsibility of the CA. The contract documents contained in Amtrak’s “Blue Book of Contract Documents” will be incorporated, as appropriate, including:

- a. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion** – A vendor which is debarred or suspended by a federal agency shall be excluded from the transaction. If the proposed contract equals or exceeds \$100,000, the contractor must execute the certification found in Appendix B.5.
- b. **Buy America Certification** – If the estimated value of a procurement for goods is less than \$1,000,000, the vendor must certify that it can and will comply with the Federal Buy American

statute found at 41 U.S.C. §10(a)–(d) and the implementing regulations found at 48 CFR Part 25. If the estimated value of a procurement for goods is \$1 million or more, the vendor must certify that it will comply with Amtrak’s Domestic Buying Preference Statute, found at 49 U.S.C. §24305(f). Applicable certificates of compliance should be included with the solicitation, when appropriate. Questions concerning compliance should be directed to the Law Department.

- c. **Anti-Lobbying Certification** –Vendors which bid for an award of \$100,000 or more must submit to Amtrak the certification found at Appendix B.6.
- d. If the certifications listed above are not made in accordance with the solicitation requirements, the bid/proposal may be considered non-responsive.

3.3.9.2 Other Submissions

- a. **Acknowledgment of Solicitation Addenda** - One of the most critical submissions that should be received with bids/proposals is an acknowledgment of any addenda to the solicitation. These are the changes to the terms of the solicitation (including the instructions, drawings, specifications, scope of work, etc.) that in all likelihood have an impact on price or schedule.
- b. **Bid Bond/Guaranty** - For those construction or facility improvement contracts or subcontracts exceeding \$100,000: The purpose of the bid bond or other bid guaranty, which must be submitted with the bid, is to serve as a guaranty that the bidder/offeror will, upon acceptance of its bid/proposal by Amtrak, execute such contractual documents as may be required within the requisite number of days after notice of award. If the bidder/offeror fails to enter into a contract with Amtrak, the bidder/offeror is liable for the amount of loss suffered by Amtrak. Such loss may be partially or completely recovered by Amtrak by exercising its rights against the bonding company.
 - 1. Acceptable alternatives to bid bonds include a deposit consisting of a cashier’s check, certified check or irrevocable letter of credit issued by a Federally-insured financial institution.
 - 2. The bid bond or bid guaranty shall be set for an amount equal to 5% of the bid total. Any modification to this amount must be approved by the Chief Logistics Officer. (See also, page A.3-7)

3. Any bonds submitted must be executed by surety companies licensed to do business in the applicable state. (See also, page A.3-7)
 4. When a bid bond or other acceptable bid guaranty is required, the solicitation must contain a statement to that effect, and provide sufficient details for bidders to understand the amount of the bid security required.
 5. **Non-responsiveness** - Normally in a bidding environment, if the proper guaranty is not furnished with the bid, the bid may be considered non-responsive. A late bid bond/guaranty must be approved by the Chief Logistics Officer.
 6. **Custody of Guaranty** - It is recommended that if the guaranty is a bond or letter of credit, it be retained with the Procurement file. If it is other than a bid bond, it is recommended that it be placed in a secure area (safe or locked file cabinet) with a notation in the Procurement file as to its location.
 7. **Unused Guaranty** - Guarantees have a financial impact on bidders/offerors as long as they are in effect and therefore, should be returned to the unsuccessful bidders/offerors as soon as it is prudent to do so (e.g., awarded the contract or the bidder/offeror is too far down the bid list to reasonably expect an award). Unused guarantees should be returned to the successful contractor after the contingencies have been met - all contractual requirements have been met and the required performance and payment bonds and insurance certificates are in place as protection for Amtrak in the event of default or non-performance of the contractor.
 8. **Collection of Bond** - The conditions which discharge the bond should be specified in the solicitation. Generally, the principal condition that discharges the bid bond or guaranty is the furnishing of a performance bond. Often the terms of the bid guaranty also guarantee that the bidder/offeror will provide executed contract documents, insurance certificates, or payment bonds.
- c. **Performance Bond** - For those construction or facility improvement contracts or subcontracts exceeding \$100,000: the purpose of the performance bond is to guarantee performance of all contractor obligations. The most likely reasons a performance bond would not be furnished (which are the conditions you might look for in deciding whether to require a bid guaranty) are: (1) a financial condition so weak that bonding companies will not participate; (2)

such a large amount of bonds already issued that the bond cannot be obtained; (3) second thoughts about the contract based on the information revealed up to the point in time of bonding; or (4) a frivolous bid.

1. The performance bond shall be in the amount of 100% of the contract price. Any modification to this amount must be approved by the Chief Logistics Officer. (See also, page A.3-7)
2. If the performance bond is not provided, Amtrak may exercise the right to accept the next ranked bidder/offeror and to collect from the defaulting bidder/offeror the price and value difference between the bids/proposals.
3. If the guaranty is a bond or equivalent letter of credit, it may be necessary to obtain a judgment against the bidder/offeror before Amtrak can actually collect from the bonding company or bank.
4. Any bonds submitted must be executed by surety companies licensed to do business in the applicable state. (See also, page A.3-7)

3.3.9.3 Solicitation Preparation - Formal solicitations are to be created as follows:

a. Bid/proposal numbering:

Bids/proposals shall be numbered as follows:

X-BBB-YDDD-SSS

where X is the standard prefix,
BBB is the three digit Contracting Agent Number,
YDDD is the Julian Date, and
SSS is a sequential number starting at “001”

For example, the first solicitation issued by Contracting Agent 075 on February 26, 2004, would be structured as follows:

X-075-0457-001

- b. Minimum Information Requirements** - Complete information should be provided, including but not limited to, quantity, description, delivery requirements, special conditions, drawings, specifications, date information required, etc.

1. If a response is to conform to a certain format, this should be spelled out in the solicitation.
 2. The CA must be thorough and diligent to remove any and all variables, inconsistencies, conflicts or discrepancies within the solicitation package.
- c. **Bid/Proposal Cycle Processing** – The following will be observed with regard to the processing of the solicitation:
1. Answers to technical questions arising during the solicitation process are to be obtained from the user department. Technical questions submitted by firms during the solicitation process should be forwarded to the PM anonymously. The CA must coordinate the reply and ensure that all potential suppliers who were solicited are provided with the same information.
 2. Electronic media, such as faxed or emailed bids/proposals, will not be allowed except in the case of small dollar procurements and except when the Ariba Acquisition & Contracting Electronic (ACE) system is used.
 3. Bid/proposal close dates will be strictly enforced by Procurement personnel. If it is determined that the close date should be extended, the CA will be responsible for securing the approval of his/her supervisor.
 4. Bids/proposals received in accordance with this procedure shall be date and time stamped immediately upon receipt. The bid/proposal will then be placed in the appropriate folder in the Procurement Department File Room until the next business day after the close date. The bid/proposal envelope is to be retained with the bid/proposal and maintained in the Procurement file.
 5. It is recommended that all bids/proposals be opened together within forty-eight (48) hours after the close date (excluding Saturday, Sunday and holidays). Any exceptions must be approved by the CA's supervisor.
 6. For formal solicitations, all bids/proposals will be opened at the same time by a CA with another CA or Supervisor in attendance.
 7. When a bid/proposal is submitted in an envelope that does not identify the bidder/offeror, the CA shall, at the time of opening, note the bidder's/offeror's name and address on the envelope.

8. Immediately following the bid/proposal opening, the CA will complete the Bid Opening Data sheet (found on the common Procurement drive) and all attendees will sign as required.
9. CA will identify on the Bid Opening Data sheet the number of suppliers solicited and responses.
10. All late bids/proposals (i.e., bids/proposals received after the close time and date) shall be referred to the Chief Logistics Officer for disposition. When a late bid/proposal has been received, and it is prior to the opening of those bids/proposals that were received on time, disposition from the Chief Logistics Officer must be sought **prior to the opening of any bids/proposals.**
11. After all bids/proposals have been received, opened and examined for completeness, a summary sheet is to be prepared noting any pertinent data and discrepancies. Determination of the proposed awardee and award of the contract will be made by the CA only after all aspects, including technical evaluation, signature approval, if required, have been considered.
12. Pricing information received from bidders/offerors shall not be disclosed to members of the TEC until such time as all bids/proposals have been technically ranked.
13. For contract awards of \$100,000 or greater, the CA should notify unsuccessful bidders/offerors that the solicitation has been completed and a contract has been awarded. Any exceptions to this notification requirement must be approved by the CA's supervisor. It is not necessary to reveal the name of the successful bidder/offeror. It is the CA's discretion whether to notify unsuccessful bidders/offerors if the contract award is less than \$100,000.

3.4 Sealed Bids (Invitation for Bids - IFB)

3.4.1 Overview – When Amtrak issues an IFB, Amtrak requests that three or more bidders submit bids so that Amtrak can evaluate the information and make an award to the responsive, responsible bidder offering the lowest total price.

- a. Under this method of procurement, bids are solicited and a contract may be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is lowest in price.

- b. When a procurement is required to be advertised (awards of \$1 million or more), the advertisement should appear at least two weeks prior to the bid/proposal close date.
- c. The IFB, which will include specifications and pertinent attachments, shall define the goods or services sought in order for the bidder to properly respond.
- d. A contract award will be made in writing to the lowest responsive and responsible bidder in accordance with the terms specified in the solicitation documents.

3.4.2 Responsibilities For Formal Bidding

a. Responsibilities of Requesting Departments

- 1. Develop specifications which provide a description of the minimum technical requirements for goods or services including the procedure by which it will be determined that the requirements have been met.
- 2. Prepare and have approved the purchase requisition and supporting documentation in accordance with Amtrak policies and procedures.
- 3. Prepare and forward to Procurement the cost estimate.
- 4. Perform technical evaluation of requests for approved equals.
- 5. Provide technical support to Procurement as required during solicitation.
- 6. Review bids for technical responsiveness and notify Procurement in writing of findings.

b. Responsibilities of Procurement Department

- 1. To the extent possible, review technical specification for clarity, completeness, and accuracy. Close attention must be paid to all elements of the specification to ensure that it is non-restrictive and generic, requesting only minimum requirements.
- 2. Review purchase requisition for adherence to established policy and procedures.
- 3. Develop the IFB package, coordinating efforts with Requestor, Supplier Diversity, Risk Management, and Law Department offices, as required.
- 4. Incorporate all applicable Federal clauses and provisions, as necessary.

5. Establish a schedule for issuing the IFB, receipt of bids and contract award, in consultation with Requestor.
6. Create a Bidders List.
7. Issue any and all addenda.
8. Schedule, moderate, and document the pre-bid conference. Conduct site inspection, if required.
9. Make a determination whether pre-qualification and/or special, technical pre-qualification is necessary.
10. Receive and safeguard all bids until scheduled bid opening. Return withdrawn bids unopened, if appropriate.
11. Conduct bid opening, record, and tabulate all bids.
12. Review bids for responsiveness and bidder responsibility, consulting with the Law Department as needed.
13. Assist in the technical evaluation of all bids, coordinating efforts of all other appropriate Amtrak departments and documenting any actions taken.
14. Perform and document cost and/or price analysis.
15. Prepare bid file, compiling and maintaining all information necessary to document the significant history of the procurement.
16. Award the contract in accordance with Amtrak policies and procedures and delegated authority.
17. Return bid bonds as appropriate.

3.4.3 Evaluation Factors - All IFBs must contain a statement of the basis upon which bids will be evaluated and awards will be made. Factors that will be considered in determining which bid is lowest must be enumerated. Examples could include life cycle costs, transportation costs, and payment discounts. The following criteria in combination with the above price evaluation factors may be used in reviewing bids and awarding contracts:

- Quality and conformance to specification
- Ability to meet Amtrak's delivery requirements
- Bidder's previous record of performance and service
- Financial ability to render satisfactory service

Any recommendations to award to other than the low bidder will be referred to the Chief Logistics Officer for final determination. (See also, Section 3.4.13)

3.4.4 IFB Review and Approval - Once the CA is satisfied with the IFB package, it must be handled as follows before it can be solicited:

- a. For solicitations with an estimated value of \$1,000,000 or more, the bidders list and the strategy for the solicitation must be reviewed and approved by a Senior Director or higher authority.

3.4.5 Distribution to Prospective Bidders – In accordance with appropriate bidders list, IFBs should be mailed or otherwise delivered (email permissible) to the maximum number of prospective bidders deemed practicable and as many as is necessary to encourage open and free competition.

3.4.6 Receipt and Safeguarding – To ensure the integrity of the bid process, Procurement shall secure and safeguard unopened all bids received prior to bid opening until the established time for bid opening.

3.4.7 Bid Opening – Amtrak is not required to publicly open bids or disclose bid prices.

3.4.8 Reasonableness of Cost – Amtrak Procurement policy necessitates that a determination of reasonable cost be made for each procurement action. Under the formal IFB method of procurement, reasonableness of cost is normally determined by price analysis, since the use of this method is predicated on the assumption that there will be adequate price competition, and that the workings of the market place will ensure reasonableness.

- a. It is Procurement’s responsibility to ensure that adequate price competition does exist. Such a determination will be based on the following criteria:
 - 1. There are at least two bidders;
 - 2. These bidders can satisfy the requirements identified by the IFB;
 - 3. The bidders are mutually independent;
 - 4. The bidders submitted bids that are responsive to the requirements of the solicitation.
- b. Once it has been established that price competition did exist, the Contracting Agent completes a price analysis. (See Section 4.3.3) A price analysis is an evaluation of the bid based on comparison of the price against other prices. It does not involve an in-depth evaluation of all the separate cost elements and the profit factor.

3.4.9 Single Bid - This results when only one bid has been received at the bid close date. This may result from having only one bidder or from all other bidders being non-responsive.

- a. Amtrak may award a contract to a single bidder if an analysis of the bid is conducted and Amtrak determines that it is in the best interests of Amtrak and the price is fair and reasonable.
- b. Where competitive bids are solicited and no responsive bid (or only a single bid) is received, competitive procurement procedures can be modified so negotiation of items are permissible, but not to the extent that the solicitation substance is so changed that more bidders could be attracted if bids were solicited under the revised requirements.
- c. A single bid requires that either a cost or price analysis be performed prior to the award of a contract. If the reasonableness of price can be demonstrated by reference to previous, competitive bids for identical or similar items, or through catalog prices, or a comprehensive comparative pricing market survey, price analysis may be acceptable.
- d. Before making a recommendation on whether to accept or reject a single bid, a complete analysis of the bid needs to be completed. This analysis should detail in writing:
 - The complete solicitation history,
 - Information from other possible vendors regarding why they did not bid,
 - A cost and/or price analysis based on cost data submitted by the vendor or generated from Amtrak records,
 - The market conditions during the procurement, and
 - An examination of the specifications and bid requirements with reference toward possible restriction.

Based on the analysis, a recommendation on how to proceed should be made to the CA's supervisor. If a determination is made to re-bid, the bid should be canceled, specifications revised, if warranted, and a new solicitation issued.

3.4.10 Tabulation and Evaluation - After bid opening, all bids are to be examined, tabulated, and evaluated to determine if there are any discrepancies, errors, omissions, material defects, or issues of responsibility that need to be considered or corrected before award. Areas to be covered include:

- a. Bid Errors** - All bids are to be carefully reviewed by Procurement and the Requestor, as necessary, to determine if any bid mistakes are apparent. Part of the review should include mathematical calculations.
1. In cases where there is an apparent mistake or reason to believe that a mistake may have been made, a bidder shall be requested to verify the bid. Attention shall be called to the apparent mistake.
 2. An obvious error such as a clerical mistake misplacing a decimal point, or an obvious error in designating a unit can be corrected by one of the Procurement Directors as long as it is verified with the bidder.
 3. Bidders are also allowed to identify a mistake in the preparation of their bids and request a change. The request must be made in writing and include details of the error.
 4. A determination will be made by one of the Directors of Procurement as to whether a bidder will be able to alter or withdraw its bid, because of an alleged mistake.
 5. The determination made by the Director of Procurement will be written and attached to the bid document along with any bidder verification. All such documents will become part of the bid and be reflected in the award.
- b. Bid Omissions and/or Discrepancies** - If a discrepancy between a unit price, extension or total price occurs, it should be resolved as follows:
1. Where a unit price is bid for a contract line, but no extension is provided, the CA shall provide the extension based on the unit price bid and the estimated quantity for that contract item.
 2. Where an extension is provided by the bidder in the “Amount” column, but no unit price appears in the “Unit Price” column of the bid, one of the Directors of Procurement shall provide the unit price by dividing the “Amount” figure provided by the bidder by the estimated quantity.
 3. Where no figure is provided by the bidder in both the “Unit Price” and “Amount” columns for one or more contract line items or where no figure is provided in the “Amount” column for one or more “Lump Sum” contract line items, the bid shall be non-conforming and shall be rejected.

3.4.11 Responsiveness of Bids - If a bid conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the bidder, the bid is responsive.

- a. **Evaluation Sequence** - The following is a sequence of evaluation that is useful for explanation and may also be useful in practice; however, the concepts and correct determinations are far more important to a successful procurement than is the sequence. Examination of bids logically begins with the lowest bidder.
- b. Once the lowest bidder is identified, its responsiveness should be determined. "Responsiveness" is a concept critical to the sealed bidding process. It is determined from the bid documents themselves and, with few exceptions, is determined with no discussions or further input from the bidder.

Examples of bids typically considered non-responsive include:

- The bid fails to conform to material requirements;
 - The bid does not conform to applicable specifications (unless the IFB allowed alternates);
 - The bid fails to conform to delivery schedule or permissible alternatives;
 - The bid imposes conditions that would modify the requirements of the IFB or limit the bidder's liability;
 - There is a condition of the bid which affects the substance of the bid (i.e., affects price, quantity, quality, delivery of the items offered, or works an injustice on other bidders);
 - The bid contains prices for line items that are materially unbalanced (i.e., figures in the bid conflict with the total bid price);
 - The bidder fails to furnish a bid guaranty in accordance with the requirements of the IFB;
 - The bidder takes exception to any material terms and conditions; or
 - All material addenda to the solicitation were not acknowledged.
- c. If there is any uncertainty, Procurement may seek the advice of the Law Department regarding the responsiveness of a bid.
 - d. Procurement and/or the PM will confer with the requesting department on any technical issue affecting responsiveness.
 - e. Minor informalities or irregularities in bids may be waived, or a bidder given an opportunity to cure. These are deficiencies deemed to have no effect on the relative standing of or be otherwise prejudicial to other bidders. This

determination is made by one of the Directors of Procurement and documented for the record.

3.4.12 Responsibility of Bidders - Once it is determined that there is a low priced bidder who is responsive, Procurement must then begin the more subjective process of determining the bidder's responsibility.

- a. Unlike responsiveness, which normally can be finally determined based on the bids, a determination of responsibility may be affected by new information up to the time of contract award. Thus, in ascertaining whether a bidder is responsible, discussions may be held with the bidder to discuss these factors so that, by the time of award, a positive determination can be made.
- b. Contracts will be awarded only to responsible contractors. A responsible contractor is one which meets the following standards:
 1. Has adequate financial resources, or the present identifiable ability to obtain such resources as required during the performance of the contract, if adequate security is not otherwise furnished.
 2. Is able to comply with the required or proposed delivery or performance schedule.
 3. Has a satisfactory record of performance or the equivalent.
 4. Has a satisfactory record or reputation of integrity and is not debarred or suspended by the federal government or otherwise ineligible to contract with the government. The U.S. Government's "List of Parties Excluded from Federal Procurement Programs" (<http://epts.arnet.gov>) must be reviewed.
 5. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
 6. Has the necessary organization, experience, operational controls and technical skills, or the ability to obtain them.
 7. Has the necessary production, construction and technical equipment and facilities, or the ability to obtain them.

3.4.13 Award to Other than Low Bidder – Amtrak's policy to award contracts to the lowest responsive and responsible bidder occasionally makes it necessary to bypass the apparent low bidder, who is ultimately determined to be either non-responsive or non-responsible.

- a. When a thorough evaluation of bids determines the low bidder not to be responsive or responsible, the apparent low bidder is rejected and award made

to the bidder determined to be the next lowest responsive and responsible bidder. (The reason for rejecting the low bid shall be documented.)

b. Awards to other than the lowest bidder must be approved by the Chief Logistics Officer.

3.4.14 Late Bids – See Section 3.3.9.3 (c)(10).

3.4.15 Bid Withdrawal/Cancellation - Bidders will be permitted to modify or withdraw their bids prior to the bid opening only under certain circumstances.

- a. When to allow withdrawal of bids** – If a written request is received from a bidder prior to the time and date set for receipt of bids that it wishes to withdraw a bid it has previously submitted, that request should be honored. If the request to withdraw is received after the time and date set for receipt of bids but before the opening of the bids, the same rules apply to that request as would apply to the late receipt of a bid. (See Section 3.3.9.3 (c) (10))
- b.** If a bidder has established the existence of a mistake in its bid prior to award of the contract, it should be allowed to withdraw its bid if:
 - The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - The bidder submits proof which clearly and convincingly demonstrates that a mistake was made.
- c.** If a bidder withdraws its bid after bid opening, the CA will normally proceed to the next lowest bidder without expecting compensation from the erring bidder. However, if the bidder is refused permission to withdraw, and attempts to withdraw by failure to perform (e.g., failure to produce a performance bond), Amtrak may be in a position to terminate the bidder for default, minimize Amtrak’s damages by awarding to the next lowest bidder, and recover the damages including the bid differential from the defaulting bidder.

3.4.16 Cancellation of IFB Prior to the Close Date - IFBs should not be canceled unless cancellation is in Amtrak’s best interests. Where an IFB is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom IFBs were issued.

3.5 Competitive Proposals (Request for Proposals - RFP) – Competitive proposal procedures should be used when IFB procedures are not appropriate. (See Section 3.3.1)

- a.** Procurement by competitive proposal involves the solicitation of proposals through an RFP. The RFP may solicit either a technical or both a technical and price/cost proposal (separately enclosed), and must include a description of the goods or

services to be purchased, all significant evaluation factors listed in descending order of importance, and any other relevant information such as schedules, dates and deadlines for the completion of the work. The actual values assigned to each evaluation factors shall not appear in the RFP. Actual values are for Amtrak internal purposes only.

- b. Since goods or services requested by an RFP can involve non-standard items or complex services, the CA should generally request additional information such as: a complete description of the work to be done; program and approach, including detail of the tasks involved; and capability data, including related experience of the proposing firm and resumes of key personnel. All of this information is to be presented to Amtrak in the form of a technical proposal.
- c. To the maximum extent possible, Amtrak will make every effort to solicit an adequate number of proposals and to accept and consider all responses to an RFP.
- d. Amtrak reserves the right to make a selection and award based on the original proposals, without negotiation with any offerors. If negotiations are conducted, however, Amtrak may negotiate with the highest rated firm or with offerors deemed to fall within the competitive range, defined as having a reasonable chance of being selected for award.
- e. If a satisfactory contract cannot be negotiated, negotiations will be formally ended with all offerors.
- f. Award will be made to the responsive, responsible firm whose proposal is most advantageous to Amtrak, with price and other factors considered.

3.5.1 Responsibilities of Requesting Department

- a. Prepare a request which will include pertinent details, project summary and a scope of work for inclusion in the RFP.
- b. Prepare a scope of work which describes accurately and in clear concise language the technical requirements to be met by a contractor, to meet Amtrak's needs. The scope of work should be in a format that describes in logical steps the complete service or item to be delivered for each milestone of the particular requirement from inception to 100% completion. A work schedule should also be included.
- c. Send purchase requisition and associated scope of work to Procurement for processing.
- d. Identify evaluation criteria against which the proposals can be evaluated.
- e. Prepare a cost estimate in the same format that contractor costs will be required to follow.

- f. Assign a PM and recommend Technical Evaluation Committee members to Procurement.
- g. Provide technical support to Procurement as needed during solicitation and negotiations.

3.5.2 Responsibilities of Procurement Department

- a. To the extent possible, review scope of work developed by requesting department for clarity, completeness, and accuracy. Question Requestor about any concerns and work with him/her to modify the scope of work as necessary.
- b. Review purchase requisition for adherence to established policy and procedures.
- c. For FRA grant-funded procurements, incorporate all Federally required clauses and provisions.
- d. Establish a schedule for issuing the RFP, receipt and evaluation of proposals and contract award, in consultation with Requestor.
- e. Advertise those procurements that are likely to result in an award of \$1 million or more in a generally distributed publication, unless a waiver is approved by the Chief Logistics Officer.
- f. Issue RFP and any and all addenda to the RFP.
- g. Schedule, moderate and document the pre-proposal conference, if held.
- h. Accept and record all proposals received, safeguarding the technical and price/cost proposals and the confidentiality of the information contained in the proposals.
- i. Assemble and chair the Technical Evaluation Committee (TEC), provide proposals for their review, tabulate the scores and establish rank.
- j. In those instances where cost/price proposals are received, analyze and rank the proposals.
- k. Perform cost/price analysis.
- l. Negotiate contract terms, conditions and costs.
- m. Award contract in accordance with Amtrak policies and procedures and delegated authority.

- n. Prepare Contract File, compiling and maintaining all information necessary to document the significant history of the procurement.

3.5.3 Request for Proposal Preparation

- a. All RFPs should be developed in as organized a fashion as possible. Since the scope of work forms the basis of the contract activity, the scope of work should be clear and concise, divided into separate tasks which succinctly detail what is expected of the contractor.
- b. The objectives of the work to be completed should be separately delineated in the scope of work and any special requirements particularly emphasized. Deliverables should be itemized, if possible.

3.5.4 General Instructions to Offerors (Prepared by Procurement)

- a. **Introduction** - The introduction should briefly explain what goods or services are being sought, and under what parameters they are being procured. At a minimum, the following should be included:

1. The title of the project;
2. Listing of the documents included in the RFP;
3. Dates proposals are due and oral presentations and/or pre-proposal conferences will be held, if applicable;
4. Amtrak address and identification of responsible Procurement official; and
5. Instructions regarding how many copies of proposals should be submitted, what type of proposals (technical and/or price/cost) are required, and how they should be submitted (sealed, separate, labeled, etc.).

- b. **Project Description** - The project description portion of the RFP explains the goods or services being procured.

Depending on the complexity of the project it should contain:

1. Background information/project history
2. General scope of work
3. Detailed scope of work
4. Schedule information
5. References, project specific data, such as standards, regulations, etc.

c. Proposal Requirements - Proposal requirements should be clearly enumerated and, at a minimum, include:

1. Instructions regarding DBE involvement.
2. Guidance regarding proposal format including amount and type of information required and any limits placed on submittal of information.
3. Forms which must be filled out.
4. Time requirements.

d. Method of Selection - All RFPs issued by Amtrak must identify evaluation factors listed in descending order of importance

The purpose of disclosing the evaluation factors is so that:

- Offerors can more accurately respond to Amtrak's needs rather than solely rely on the technical specifications alone;
- Offerors will be able to clearly present the information needed to conduct the evaluation; and
- The appearance of favoritism in offeror selection will be diminished.

e. General Provisions - This section consists of the terms and conditions, including those that are mandated by law or regulation.

f. Documents and Attachments - This section should contain any special documents, exhibits or information relating to the procurement.

3.5.5 Pre-Proposal Conference - Pre-proposal conferences can and should be held for any procurement where a determination is made that the complexity of the procurement warrants one.

3.5.6 Addendum – Revisions to an RFP prior to receipt of proposals sometimes become necessary to make changes in requirements, delivery schedules, close dates, etc., or to correct defective or ambiguous information. Should such changes become necessary, they will be accomplished by issuance of a sequentially numbered addendum in accordance with the procedures outlined in Section 3.3.8.2 hereof.

3.5.7 Cancellation of RFP Before Close Date - RFPs should not be canceled unless cancellation is in Amtrak's best interests. Should it become necessary to cancel an RFP, the CA should:

- a. Return unopened any proposals already received with an explanation for canceling.
- b. Immediately notify in writing any prospective offerors with an explanation.
- c. Include in the notice of cancellation the name of the procurement, the date it was issued and any identifying number.

3.5.8 Receipt And Safeguarding of Proposals - To ensure the integrity of the procurement process, Procurement shall secure and safeguard unopened all proposals received prior to the established time for opening of proposals.

- a. All information received in response to an RFP is to be treated as confidential, to the maximum extent possible. All requests for disclosure of information under the Freedom of Information Act (FOIA) will be handled by Amtrak's FOIA Officer.

b. Specific Responsibilities:

1. Time and date stamp all proposals received.
2. Ensure proposals are properly marked and, if applicable, technical and cost/price proposals separately enclosed.
3. Return any withdrawn proposal or any late proposal that is not accepted by Amtrak to the offeror. Include an explanation of the reason for the return. (Late proposals shall be handled in accordance with Section 3.3.9.3(c)(10)).
4. After the close date, ensure the proposals are in order, and hold until the technical proposals are distributed to the Technical Evaluation Committee for review.

3.5.9 Evaluation and Award - The following is a listing of elements commonly found in the competitive proposal method of procurement:

- a. Both a technical and price/cost proposal are requested so that they may be evaluated, usually by separate staff. Where technical objectivity is important, it is a better practice to have a Technical Evaluation Committee evaluate the technical proposals (see Section 3.5.12 (c) below).

- b. The evaluation factors to be considered in the award are identified in the RFP in descending order of importance. This requires only the ranking of the factors without describing the process for applying the factors to proposals.
- c. Amtrak's standard RFPs notify prospective offerors that award may be made on the basis of initial proposals submitted without any negotiations or discussions.
- d. Amtrak's standard RFPs notify prospective offerors that, while price is important, award will be made to the offeror whose overall proposal is most favorable to Amtrak.

3.5.10 Proposal Guaranty - Although performance bonds are often appropriate, the use of a proposal guaranty is less common than a bid guaranty. Because the offerors generally have an opportunity during negotiations to render their proposals unacceptable, part of the purpose of bid guaranties cannot be achieved in the case of proposals. However, if it is particularly important that the initial proposals be firm commitments by the offerors, that frivolous proposals not be submitted, or that offerors be able to provide performance bonds, then a proposal guaranty in the form of a cashier's check, letter of credit, or approved bond may be cost-effective.

3.5.11 Solicitation Guidelines

- a. Procurements that are likely to result in an award of \$1 million or more shall be solicited using a formal solicitation process. In addition, the solicitation shall be advertised in a generally distributed publication, unless a waiver is approved by the Chief Logistics Officer.
- b. Procurements with an estimated value of \$100,000 or greater will be solicited using a formal solicitation process.
- c. Procurements estimated at less than \$100,000 may be solicited via the small dollar procurement process, which requires obtaining competition from an adequate number of sources (at least two).

3.5.12 Evaluation of Proposals – The RFP will contain evaluation criteria and their relative importance.

- a. It is the policy of Amtrak to include in all RFPs the evaluation factors that will be used by the Technical Evaluation Committee in rating proposals. All factors must be listed in the RFP in descending order of importance, and cannot be changed after receipt of proposals. Rankings, rather than actual values, should be published in the RFP even though actual values will be used in the evaluation. The actual values assigned must be documented in the file prior to issuing the solicitation.

- b. Should it become necessary to change either the evaluation criteria or the values assigned after proposals are received, the solicitation must be amended and offerors permitted to submit new proposals. There are no exceptions without the approval of the Chief Logistics Officer.
- c. **Technical Evaluation Committee** - Proposals are initially evaluated individually by each member of the TEC formed for a specific procurement. A subsequent committee meeting may be scheduled by Procurement if individual scores are grossly inconsistent. The following guidelines will govern the formation of the TEC:
 1. The membership of the TEC should generally be determined by the PM in consultation with Procurement prior to the issuance of the RFP and should not be changed after issuance of the RFP without a documented explanation for the change.
 2. The PM will be assigned by the requesting department.
 3. The committee should consist of a minimum number of three members, including the PM. If less than three members are proposed, permission must be received from the Chief Logistics Officer.
 4. The Committee should generally consist of members from more than one business unit, so as to broadly reflect Amtrak's interests. Unless approved by the Chief Logistics Officer, a member of the TEC should not be in a supervisory position to another member.
 5. No TEC member shall have any ties, financially or otherwise, with any firms submitting a proposal. Should even the appearance of a conflict of interest develop, the affected member of the TEC must resign from the TEC. [*Note: For purposes of determining whether a conflict exists, review P/I 1.3.1 (Amtrak's policy on Ethical Conduct and Conflict of Interest.)*]
 6. Although not an evaluating member of the TEC, the CA shall serve as the chair of the TEC.

d. Responsibility for Evaluating Proposals

1. Procurement Department's Responsibilities

- The CA shall perform the following functions:
 - Act as Chair of the TEC.
 - Review all responses to the RFP for compliance with Amtrak's requirements.

- Act as the Contracting Official’s Authorized Representative during the procurement process (and subsequent contract administration).
- Advise the TEC on matters of Procurement policy and procedure.
- Distribute copies of the “Statement of Confidentiality and No Conflict of Interest” certification to all members of the TEC for execution. (See Appendix B.11)
- Convene all meetings of the TEC.
- Direct the TEC’s activities throughout the procurement process.
- Serve as the sole point of contact between Amtrak and prospective offerors during the procurement process.
- Review and compile the results of the TEC’s evaluation of the technical proposals.
- Establish a ranking of proposals based on the TEC’s technical rating of proposals.

2. Evaluation of a Proposal – The CA shall perform the following actions: (i) tabulate the results of the TEC’s evaluation of all technical proposals; (ii) conduct a commercial evaluation to include review of the cost/price proposals and offerors’ compliance with commercial terms (e.g., submittal of all certifications) and record the scores thereof; and (iii) establish a ranking based on combined technical and commercial evaluation scores. A determination regarding technical acceptability may be based on a pre-determined minimum score of 70% of total technical points.

- a. The CA shall also review the results of the technical evaluation with the members of the TEC. If individual scores are grossly different, he/she shall request a meeting of the TEC to discuss differences, and re-score if necessary.
- b. Price must be an evaluation factor for all proposals. On a combined technical/price scale of 100%, the price “weight” assigned shall typically range from 10% to 60%. Variations from the typical range must be approved by the Chief Logistics Officer.
- c. The CA shall determine whether oral presentations are necessary. If so, he/she shall schedule them and notify all offerors and the TEC when they are scheduled.
- d. The CA shall conduct oral presentations and establish a final ranking of all proposals based on technical and commercial evaluations.
- e. The CA shall determine those offerors in the competitive range.

- f. The CA shall perform a cost/price analysis of the highest ranked proposal(s) in anticipation of negotiation or award without negotiation. If award will be made without negotiation, go to step h.
- g. The CA shall initiate, coordinate and conduct negotiations with the intended awardee and review results with the TEC.
- h. The CA shall conduct a responsibility review of the intended awardee. (See Section 3.4.12)
- i. The CA shall ensure that the procurement activity was conducted in accordance with the established Procurement policies and procedures, and any applicable local, state, and federal requirements.
- j. The CA shall prepare a written recommendation to the Contracting Official to award the contract to the responsive and responsible offeror whose proposal will be most advantageous to Amtrak, price and other factors considered.
- k. The CA shall prepare a file which contains the following:
 - A copy of the advertisement(s), indicating publication and date(s) which it appeared, if applicable.
 - Documentation supporting the determination of competitive range.
 - Technical evaluation score sheets signed by the TEC members.
 - TEC members' executed copy of the "Statement of Confidentiality and No Conflict of Interest" certification.
 - Cost/price analysis to demonstrate that the price is fair and reasonable.
 - Statement that price is fair and reasonable.
 - Copy of the proposed contract.
 - Copy of all proposals submitted.
 - Negotiation documentation.

3. Responsibilities of Technical Evaluation Committee Member - The TEC member shall:

- a. Complete and sign the “Statement of Confidentiality and No Conflict of Interest” certification, a copy of which is included as Appendix B.11. This certification must be submitted along with the score sheets. The certification shall be filed with the solicitation documents in the Procurement files. **NOTE:** If a TEC member declines to complete the certification, the Contracting Official should be notified immediately.
- b. Be present at all meetings held prior to contract award.
- c. Serve as a technical expert at these meetings, answering any and all questions relative to the technical specifications of the project.
- d. Independently evaluate technical proposals and score them based on the evaluation criteria in the RFP document and the technical score sheet.
- e. Return the scored evaluations at the time required by the CA.

The TEC member shall not:

- Initiate any communication with prospective offerors at any time unless directed by the CA.
- Indicate the project’s dollar estimate to prospective offerors or any individual or firm not designated by the CA to receive such information.
- Meet with prospective offerors at any time other than that required by the CA as shown in the RFP document or any addenda.
- See price/cost proposals prior to all technical evaluations being completed.
- Discuss the evaluation or scoring with other TEC members until all scores are submitted to the CA.

4. Responsibilities of the Project Manager - The Project Manager shall:

- a. Perform all the duties required of a TEC member, as applicable.
- b. Prepare a purchase requisition that includes a written estimate of the cost to produce the desired goods or services identified in the RFP prior to the issuance of the RFP.
- c. Identify the members of the TEC and transmit the names to Procurement in writing prior to the issuance of the RFP.

- d. Identify, in consultation with Procurement, the evaluation criteria and weights.
- e. As appropriate, solicit committee review and input on the project specifications and evaluation criteria prior to the issuance of the RFP.
- f. Support the requirements of the CA.

3.5.13 Discussions and Clarifications – The CA may wish to obtain clarifications from one or more offerors, or hold discussions with all offerors immediately after receipt of proposals. However, it is also possible to proceed with evaluations and determination of a competitive range as described below before discussions are held. Most typically, the first discussions are oral presentations made by a short list of offerors within a competitive range.

- a. There is no requirement to conduct discussions with offerors provided:
 - 1. The solicitation did not commit in advance to discussions or the solicitation notified all offerors that award might be made without discussion.
 - 2. The award is, in fact, made based on information submitted with the original proposal.
- b. The competitive range is determined on the basis of cost or price and other evaluation factors and includes the proposals that have a reasonable chance of being selected for award.

3.5.14 Additional Submissions

- a. **Request for Revised Proposals** – When negotiating with an individual offeror(s), a revised proposal may be requested when appropriate. Unless explicitly stated otherwise, the revised proposal extinguishes the prior proposal. The offeror should identify all changes in the revised proposal.
- b. **Request for Best and Final Offer** - A best and final offer (BAFO) may be requested of each offeror in the competitive range at the conclusion of discussions (negotiations) with those offerors. If an offeror does not respond to a request, the most recent proposal is considered to be its best and final offer.

3.5.15 Award Without Discussions – If Amtrak makes an award, it will be made to the responsive, responsible offeror whose overall proposal is, in Amtrak’s sole judgment, most favorable to Amtrak, based on technical content, price, and other evaluation factors set forth in the RFP. One of the initial proposals may be

accepted if it can be clearly demonstrated that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price.

3.5.16 Withdrawal of Proposals

- a. Firm proposal** - A promise to undertake specified obligations in exchange for consideration which promise may be accepted for a specified or implied period of time; a firm proposal cannot be withdrawn during the period for which it remains firm.
- b.** The solicitation states a date and time by which proposals must be submitted, and a period following that date during which the proposals remain firm. Competition is best served and unnecessary alternate proposals are avoided by allowing offerors to withdraw or modify their proposals up to the close date. However, after the close date, the proposals are usually firm and cannot be withdrawn without approval of Chief Logistics Officer.

3.5.17 Debriefing Unsuccessful Offerors - Offerors excluded from the competitive range or from award may request a debriefing or the CA may offer to provide a debriefing. A candid explanation of the process can serve the purposes of defusing any potential dispute by the disappointed offeror and encouraging future proposals. However, there is no requirement to debrief unsuccessful offerors; the risk of litigation and other risks must be carefully weighed. (See Section 4.6, Debriefing of Bidders/Offerors)

3.6 Non-Competitive (Sole/Single Source) Procurements –Refer to Amtrak’s Sole/Single Source Procurement Policy in P/I No. 11.47, a copy of which is attached hereto as Appendix B.8. All sole/single source procurements shall be made in accordance with this policy.

Chapter 4 – Award of Contracts

- 4.1 Overview** - Effective contract preparation requires that Amtrak's procurement needs be met efficiently and its legal rights protected in all contracts. State and Federal regulations must be fully complied with, as appropriate. For a contract to be complete, it must include the contract number, statement of work, specifications, period of performance, price, general provisions and supplementary general provisions.

For most routine purchases made by Amtrak, the purchase order issued to the vendor is sufficient to form a binding agreement. Routine purchases in this case generally include small dollar procurements and those procurements with relatively simple specifications or requirements. Formal contracts (i.e., those signed by both parties) are generally not required for these procurement actions.

- a. There are procurements that do require the preparation of a formal contract between Amtrak and a vendor, such as the following:
 1. Construction procurements;
 2. Capital equipment procurements;
 3. Consulting services procurements;
 4. Architectural & Engineering services procurements;
 5. General services procurements where an IFB/RFP has been issued with a specific scope of work;
 6. Any procurement action that requires a formal contract in order to meet or protect the best interests and needs of Amtrak.
- b. The Chief Logistics Officer or designee, working with the requesting department and the Law Department, has the responsibility for final determination of contract requirements and required preparation, execution, and management of resulting contracts.
- c. Some form of cost or price analysis must be performed on every procurement action.
- d. The contract must state clearly the rights and responsibilities of all parties to the contract. If care is taken to construct a complete and legally sufficient contract, the number of legal confrontations during the life of the contract will be greatly reduced and, for those that do occur, the contract should contain instructions for resolution of disputes in the form of a disputes clause.

4.2 Responsibilities of Procurement Representative

- a. Prepare contract documents using forms developed and approved by the Law Department. If pre-approved forms cannot be used, the Law Department should be consulted.
- b. Ensure that necessary provisions and clauses are included.
- c. Obtain approval from the Chief Logistics Officer or designee of the complete contract document package.

4.3 Cost and Price Analyses – In general, the purpose of a cost or price analysis is to ensure that Amtrak does not pay unreasonably high prices. However, prices that are unreasonably low can also be detrimental to Amtrak if they prove to be an indication that the vendor has made a mistake or doesn't understand the work to be performed. Unless waived by the Chief Logistics Officer, a cost or price analysis should be performed on every procurement action, including contract modifications to determine the reasonableness of a proposed contract price. All analyses involving procurement actions of \$5,000 or greater shall be documented in the Procurement file.

4.3.1 Independent Cost Estimate - Before issuing a solicitation, the CA should seek an independent estimate of the price level for the goods or services to be purchased. The estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as drawings, specifications, and prior data (such as cost data from prior procurements). The estimate can assist in a determination of reasonableness of price.

4.3.2 Cost Analysis - A cost analysis entails the review and evaluation of the separate cost elements and the proposed profit of a vendor's cost or pricing data and the judgmental factors applied in estimating the costs. A cost analysis is generally conducted to form an opinion on the degree to which the proposed cost, including profit, represents what the performance of the contract should cost, assuming reasonable economy and efficiency.

- a. A cost analysis should be performed when the vendor is required to submit the elements (i.e., labor hours, overhead, materials) of the estimated cost (e.g., professional, consulting, architectural and engineering services contracts).
- b. A cost analysis is necessary whenever 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.

- c. **Profit** - Amtrak 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.
- d. **Federal Cost Principles** - FRA grant funds may only be used by Amtrak to pay for allowable costs. Allowable Cost is defined in 48 CFR 31.201-2 Determining Allowability.

4.3.2.1 Conducting Cost Analysis - Cost analysis entails reviewing each element of cost to determine whether the vendor's estimate constitutes an accurate and reasonable prediction of the cost to be incurred during performance and whether the vendor is using sound business techniques and judgments in allocating resources to a contracted effort. The contract price is figured by adding a rate of profit that is determined to be fair. All reasonable costs of performance can be considered but the costs must be consistent with Federal cost principles found in 48 CFR Part 31.

4.3.2.2 Responsibilities

a. **Procurement** - The Procurement Department should:

- Obtain the cost and/or pricing data that is needed to analyze the bid/proposal.
- Identify the expertise within Amtrak that needs to be called on to assist in the cost analysis (e.g., OIG, Finance, Engineering, Mechanical).
- Determine fairness and reasonableness of price.
- Determine, analyze, and justify amount of profit.
- Document the cost analysis.
- Make the final business assessment.

b. **Project Management** - Project Management should provide technical knowledge and experience about performance aspects of the contract including, as required:

- Contractor methodology
- Labor hours
- Required materials
- Field pricing data (i.e., certified payrolls)
- Cost engineering data
- Quality control
- Production capabilities

- [Post] support functions and capabilities
 - Special circumstances
- b. **Office of Inspector General (OIG)** – When appropriate, the OIG should review the vendor’s books and records, commenting on accounting methods or practices that may significantly impact proposed price and/or cost data. The OIG should also
- Coordinate all the activities necessary to complete the analysis.
 - Reconcile the cost analysis data with the vendor’s cost proposal.
 - Make a determination, based on all the information in the cost analysis, of the effect on the vendor’s overall price.

4.3.2.3 Documentation - All cost analyses completed must be documented and filed in the contract file. The complexity of the analysis and the document produced will vary depending on the size and type of the procurement. The four basic parts of a documented cost analysis are:

- a. Discussion of the cost elements that were examined; a narrative of the findings regarding vendor’s estimates; and the identification and reconciliation of any differences between Amtrak’s estimated cost and that of the vendor.
- b. Identification of the procurement analyzed, to include: vendor name; planned procurement information; IFB/RFP number; product or service involved; estimated and proposed cost.
- c. Explanation of depth and detail of the analysis, to include: identification of who was involved in the analysis; how costs were estimated; what relationship proposed costs have to past experienced costs and projected costs; what analysis of subcontracting was done; what costs, if any, are identifiable as recurring and/or non-recurring contractor assumptions; and anticipated profit.
- d. Determinations made regarding the reasonableness of cost based on the entire cost analysis, including both positive and negative conclusions.

4.3.3 Price Analysis - A price analysis involves examining and evaluating a proposed price without evaluating its separate cost and profit elements. Price analysis is based essentially on data that is verifiable independently from the vendor's data. A price analysis may be used to determine the reasonableness of the proposed contract price.

Price analysis is a less complex, less costly and less time consuming process than cost analysis. It does not delve into a detailed examination of costs, overhead, profit, etc., but simply compares the total price proposed with other prices to determine reasonableness. The complexity of the analysis will vary in relationship to the complexity, degree of competition, and dollar value of the procurement.

To be valid, the data compared in a price analysis must be recent and similar. Two or more price comparisons and/or the independent estimate satisfy the need for price analysis.

Price analysis is sufficient to determine the reasonableness of price when multiple sealed bids are received in response to a solicitation, commercial items are being purchased that are readily available to the public in a price competitive environment, or the procurement involves standard items with a clear price history.

4.3.3.1 Primary Activities in the Price Analysis:

- a. Some common price analysis techniques consist of the following:
 1. Comparison of proposed prices received in response to the solicitation, as long as adequate competition has been established.
 2. A comparison is made of prior proposed and contracted prices with current proposed prices for the same or similar item. For example, last year Amtrak received 5 bids for this same item and the prices this year are only 1% higher. In light of inflation, this seems to be a reasonable price. Prior price comparisons may be affected by: changes in economic conditions between the times of the two procurements; differences in quantities; and delivery schedules.
 3. Comparison with competitive, published price lists, published market price of commodities, similar indices, and discount or rebate arrangements.
 4. Comparison of proposed prices with the independent estimate performed prior to the solicitation, although this alone may not always be adequate to warrant a determination that the price is reasonable.
 5. The application of unit costs (e.g., dollars per pound, per horsepower, or other units) is used to highlight significant inconsistencies that warrant additional pricing inquiry.

- b. If, on the basis of a price analysis, Amtrak is able to document its determination that the price is fair and reasonable, and if the bid/proposal is responsive and the bidder/offeror responsible, Amtrak may proceed with the award.
- c. To make a fair comparison, nonrecurring costs, such as design, capital equipment, production facilities, may be removed to equalize the analysis.

4.3.3.2 Responsibilities – Performed by Procurement:

- a. Determine that adequate competition exists to allow price analysis.
- b. Confirm that all comparisons made were valid, similar and recent, addressing any dissimilarities or inconsistencies.
- c. Document the price analysis.

4.3.3.3 Documentation - The price analysis should be written, filed, and indicate the various comparisons made, including any data used as documentation of historical, catalog or market prices and should conclude whether there has been a determination of price reasonableness.

4.4 Pre-Award Audit

4.4.1 Discretion of the Contracting Agent – At the discretion of the CA, Amtrak may require audit review prior to the award of any noncompetitive contract, individual contract change or modification where the price will be based upon vendor supplied cost and pricing data.

4.4.2 Audit and Inspection of Records – The Audit and Inspection of Records clause should be included in all contracts.

4.4.3 Procedures

- a. **Scope of Audit** - All audits shall be sufficient in scope to allow an auditor to render an informed opinion as to the appropriateness of the cost or pricing data submitted and the fairness of the contract price.
- b. **Audit Exceptions** - Audits are generally not required when any of the following conditions exist:
 - 1. The procurement relates to items that are substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public.

2. Sufficient audited data is already available to determine the reasonable of the price.
3. Reasonable comparisons can be made of acceptable prior purchases, quotations or by other cost analyses for a similar item or service from different suppliers. Allowances should be made for differences in quantities, conditions, specifications, delivery time, etc.
4. The procurement relates to spare or replacement parts from the original supplier in order to protect equipment during its warranty period.
5. When the Chief Logistics Officer determines that proceeding without an audit is in the best interest of Amtrak, e.g., Amtrak might incur financial or operational impacts that are more significant than the price considerations of the acquisition.

4.4.4 Duties and Responsibilities

- a. The Procurement Department shall:
 1. Include Audit and Inspection of Records clauses in all contracts to protect Amtrak's right to access and examine all pertinent books, records and data of the contractor.
 2. When deemed appropriate, ensure that timely requests for audit review are made.
 3. Forward cost and pricing support documents, plus all contract and contract-related data necessary for the audit, to OIG - Audits. NRPC Form 212 or 213 may be utilized to format the cost and pricing data.
 4. Request audit review of bids/proposals where a valid need is perceived to exist.
 5. Consider audit findings and audit recommendations in all contract negotiations. A memorandum of negotiation must be prepared, setting forth the rationale for all departures from audit recommendations.
 6. Act as liaison between the auditor and the contractor to provide audit access to contractor's books, records and other data.
 7. Provide for retainage of payments, if applicable, until any audit negotiations are concluded.

4.5 Request for Procurement Authority (\$250,000 or Greater) – The following procedures will be observed by all Procurement personnel when requesting authorization for award of contracts of \$250,000 or greater.

4.5.1 Contract Authorization Form – CAs originating this document for review and approval must do so in such a manner to make it clear and concise to permit the review and concurrence of the Chief Logistics Officer, who will be seeking a clear understanding as to what the contract is for, who is funding it, and the basis of award. See Appendix B.7, for a sample request submission.

4.5.2 Additional Approvals - For contracts with a value beyond the Chief Logistics Officer's contracting authority, a Staff Summary must also be prepared. See Appendix B.10, for a sample staff summary sheet.

4.6 Debriefing of Bidders/Offerors - Debriefing of unsuccessful bidders/offerors is not required, but may be valuable to both the bidders/offerors and Amtrak. A debriefing may be helpful for a number of reasons:

- It communicates a sense of fairness and appreciation to bidders/offerors who have made sizeable investments of time and resources in preparing bids/proposals for Amtrak.
- It may avoid a protest by convincing a disappointed bidder/offeror that Amtrak's decision was carefully made, factually well supported and the best one for Amtrak.
- Of most importance, it can help bidders/offerors improve their future bids/proposals, which is a definite advantage to them and to Amtrak.

4.6.1 Method of Debriefing - Debriefings are to be conducted orally. Individuals who participated in the evaluation of proposals may participate in the debriefing. It is important, however, for the debriefing team to meet and review beforehand what information will be communicated and what information is considered inappropriate to divulge. The Procurement official will control the meeting and carefully control what is being divulged.

4.6.2 Scope of Debriefing - The primary objective of the debriefing is to help the bidder/offeror improve its chances of success on future bids/proposals, and not to defend Amtrak's selection decision. In light of this purpose, debriefings should:

- Focus on the significant weaknesses, deficiencies, and strengths in the bid/proposal. The goal is to communicate to the bidder/offeror those aspects of its bid/proposal that were positive and those that need to be improved.
- Provide a summary of the rationale for award.
- Avoid indicating the overall ranking for the technical or price/cost proposal evaluation.

- Avoid disclosing specific numerical evaluation scores and detailed, point-by-point comparisons with other bids/proposals.

4.6.3 Disclosure of Information – Information not to be disclosed includes:

- a. Trade secrets.
- b. Confidential manufacturing processes and techniques. (Individual states in which Amtrak operates may have different requirements regarding the disclosure of information. Therefore, these laws should be reviewed with the Law Department.)
- c. Financial or business information that is confidential, such as cost information, profit, overhead rates, etc.
- d. Names of the members of the Technical Evaluation Committee.

4.6.4 Time of Debriefing - Debriefings will not be conducted before contract award. Information communicated to a vendor prior to award could encourage a protest or it might result in an attempt by the unsuccessful vendor to resubmit an improved bid/proposal and delay the selection process.

4.7 Bid Protests - Amtrak is solely responsible for the settlement and satisfaction of all contractual and administrative issues which may arise out of procurements, including disputes, claims, and protests of award.

4.7.1 Formal Bid Protest Procedure – Amtrak does not have, and is not required to have, a formal bid protest procedure. However, if any bidder/offeror challenges the appropriateness of a contract award decision, then such decision shall be reviewed by Amtrak’s Chief Logistics Officer for a determination of the appropriateness of the decision.

- a. If the Chief Logistics Officer were personally involved in the initial award decision, then the decision shall be reviewed by Amtrak’s General Counsel.
- b. Amtrak shall notify the bidder/offeror of the outcome of its review.

4.8 Documentation of Procurement Actions

4.8.1 Sealed Bid Procurements (IFBs)

4.8.1.1 Abstract of Bids - A written record of the award decision needs to be made. The elements of the award decision that need to be documented are:

- A tabulation and evaluation of bids. This will include a determination that the low bid is responsive to the IFB. Responsiveness is discussed in Section 3.4.11. When there are lower bids than the bid being accepted for award, the award decision document must give the reasons for rejecting the lower bids. When there are equally low bids, the documentation must describe how the tie was broken.
- A determination that the low bidder is responsible. Responsibility is discussed in Section 3.4.12.

4.8.1.2 Documentation of Award Decision - For procurements in excess of \$25,000, Amtrak shall include in the procurement files the basis for contractor selection, the basis for award cost or price, and a justification for lack of competition, if applicable.

4.8.2 Negotiated Procurements (RFPs)

4.8.2.1 File Documentation of Selection Decision - Having considered all of the available proposal evaluation data, the CA must document the basis for the decision to select that offeror whose proposal is most advantageous to Amtrak, with price and other factors considered. The contract file documentation should include the following:

- **The Technical Evaluation** - The technical evaluation information indicating the relative strengths and weaknesses of the proposals, together with the technical risks (if any) of the various approaches.
- **Determination of Competitive Range** - The Competitive Range Determination identifying those proposals that had a reasonable chance of being selected for award, given their relative technical strengths and weaknesses, and their relative prices.
- **A Cost/Price Analysis** –The contract file should reflect evidence of a cost or price analysis. The CA may wish to prepare a separate cost/price analysis memorandum analyzing the costs or prices proposed against: (a) the independent cost estimate prepared prior to solicitation, (b) specific company information in the proposals, such as the particular technical approach being offered, and (c) any other pertinent information such as a technical evaluation of the cost proposal, an advisory audit of the offeror's cost proposal, or a comparison of prices offered with prior procurements.

If the contract being awarded is a cost-reimbursement type, the cost/price analysis needs to address the realism of the various cost elements proposed. Where the costs are unrealistically low, an

adjustment should be made to reflect what Amtrak believes the effort will actually cost given the offeror's specific technical approach, as well as its direct and indirect cost rates. This cost realism assessment must be carefully considered when determining which offeror's proposal represents the best value for Amtrak.

- **Determination of Selected Contractor's Responsibility** – Documentation regarding the selected contractor's responsibility should be included in the file.

4.8.2.2 Documentation of Award Decision - For procurements in excess of \$25,000, Amtrak shall include in the procurement files the basis for contractor selection, the basis for award cost or price, and a justification for lack of competition, if applicable.

Chapter 5 - Contract Administration

5.1 Documentation of Contract Administration

- a. The objectives of good contract administration are to ensure the following post award activities:
 - 1. Satisfying the requirement with respect to quantity and quality
 - 2. Ensuring timely delivery
 - 3. Protecting Amtrak’s interests through cost reviews and the monitoring of payments
- b. The extent of contract administration will vary depending on the type and value of the contract.
- c. The contract should contain the terms and conditions governing performance by the contractor. The CA shall enforce these terms and conditions.
- d. The CA shall maintain an appropriate system for contract management to ensure contractor compliance with the contract terms, including allowable cost provisions and the audit requirements of Amtrak and the Federal Railroad Administration, as incorporated into the contract.
- e. Depending upon the complexity of the contract, CAs may need to involve the following personnel in contract administration activities:
 - 1. Project Manager;
 - 2. Technical project personnel (e.g., user department personnel);
 - 3. Law Department personnel;
 - 4. Auditors;
 - 5. Operations personnel;
 - 6. Project control personnel, consultants; and
 - 7. Budget/finance personnel.

The participation of any of the above will be in the form of advisors to the CA.

- f. The CA is responsible for handling Amtrak’s business relationship with a contractor. This involves the responsibility for resolving contractual problems of a business (non-technical) nature such as terminations and defaults, negotiating contract modifications, authorizing changes in the contractual obligations of both parties, and settling disputes that arise during contract performance.

- g.** The PM is primarily responsible for providing day-to-day technical management of a contract. The CA will require the PM and staff to ensure that the contractor performs according to the technical requirements of the contract. In accomplishing this, the PM is responsible for the following:
1. Understanding the requirements of work statements and specifications;
 2. Having a general understanding of the contract terms and conditions which may have a significant impact on Amtrak and/or the contractor (e.g., limitation of cost, change clauses);
 3. Serving as the initial recipient for all correspondence regarding technical matters; distributing correspondence to the CA or other appropriate departments and following-up with appropriate departments to ensure response;
 4. Providing technical guidance to the contractor;
 5. Making sure all technical direction is recorded in writing;
 6. Maintaining a file of all technical instructions that are issued, as well as all deliverables received, and furnishing to the CA copies of: trip reports, conference reports, and correspondence.
 7. Bringing to the attention of the contractor, in writing, unsafe field conditions caused by the contractor's actions;
 8. Working with the CA to define the information to be furnished to the CA. Normally this involves keeping the CA informed of significant events (e.g., quality of work, progress, issues impacting schedule and cost, disputes, status of deliverables) involving the contract, as well as working with the CA as appropriate to resolve issues; and
 9. Ensuring that the goods or services received are in accordance with the contract.
- h.** In accomplishing these tasks, however, it is important that the PM be aware of actions that should not be taken, including:
1. Modifying the stated terms of the contract;
 2. Except in the case of unsafe conditions or emergency situations, directing the contractor to stop work unless authorized in writing by the CA to do so;
 3. Approving items of cost or time not authorized by the contract without the approval of the CA;

4. Executing any supplemental agreements; or
5. Rendering any decisions on contractual disputes.

5.2 Contract Modifications (Change Orders, Amendments, Changes) – A contract modification is a written alteration in the specifications, delivery date, contract period, price, quantity, or other provision of an existing contract, accomplished by unilateral action in accordance with a contract clause (e.g., change order, notice of termination, exercise of a contract option) or by a mutual action of the parties to the contract. A Contract Modification includes (a) a written Amendment to the Contract signed by both parties, or (b) a Change Order issued by the CO.

5.2.1 Contract Scope and Cardinal Changes – Changes clauses generally stipulate that changes must be “within the general scope of the contract.” The meaning of this phrase is somewhat vague and has been the subject of much interpretation by various judicial bodies processing contractor protests and claims.

The Federal Court of Claims coined the term “cardinal change” to describe those changes that are beyond the scope of the contract. There are various tests used to determine if a change is within scope. One test examines changes in the nature of work to be performed. Another looks at the amount of effort the contractor is required to perform. Still another test concerns whether the proposed change is within the scope of the original competition.

5.2.2 Cost/Price Analysis of Changes - Amtrak must have accurate, current, and complete cost and/or price data before a decision is made on the validity of the proposed costs. The major sources of data available are the contractor’s data and Amtrak’s records. The following data should be examined, if available, to help verify the reasonableness of proposed costs of the change:

- a. The contractor’s cost data used to construct its cost proposal (including the contractor’s risk assessments and other judgments);
- b. Records of previously negotiated fixed overhead, G&A rates, and independent research and development rates and other costs; and
- c. Cost and/or price information submitted by competing contractors, and in-house estimates.

5.2.3 Construction Changes – Every construction contract should include a Changes clause giving Amtrak the unilateral right to order changes in the contract work during the course of performance, and the contractor the duty to proceed with the work as changed upon receipt of the change order, assuming that the change is within the scope of the contract.

The following changes are considered within the general scope of the contract:

- a. Changes in the specifications (including drawings and designs);
- b. Changes in the method or manner of performance of the work;
- c. Changes in the Amtrak-furnished facilities, equipment, materials, services or site; or
- d. Directed acceleration of the performance of the work.

5.2.3.1 Differing Site Conditions - Unless the contract provides otherwise, the construction contractor will usually be held to bear the risk of unexpected subsurface or physical site conditions. This creates a serious problem for the company wishing to bid on a construction project. The contractor must either perform a costly site inspection, even though there is no assurance that its bid will be successful, or it must include a substantial contingency in its bid price to cover the risk of the unknown site conditions. Most construction solicitations will contain a “differing site conditions” clause describing the types of risk being assumed by Amtrak, promising the contractor an equitable adjustment if the defined conditions materialize.

The usual clause will refer to “subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.”

5.2.3.2 Field Emergency Change Orders - Field changes involve situations where Amtrak is subject to potential claims by contractors such as where delay could prevent performance of work by either the contractor or another contractor whose work is dependent upon such contractor’s work or otherwise result in a monetary claim. It also includes situations where delay would result in a significant increase in cost to perform the change order work. In addition, situations involving change orders that impact upon customer service or public health, safety or welfare, or any other critical aspect of operations, fall under this category.

The file should contain:

- Justification of the Change Order
- Engineer’s estimate
- Contractor’s proposal
- MR number in the amount of Contractor’s proposal

Note: No Amtrak employee, agent or representative is authorized to direct any modification or alteration to the contract deliverables stipulated under the contract documents unless expressly authorized to do so in writing by the CO.

5.2.3.3 Unilateral Change Orders - This type of change order is to be used when either:

- a. Contractor denies that particular work is within the scope of the contract; or
- b. Terms (price and time) for a particular change cannot be agreed upon with the contractor. The unilateral change order is issued only by the Procurement Department using the authority of the contract changes clause.

5.2.3.4 Emergency Change Orders - When time will not permit the negotiation of the change prior to issuance, it should be possible to obtain a “not-to-exceed” price from the contractor prior to the beginning of work. A bilateral Change Order should then be issued defining the changed work and setting a ceiling price; the final price is to be negotiated at a later date, but may only be adjusted downward. This Change Order would have to be issued as a two-party modification because it contains a “not-to-exceed” ceiling price for the change, and Amtrak could not unilaterally impose a ceiling price commitment on the contractor. The contractor would then submit a formal proposal and negotiations would take place.

5.2.3.5 Pricing of Construction Changes - When a contract clause exists which addresses the action causing the change (e.g., the changes clause, differing site conditions clause), the contract clause will determine the manner of the price adjustment. The term “equitable adjustment” is used to describe the method of adjusting the contract price. The term equitable adjustment includes an allowance for profit, while the term adjustment provides for an adjustment for increased performance costs, due to directed suspensions of work under this clause, but not profit.

- a. **Basic Pricing Formula** – The basic pricing formula for an equitable adjustment is “the difference between what it would have reasonably cost to perform the work as originally required and what it reasonably costs to perform the work as changed.”

Under the basic pricing formula, the amount of the adjustment for the deleted work is the cost that the contractor would have incurred had the change not been issued, i.e., had the work been performed. The basic pricing formula requires that the contractor recover the

increased cost of performing the work as changed. This is true even if the amount included in the original bid/contract was more than what was necessary for performance of the original work.

b. Allowable Costs – Whenever a contract modification requires the submission of estimated costs for negotiation, as is the case in virtually all construction change orders, the cost principles in 48 CFR Part 31 should be used to determine what is an allowable cost. This is true for all contracts, whether they are cost-type or fixed price. 48 CFR Part 31 provides that allowable costs must meet all of the following tests:

- Reasonableness;
- Allocability;
- In accordance with generally accepted accounting principles and cost accounting standards (if applicable); and
- Not excluded by specific contract provisions such as advance agreements.

c. Major Cost Elements

1. Labor – The contractor bears the burden of demonstrating that the cost of its additional labor effort has been caused by the event on which the claim is based. If it is impossible to segregate the additional labor hours resulting from the change or other action of Amtrak, the total cost method may be used. By this is meant the total costs actually incurred compared to the original estimate. This method can only be used if:

- The original labor estimates in the contractor’s bid are reasonable, based on objective, external evidence,
- Amtrak was solely responsible for the overrun and there must be no concurrent delays, etc., or
- There is no other reliable method to establish the additional labor costs. If there is another method, the *total cost* approach cannot be used.

2. Field Overhead – Field overhead is the cost of maintaining the contractor’s field operations staff, facilities and equipment at the job site. Field overhead includes the cost of personnel chargeable to the specific project, such as the salaries for office

clerks, project supervisors, timekeepers and engineers. It may also include rental or ownership costs for on-site trailers, office equipment, utilities, telephones, automobiles, trucks, etc.

3. **Home Office Overhead** – Home office overhead is generally referred to as “General and Administrative” (G&A) costs, and these costs include those activities necessary for the overall business of the contractor. They generally include the salaries of the company executives, legal counsel, corporate liability insurance, accounting, depreciation, proposal/bidding costs, bad debts, etc.
4. **Profit** – Profit is allowed as part of any Amtrak action which entitles the contractor to an “equitable adjustment” under the terms of the contract. The profit would be that which is reasonable and customary for the type of work being performed; or, the specific amount of the profit may be set forth in the contract documents.

5.2.3.6 Variations in Estimated Quantities - The typical “Variation In Quantity” clause entitles the contractor to a price adjustment for under-runs as well as over-runs in quantities. Many construction contracts contain unit prices and estimated quantities of the various pay items. This procedure is used when the quantity of work cannot be estimated with sufficient accuracy to permit the work to be priced on a lump sum (total-price) basis.

5.2.3.7 Delays - There are many events that can occur to delay a contractor’s performance. Delays can be of three general types:

- a. Those where the contractor bears the risk of both time and cost - these are delays within its control. These delays are non-excusable.
- b. Those for which Amtrak is responsible for both time and cost impacts - these are delays for which Amtrak agrees to be responsible or which are caused by it. These are compensable delays.
- c. Those for which neither party is responsible to the other – these are delays, such as concurrent delays, where both parties have caused delays which have an equal impact on completion, and it is impossible to apportion or separate the delays. In such cases, the contractor may not recover its increased costs and Amtrak may not enforce liquidated damages.

Excusable delays – The primary purpose of an excusable delay (force majeure) provision is to protect the contractor from sanctions for late performance (e.g., default termination, liquidated damages and actual delay damages). Excusable delays may not be compensable. There are three elements that are critical in determining whether an excusable delay has occurred. The three elements are:

- a. The delay must arise from unforeseeable causes. If circumstances that are known when the contract is entered into make certain delays foreseeable, then courts have held the contractor responsible and refused to grant relief.
- b. The event must be beyond the control of the contractor.
- c. The delay must be without the fault or negligence of the contractor.

Examples of excusable delays include: strikes, unusually severe weather, and certain subcontractor and supplier delays.

Compensable delays – These are delays for which the contractor is entitled to compensation, not merely an extension of time, as with many of the excusable delays.

In order to be compensated for delays, a contractor must demonstrate that the delay is unreasonable in duration.

Concurrent delays – When both parties contribute to a delay. If one party contributed in part to the delay, it will not be barred from recovering damages from the other party (e.g., if Amtrak is partly responsible for the delay, it will not be precluded from recovering liquidated damages). Where it is impossible to allocate or separate the delays, or where the delays are truly concurrent (where each party has had an equal impact on completion), the following rules would apply:

1. Where contractor-caused delay is concurrent with Amtrak-caused delay, the contractor may not recover its increased costs resulting from the delay.
2. Where non-compensable delays are concurrent with Amtrak-caused delays, a contractor may not recover its increased costs resulting from the delay.
3. Where Amtrak has contributed to the project delay, and such contribution cannot be separated from other causes of delay, liquidated damages cannot be enforced by Amtrak.

5.2.3.8 Acceleration - Acceleration is the speeding up of the rate of performance in order to complete the contract earlier than would be the case if the contractor pursued the effort in a normal manner.

a. Amtrak-caused delay – When Amtrak causes a delay that would entitle a contractor to recover its increased costs, the contractor may attempt to mitigate the costs of the delay by voluntarily accelerating its efforts. In this case, the contractor is entitled to recover the costs of accelerating the effort and these increased costs are actually recoverable as part of the delay costs because they were incurred in mitigation of those delay costs.

b. Amtrak-directed acceleration – When Amtrak orders the contractor to complete work earlier than the contract requires, the contractor is entitled to recover the cost of acceleration. Amtrak may expressly order the contractor to accelerate performance, thus creating a compensable acceleration but, in the majority of cases, the acceleration is constructive rather than expressed; i.e., Amtrak orders the contractor to meet the contract completion date even though there has been an excusable delay that would entitle the contractor to an extension in the completion date. The effect of this order by Amtrak is to require a rate of performance that is faster than the contract requires, and this is equivalent to an express order to accelerate.

c. Elements required for constructive acceleration - In order to recover for constructive acceleration, the contractor must demonstrate three elements:

1. The delays that occasioned the order to accelerate were excusable.
2. The contractor was ordered to accelerate.
3. The contractor in fact accelerated performance and incurred extra costs.

5.2.3.9 Progress Payments - Amtrak may provide for progress payments under contracts that require long time periods to complete contract performance or if the use of progress payments contributes to the effective and efficient administration of projects. Progress payments should be made on the basis of costs incurred by the contractor, and the percentage or state of completion of the contract.

Progress payments should be used when the investment in work and progress is expected to be great enough to add substantial costs to the

contract or to strain the contractor's cash flow or ability to obtain financing.

Title to property (materials, work in progress, and finished goods) for which progress payments are made must be transferred to Amtrak free from all encumbrances or a priority lien must be secured in favor of Amtrak pursuant to Article 9 of the Uniform Commercial Code and other applicable state laws.

5.2.3.10 Suspension of Work - It may be necessary to suspend or delay work performance for a period of time to obtain necessary permits or because of weather conditions, funding availability, operating conditions or unforeseen conditions. Unless they were specifically identified in the contract, the contractor may have cause for financial reimbursement. Cost claims for work suspension must be analyzed and justified. Negotiation of the costs may be required. Prior to issuing a suspension change, the associated costs should be estimated and, if possible, a negotiated agreement reached.

5.3 Resolution of Disputes Regarding Contract Performance

5.3.1 Applicability. "Claims" and "Disputes" are written assertions by one of the contracting parties seeking, as a matter of right, the payment of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to a contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

A claim relating to a contract may be referred to the Law Department for review.

Claims or disputes may be over a time related issue and costs related thereto or over a bona fide change order (i.e., Amtrak has directed a change in the end product being produced, field conditions are different from the representations, or changes have occurred in environmental laws and regulations).

The first priority should be to reach a settlement through informal discussions conducted by the CA. If these fail to resolve the issues in dispute, the dispute resolution clause in the contract should be followed.

5.4 Termination

5.4.1 General. - The performance of work under a contract may be terminated in part or in whole when the CA determines that such termination is in the best interests of Amtrak. Contracts may be terminated for convenience (i.e., when in the best interests of Amtrak) or for cause (i.e., the contractor has failed to perform in accordance with the contractual requirements).

5.4.2 Termination For Convenience - The Termination for Convenience clause extends to Amtrak the broad right to terminate a contract whenever it is in Amtrak’s best interest. Unlike terminations for cause, there are relatively few conditions restricting this contractual right. The contractor need not do anything wrong nor does it have any recourse to a decision to terminate for convenience. This right is most commonly exercised when the CA (after appropriate consultation with affected Amtrak departments) determines that the product or work is no longer needed.

An estimate of the termination costs should be prepared prior to notice of termination being sent to a contractor. This estimate should include all costs and profit, for which Amtrak may be responsible, in accordance with the terms of the contract.

5.4.3 Termination For Cause - Use of termination for cause hinges upon two prerequisites. First, reasonable grounds for termination must exist. A termination for cause cannot be issued arbitrarily. Second, Amtrak must comply with the procedural requirements set forth in the contract for termination for cause.

The most fundamental condition warranting a termination for cause is a failure to perform or deliver within the prescribed time period. Additional grounds for default include:

- a. Failure to make progress;
- b. Non-compliance with other contractual provisions;
- c. Failure to proceed – e.g., non-compliance with a duly authorized change order; or
- d. Anticipatory repudiation – this condition arises when the contractor makes known its intention not to deliver or perform on time.

Due diligence must be exercised in terminating a contractor for cause and Amtrak must determine that no excusable condition(s) exist for the contractor’s failure to perform. In the event that Amtrak determines that it is appropriate to waive its right to terminate for cause for any specific breach by a contractor, Amtrak must not waive its rights to termination for cause in the event of a succeeding breach (whether of the same nature as the one waived or different) of a contract by the contractor.

Amtrak may wish to issue a “cure notice” to the contractor giving it time to correct the situation prior to termination. The cure notice should, at a minimum, set forth the reason for the intended termination and a date by which the contractor must cure the default.

Chapter 6 – Contract Closeout

The procedures in this section apply only to Amtrak Construction Contracts.

6.0 Overview

A completed contract is one in which: 1) all physical construction work has been completed and accepted by Amtrak; 2) all deliverables required by the contract documents have been received and accepted by Amtrak; 3) all outstanding issues, to include audits or claims, have been resolved; 4) all required close-out documentation has been received; and 5) final payment of retainage monies has been made.

Once the physical construction work of a contract has reached substantial completion, the CA and PM (also referred to as the Contracting Official's Technical Representative or COTR) will, in a timely manner, work in concert with the contractor to: 1) achieve final completion and acceptance by Amtrak of all remaining punch-list work; 2) assure receipt by Amtrak of any outstanding deliverables; 3) resolve any outstanding claims; 4) conclude any audits and negotiate settlement amount; 5) initiate the preparation and execution by the parties of the required close-out documentation; and 6) process the contractor's final retainage invoice for payment. The CA will solicit help from the Law Department or any other department, as necessary, to facilitate timely close-out of the contract.

6.1 Contract Close-Out Documentation/Responsibilities: Below are specific individual and joint responsibilities associated with the timely preparation, execution and submittal of close-out documentation to permit contract close-out.

6.1.1 Contracting Agent Responsibilities – The CA shall:

- a. Act as the facilitator and provide direction to the appropriate parties, to include the contractor and Amtrak's PM, regarding specific close-out documentation required and actions which must be taken by the parties to accomplish timely project close-out.
- b. Obtain the PM's verification that all punch list items noted on Form 5 (Certification of Substantial Completion) have been satisfactorily addressed.
- c. Execute Form 1 (Certification of Final Completion) after concurrence by the PM and Amtrak's Director of Engineering.
- d. Consolidate and include applicable close-out documentation as part of the permanent contract file.

- e. Verify that there is an appropriate “hold back” from contractor’s payment in order to satisfy any reported or potential audit findings as a result of any audits already completed or still in progress.
- f. Once applicable required close-out documentation has been received and duly executed, recommend final invoice payment via the execution of Form 58, after execution by the Amtrak’s PM.
- g. Maintain updated log and custody chain of all archived files and any other contract files outside of the CA’s possession (e.g., files sent to the OIG).

6.1.2 Project Manager Responsibilities – The PM (COTR) shall:

- a. Upon receipt of Form 5 (Certification of Substantial Completion), together with Form 33 (Punch List) from the contractor, verify the accuracy of data provided; if in concurrence, execute the document and forward to the CA.
- b. Upon receipt of Form 1 (Certification of Final Completion) from the contractor, conduct an inspection to verify the completion of all punch list work; if in concurrence, execute the document and forward to the appropriate next level of signatory authority for approval and forwarding to the CA.
- c. Prepare Form 34 (Major Equipment Status) to document receipt of required manuals, warranties, equipment test reports, if applicable.
- d. Prepare Form 35 (As-Built Record Status) to document receipt of required as-built drawings and to record acceptance by Amtrak and the Engineer of record, if applicable.
- e. Review the contractor’s final Application for Payment for completeness and accuracy, then execute and date the document to authorize payment.
- f. Prepare Form 29 (Request to Suspend or Release Contract Retainage), attach to the final Application for Payment and forward to the CA.
- g. Approve prepared Form 58, to authorize processing and payment of the contractor’s final invoice.

6.1.3 Contractor Responsibilities – The contractor shall prepare, execute and submit to Amtrak’s PM or as otherwise directed by the CA, the following items:

- a. Form 5 (Certification of Substantial Completion), together with Form 33 (Punch List) once substantial completion is reached.
- b. Form 1 (Certification of Final Completion) once punch list work has been completed.

- c. Forms 81 and 82 (Contractor’s Application for Payment) or Amtrak- approved equivalent, requesting retainage.
- d. Form 84 (Contractor’s Certification with Respect to Requests for Payment), with Application for Payment.
- e. Form 3B (Contractor’s Final Release and Waiver of Liens and Claims Certification), with Application for Payment.
- f. AIA Form G707 (Consent of Surety), if contract were bonded, with Application for Payment.
- g. Form 52 (Contractor’s Warranty).
- h. Form 53 (Subcontractor’s Warranty), if applicable.
- i. Any other submittals required by the contract documents, to include: equipment manuals, spare parts lists, certificates of occupancy, warranties, permits, licenses, and as-built drawings. Submittal of this documentation may occur at any time during the contract performance period.

6.2 Contract File Documentation: The contract file should include the following completed and executed documents:

- a. Form 5 - Certification of Substantial Completion.
- b. Form 1 - Certification of Final Completion, with Form 33 (Punch List).
- c. Form 34 - Major Equipment Status, if applicable.
- d. Form 35 - As-Built Record Status, if applicable.
- e. Form 52 - Prime Contractor’s Warranty.
- f. Form 53 - Subcontractor’s Warranty, if applicable.
- g. Forms 81 & 82 - Application for Payment (or approved equivalent).
- h. Form 3B - Contractor’s Final Release and Waiver of Liens and Claims Certification.
- i. Form 84 - Contractor’s Certification with Respect to Requests for Payment.
- j. Form 29 – Request to Suspend or Release Contract Retainage.
- k. AIA Form G707 Consent of Surety, if a bondable project.

- l. Any other contract-related supplemental agreement detailing any amounts due from the contractor (whether cash, goods or services) for which sufficient retainage has not been withheld. Any such agreement must be signed by the contractor acknowledging liability to Amtrak. Copies of these documents are to be sent to both the Law and Finance Departments for record keeping and future collections purposes.
- m. Proof of Insurance – The CA shall confirm that all certificates of insurance required under the contract are valid and current (i.e., non-expired) as of the date of close-out. All such certificates shall be included in the contract file prior to the making of final payment and/or release of retainage to the contractor.

6.3 Record Retention: The Procurement Department will maintain records and files in sufficient detail to document the history of the procurement. It is the responsibility of the requestor or the originator of a document required for project close-out, to promptly provide the documentation to the CA for inclusion in the close-out file.

6.3.1 Contract files pertinent to a contract award shall be retained for the period of time specified by corporate policy.

6.3.2 Access to Records of Amtrak and Contractor: In accordance with the applicable grant or contract, Amtrak may permit and require its contractors to permit the Secretary of Transportation, the Comptroller General of the United States, or their authorized representatives to inspect project work, materials, payrolls, and other data, and to audit the books, records and accounts of Amtrak and the contractor pertaining to the project.

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)**

**SUPPLEMENTARY GENERAL PROVISIONS
FOR
CONSTRUCTION CONTRACTS**

**SUPPLEMENTARY GENERAL PROVISIONS
FOR CONSTRUCTION CONTRACTS**

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**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)**

**SUPPLEMENTARY GENERAL PROVISIONS
FOR CONSTRUCTION CONTRACTS**

S1.0 DAVIS-BACON ACT

S1.1 For construction contracts in excess of \$2,000, Contractor shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7), as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). All laborers and mechanics employed or working upon the site of the Work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted under the Copeland Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3)), the full amount of wages due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the appropriate wage determination decision of the Secretary of Labor which is incorporated into the Contract by reference and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor or the subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by Contractor at the site of the Work in a prominent and accessible place where it can be easily seen by the workers. The term "laborers and mechanics" shall be deemed to include apprentices and trainees not covered by an approved program.

S1.2 The wage determination decision of the Secretary of Labor specifies the minimum hourly rates of wages that shall be paid to laborers and mechanics employed or working directly upon the site of the Work. The rates have been determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act, as amended, to be the prevailing rates for the corresponding classes of laborers and mechanics employed on contracts of a similar character in the locality where this Work is to be performed.

S1.3 The wage determination decision of the Secretary of Labor is for the purpose of setting forth the minimum hourly wage rates required to be paid during the life of the Contract and is not to be accepted as a guarantee, warranty or representation as to the wage rates indicated therein. While the wage rates given in the decision are the Contract minimum rates, it is the responsibility of Contractor to inform itself as to local labor conditions such as the prevailing wage rates, the length of the workday and workweek, overtime compensation, health and welfare contributions, available labor supply, and prospective changes or adjustments of wage rates. Contractor shall abide by and conform to all applicable laws, Executive Orders, rules, regulations and orders of Federal agencies authorized to pass upon and determine wage rates. Under no circumstances shall any mistake in complying with the appropriate wage determination decision of the Secretary of Labor and in the wage rates set forth therein entitle Contractor to cancellation of the Contract or to an increase in the Contract Sum or other additional payment or recovery.

S1.4 Contractor may discharge its obligation under this Section to workers in any classification for which the wage determination decision contains:

- a) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Act Regulations (29 CFR part 3); or
- b) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by the Davis-Bacon Act, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and Contractor pays a cash equivalent or provides an alternative fringe benefit, it shall furnish information with its payrolls showing how it determined that the cost

incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where Contractor provides a fringe benefit different from any contained in the appropriate wage determination it shall similarly show how it arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Official shall submit the question, together with its recommendation, to the Secretary of Labor for final determination.

S1.5 The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in Section 1 (b) (2) of the Davis-Bacon Act or in the wage determination decision forming a part of the Contract may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by Contractor. The Secretary of Labor may require Contractor to set aside assets, in a separate account, to meet its obligations under any unfunded plan or program.

S1.6 The Contracting Official shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the Contract shall be classified or reclassified conformably to the wage determination decision and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics, including apprentices and trainees to be used, the Contracting Official shall submit the question, together with his/her recommendation, to the Secretary of Labor for final determination. Apprentices and trainees may be added under this Section only where they are employed pursuant to an apprenticeship or trainee program.

S1.7 In the event it is found by the Contracting Official that any laborer or mechanic, including apprentices and trainees, employed by Contractor or any subcontractor directly on the site of the Work covered by this Contract has been or is being paid at a rate of wages less than the rate of wages required by this Section, the Contracting Official may (a) by written notice to Contractor terminate its right to proceed with the Work, or such part of the Work as to which there has been a failure to pay said required wages, and/or (b) prosecute the Work to completion by contract or otherwise, whereupon Contractor and its sureties shall be liable to Amtrak for any excess costs occasioned Amtrak thereby.

S1.8 The foregoing requirements of this Section and the requirements of the Davis-Bacon Act as amended (40 U.S.C. 276a to a-7) shall be deemed to have been complied with for Work performed under this Contract by employees of railroads operating under collective bargaining agreements subject to the provisions of the Railway Labor Act (45 U.S.C. 151 et seq.).

S1.9 The rights and remedies of Amtrak provided in this Section are in addition to any other rights and remedies provided under this Contract.

S2.0 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

S2.1 For construction contracts in excess of \$2,000 and all contracts that involve the employment of mechanics or laborers and are in excess of \$2,500, Contractor shall comply with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

S2.2 No contractor or subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such Work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

S2.3 In the event of any violation of the provisions set forth in Section S2.2, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in Section S2.2 in the sum of ten dollars (\$10) for each calendar day on which such

individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by provisions set forth in Section S2.2.

S2.4 The Contracting Official shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of Work performed by Contractor or subcontractor under any such contract or any other Federal Contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in Section S2.3.

S2.5 Contractor shall comply with Section 107 of the Contract Work Hours and Safety Standards Act, which provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

S3.0 PAYROLL AND BASIC RECORDS

S3.1 Contractor shall maintain payrolls and basic records relating thereto for all employees, laborers and mechanics, including apprentices, trainees, watchmen, and guards working at the site of the Work during the course of the Work and for a period of three (3) years after final payment under the Contract. Such records shall contain the name, address and social security number of each such employee, his/her correct classification, rate of pay (including rates of contributing for, or costs assumed to provide, fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever Contractor has obtained approval from the Secretary of Labor as provided in Section S1.5 hereof, it shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.

S3.2 Contractor shall submit weekly a copy of all payrolls to the Contracting Official. The first submission of copies of Contractor's payrolls shall include a copy of the complete appropriate wage rate decisions. Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic, including apprentices and trainees, conform with the Work it performed. Submission of the weekly "Statement of Compliance" required under this Contract and the Copeland Regulations of the Secretary of Labor (29 CFR part 3) shall satisfy the requirement for submission of the above statement. Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits, which is required by Section S1.5 hereof. Contractor, its subcontractors at all tiers employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the Contracting Official that their employment is pursuant to an approved program and shall identify the program.

S3.3 Contractor or subcontractor shall make the records required under this Section available for inspection, copying and transcription by authorized representatives of the Contracting Official, the Department of Labor, and authorized representatives of the Federal Railroad Administration (FRA), U.S. Department of Transportation and the Comptroller General and shall permit such representatives to interview employees during working hours on the job.

S3.4 The foregoing requirements of this Section shall be deemed to have been complied with for Work performed under this Contract by employees of railroads operating under collective bargaining agreements subject to the provisions of the Railway Labor Act (45 U.S.C. 151 et seq.).

S3.5 Contractor shall insert in each subcontract the provisions set forth in Sections S3.1 – S3.3 hereof and also a provision requiring the subcontractors to include these provisions in any subsubcontracts. Contractor shall be responsible for compliance by each subcontractor or subsubcontractor with the provisions set forth in Sections S3.1 through S3.3 hereof.

S4.0 **COMPLIANCE WITH COPELAND REGULATIONS**

Contractor shall comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) as supplemented in Department of Labor Regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States").

S5.0 **EXAMINATION OF RECORDS**

S5.1 Authorized representatives of the FRA, U.S. Department of Transportation and the Comptroller General shall, until three (3) years after final payment under this Contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine, audit and copy any of Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract.

S5.2 Contractor agrees to include, or cause to be included, this Section in first-tier subcontracts entered into under this Contract. "Subcontract" as used in this Section excludes (a) purchase orders not exceeding \$10,000 and (b) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

S5.3 The periods of access and examination in Section S5.1 above for records relating to (a) appeals, litigation or settlement of claims arising from the performance of this Contract or (b) costs and expenses of this Contract to which authorized representatives of the FRA, U.S. Department of Transportation and the Comptroller General have taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

S6.0 **USE OF UNITED STATES FLAG VESSELS**

Contractor agrees to comply with 46 U.S.C. § 1241(b) and regulations issued thereunder (46 CFR part 381, "Cargo Preference --U.S.- Flag Vessels"), to the extent valid and applicable, as follows:

S6.1 To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage involved under the Contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;

S6.2 To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in Section S6.1 above to Amtrak (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, marked with appropriate identification; and

S6.3 To insert the substance of the provisions of this Section in all subcontracts issued pursuant to this Contract.

S7.0 **BYRD ANTI-LOBBYING AMENDMENT**

If this Contract equals or exceeds \$100,000, Contractor shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying", a copy of which is attached hereto as Appendix A. Each tier contractor shall certify to the tier above 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 tier contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

S8.0 **DEBARMENT AND SUSPENSION; DRUG-FREE WORK PLACE**

If this Contract equals or exceeds \$100,000, Contractor shall certify to Amtrak that Contractor is not listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O. 12549 and 12689, "Debarment and Suspension" and 49 CFR part 29 and shall comply and cause its subcontractors and all lower tier subcontractors to comply with U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)", 49 CFR part 29. Contractor shall execute the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", set forth in Appendix B. Contractor agrees to obtain the same such certification on debarment and suspension from its subcontractors and lower tier subcontractors.

S9.0 **EQUAL EMPLOYMENT OPPORTUNITY**

Contractor shall comply and shall cause its subcontractors and lower tier subcontractors to comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

S10.0 **PARTICIPATION BY SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS**

Contractor is encouraged to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined in 49 CFR part 26) in performing this Contract.

S11.0 **PATENT RIGHTS; RIGHTS TO INVENTIONS**

S11.1 If any invention, improvement or discovery of Contractor or any of its subcontractors at any tier, is conceived or first actually reduced to practice employing funding provided to Contractor under this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agrees to notify Amtrak immediately and provide a detailed report. The rights and responsibilities of Amtrak, Contractor and the Federal Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies and any waiver thereof.

S11.2 The rights of the Federal Government and Amtrak shall be preserved in any contract for the performance of experimental, developmental or research work funded by an FRA grant, in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FRA.

S12.0 **ENVIRONMENTAL COMPLIANCE**

S12.1 In addition to the requirements set forth in the General Provisions, if the Contract amount exceeds \$100,000, Contractor shall comply and shall cause its subcontractors at every tier to comply with the following provisions, as modified from time to time, all of which are incorporated herein by reference: the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and all standards, orders or regulations issued thereunder. Contractor hereby certifies that no facilities that will be used to perform work under this Contract are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). Contractor will notify the Contracting Official as soon as Contractor or any subcontractor at any tier receives any communication from the EPA indicating that any facility that will be used to perform work pursuant to this Contract is under consideration to be listed on the EPA's List of Violating Facilities; **provided, however**, that Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.

S12.2 Where applicable, Contractor shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.)

S13.0 **COMPLIANCE WITH BUY AMERICAN REQUIREMENTS**

S13.1 Pursuant to 49 U.S.C. § 24305(f), if the value of the Contract is one million dollars (\$1,000,000) or more, any unmanufactured articles, materials and supplies purchased by Amtrak must be mined or produced in the United States and any manufactured articles, materials and supplies must be manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States. Accordingly, all articles, materials, or supplies to be delivered under this Contract must meet these requirements, unless a waiver is obtained from the Secretary of the Department of Transportation. Components of unknown origin are considered to have been mined, produced or manufactured outside the United States.

S13.2 If the value of the Contract is less than one million dollars (\$1,000,000), unless a waiver is obtained, the Work to be performed under this Contract shall comply with the Buy American requirements set forth at 41 U.S.C. §§ 10a-10d.

S13.3 Contractor certifies that the articles, materials and supplies to be furnished under this Contract comply with the above requirements.

S13.4 In addition to the above requirements, depending on the funding source for the Contract, additional Buy American requirements may be applicable. Any additional requirements will be set forth in the Alterations Section hereof or elsewhere in the Contract Documents.

S14.0 **FLOOD INSURANCE REQUIREMENTS**

Contractor shall comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (P.L.93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

S15.0 **APPLICATION TO LOWER-TIER SUBCONTRACTORS**

S15.1 Contractor shall insert in each subcontract the provisions set forth in these Supplementary General Provisions and also a provision requiring the subcontractors to include these provisions in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth herein. Contractor shall also include in each subcontract that exceeds \$100,000, and cause its subcontractors to include in each lower tier subcontract that exceeds \$100,000 the following:

S15.1.1 Provisions that allow for administrative, contractual or legal remedies in instances in which a contractor or subcontractor violates or breaches contract terms;

S15.1.2 Provisions for termination of the contract, either for default or due to conditions beyond the control of the contractor, including the manner by which termination shall be effected and the basis for settlement;

S15.1.3 Provisions requiring: (i) a bid guarantee from each bidder equivalent to five percent of the bid price; (ii) a performance bond for 100 percent of the contract price; and (iii) a payment bond for 100 percent of the contract price; the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States".

S16.0 **COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

Contractor will comply and cause its subcontractors and lower tier subcontractors to comply with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973, as amended (29 U.S.C. 794 et seq.) and implementing Department of Transportation regulations at 49 CFR parts 27, 37 and 38.

S17.0 **ALLOWABLE COSTS**

Contractor's expenditures will be reimbursed only if they conform with Federal cost principles as set forth in Federal Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, "Contracts with Commercial Organizations," which is incorporated herein by reference. If any costs are disallowed, as determined by an audit by Amtrak or the Federal Government, Contractor agrees to reimburse Amtrak for such disallowed costs within sixty (60) days of notice to Contractor of the determination of disallowance.

S18.0 **ALTERATIONS TO SUPPLEMENTARY GENERAL PROVISIONS**

The following Sections of the Supplementary General Provisions are revised as follows:

**APPENDIX A TO SUPPLEMENTARY GENERAL PROVISIONS
FOR
CONSTRUCTION CONTRACTS**

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Offeror/Contractor:

Name of Company

Date

Signature of authorized representative:

Title: _____

**APPENDIX B TO SUPPLEMENTARY GENERAL PROVISIONS
FOR
CONSTRUCTION CONTRACTS**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY
EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant (offeror/prospective contractor) certifies, by submission of this offer or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant (offeror/prospective contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer or proposal.

Offeror/Contractor:

Name of Company

Signature of authorized representative:

Title: _____

Date: _____

*Instructions for this Certification may be found at 49 CFR part 29, App. B.

NATIONAL RAILROAD PASSENGER CORPORATION
SUPPLEMENTARY GENERAL PROVISIONS FOR NONCONSTRUCTION CONTRACTS

Contractor shall comply with and insert the following provisions in all subcontracts issued pursuant to this Contract:

1. **Equal Employment Opportunity.** Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. **Patent Rights; Rights to Inventions.**
 - (a) If any invention, improvement, or discovery of Contractor or any of its subcontractors is conceived or first actually reduced to practice employing financial assistance provided to the Contractor under this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agrees to notify Amtrak immediately and provide a detailed report. The rights and responsibilities of Amtrak, Contractor and the Federal Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
 - (b) If the Contract involves the performance of experimental, developmental, or research work, the rights of the Federal Government and Amtrak shall be in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the Federal Railroad Administration (FRA).
3. **Byrd Anti-Lobbying Amendment.** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying", a copy of which is attached hereto. Each tier certifies to the tier above 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 tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Amtrak.
4. **Debarment and Suspension.** No contract shall be entered into with parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" and 49 CFR part 29. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractor will comply with U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)." If this Contract equals or exceeds the small purchase (simplified acquisition) threshold of \$100,000, Contractor shall execute the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" attached hereto.
5. **Buy American.** Contractor shall comply with the Buy American Act (41 U.S.C. 10a-d), and the implementing regulations set forth at 48 CFR part 25, except for acquisitions in excess of one million dollars (\$1,000,000), in which case Contractor shall comply with Amtrak's domestic buying requirements found at 49 U.S.C. 24305(f).
6. **Cargo Preference--Use of United States-Flag Vessels.** As required by U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 CFR part 381, if equipment, materials or commodities may be transported by ocean vessel in carrying out the activities funded under this Contract, Contractor agrees:
 - (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates.
 - (b) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "On-Board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to Amtrak (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, DC 20590, marked with appropriate identification.
7. **Drug-Free Work Place.** Contractor agrees to comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Grants)", 49 CFR part 29 for procurements that are expected to equal or exceed the small purchase (simplified acquisition) threshold of \$100,000.

8. **Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.** Contractor is encouraged to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined in 49 CFR part 26) in carrying out activities funded under this Contract.

9. **Record Retention – Submission of Proceedings, Contracts and Other Documents.** During the course of its activities under this Contract and for three years thereafter, Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to its performance under this contract as FRA may require. Reporting and record-keeping requirements are set forth in 49 CFR part 19.

10. **Audit and Inspection; Inspection by Federal Officials.** Contractor agrees to permit Amtrak, the Secretary of Transportation and Comptroller General of the United States, or their authorized representatives, to inspect all work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to Contractor's activities under this Contract. Contractor will take appropriate steps to ensure that the aforementioned materials are available for inspection in order to ensure compliance with this section.

11. **Environmental Protection.** *This section applies if the Contract exceeds \$100,000.* Contractor will conduct work under this Contract, and will require that work that is conducted as a result of this Contract be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and all regulations issued thereunder. Contractor certifies that no facilities that will be used to perform work under this Contract are listed on the List of Violating Facilities maintained by the Environmental Protection Agency (EPA). Contractor will notify Amtrak as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Contract is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonable have been aware. Also, where applicable, Contractor shall comply with the **Wild and Scenic Rivers Act** of 1968 (16 U.S.C. 1271 et seq).

12. **Remedies for Breach.** All subcontracts in excess of the small purchase threshold (currently \$100,000), shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a subcontractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

13. **Contract Termination Provisions.** All subcontracts in excess of the small purchase threshold (currently \$100,000), shall contain suitable provisions for termination by Contractor, including the manner by which termination shall be effected and the basis for settlement. In addition, such subcontracts shall describe conditions under which it may be terminated for default as well as conditions where it may be terminated because of circumstances beyond the control of Contractor.

14. **Allowable Costs.** Contractor's expenditures will be reimbursed only if they conform with Federal guidelines or regulations and Federal cost principles as set forth in Federal Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, "Contracts with Commercial Organizations", which are incorporated herein by reference. If any costs are disallowed, as determined by an audit by Amtrak or the Federal Government, Contractor agrees to reimburse Amtrak for such disallowed costs within sixty (60) days of advice to Contractor of the determination of disallowance.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Company

Date

By

Title

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The offeror/prospective contractor certifies, by submission of this offer or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the offeror/prospective contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer or proposal.

Offeror/Contractor:

Name of Firm

Signature of authorized representative:

Title: _____

Date: _____

*Instructions for this Certification may be found at 49 CFR part 29, App. B.

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TITLE 49—TRANSPORTATION

Subtitle A--Office of the Secretary of Transportation Subpart C--Post-Award Requirements

Sec. 19.40 Purpose of procurement standards.

Sections 19.41 through 19.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

Sec. 19.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

Sec. 19.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

Sec. 19.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

Sec. 19.44 Procurement procedures.

- (a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that the conditions in paragraphs (a)(1), (2) and (3) of this section apply.
 - (1) Recipients avoid purchasing unnecessary items.
 - (2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.
 - (3) Solicitations for goods and services provide for all of the following:
 - (i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features that unduly restrict competition.
 - (ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
 - (iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

- (iv) The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation.
 - (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- (b) **DELETED IN ITS ENTIRETY**
- (c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting shall not be used.
 - (d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 49 CFR part 29, the implementation of E.O.s 12549 and 12689, “Debarment and Suspension”.
 - (e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.
 - (1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.
 - (2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000*) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
 - (3) The procurement, which is expected to exceed the small purchase threshold, specifies a “brand name” product.

* REVISED TO \$100,000 PER 41 U.S.C. 403 (11)

- (4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.
- (f) Additional procurement procedures.
 - (1) Section 165 of the STAA of 1982, as amended; section 337 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987, 49 U.S.C. 1601, section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991, and section 9129 of the Aviation Safety and Capacity Expansion Act of 1990, 49 U.S.C. app. 2226, impose Buy America requirements on the procurement of foreign products and materials by all recipients of FHWA, FTA, and Federal Aviation Administration (FAA) funds. Procedures are contained in 49 CFR part 660, Buy America Requirements and part 661, Buy America Requirements--STAA of 1982. In addition, for FTA recipients, nonregulatory guidance is contained in FTA Circular 4220.1B, Third Party Contracting Guidelines, Chapter I, section 11. Non-regulatory guidance for FAA programs is contained in FAA Order 5100.38A and special conditions in grant awards.
 - (2) Section 511(a)(16) of the Airport and Airway Improvement Act of 1982, 49 U.S.C. app. 2210, requires FAA recipients and subrecipients to extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and to award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the 1949 Federal Property and Administrative Services Act, or equivalent airport sponsor qualifications based requirements. Non-regulatory guidance for FAA programs is contained in FAA Order 5100.38A and special conditions in grant awards.
 - (3) Section 3(a)(2)(C) of the Federal Transit Act, as amended, (49 U.S.C. app. 1602(a)(2)(C)) prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications. Nonregulatory guidance is contained in FTA Circular 4220.1B, Third Party Contracting Guidelines, Chapter I, section 15 and Attachment A.
 - (4) Section 1241(b)(1) of 46 U.S.C. and 46 CFR part 381, Cargo Preference--U.S. Flag Vessels impose cargo preference

requirements on the shipment of foreign made goods for FTA recipients. Nonregulatory guidance is contained in FTA Circular 4220.1B, Third Party Contracting Guidelines, Chapter I, section 10.

Sec. 19.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

Sec. 19.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

- (a) Basis for contractor selection,
- (b) Justification for lack of competition when competitive bids or offers are not obtained, and
- (c) Basis for award cost or price.

Sec. 19.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

Sec. 19.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

- (a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

- (b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
 - (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - (2) 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.
 - (3) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
 - (4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, “Surety Companies Doing Business with the United States”.
- (d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have

access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

- (e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

Appendix A to Part 19—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity* —All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)* —All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)* —When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a(7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)* —Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions

which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under a Contract or Agreement —Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended —Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) —Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above 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 tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (E.O.s 12549 and 12689) —No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension” and 49 CFR part 29. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

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Appendix B.1
DELEGATIONS OF CONTRACTING AUTHORITY

<i>Expenditure/Revenue Category</i>	<i>Executive Staff Member¹</i>	<i>Executive Staff Authority</i>			<i>CEO Authority</i>
		<i>Budgeted² or 100% Reimbursable</i>	<i>Unbudgeted</i>	<i>Contract Amendments</i>	
<u>I. CONTRACTING FOR GOODS AND SERVICES</u>					
Purchase of Inventory or Expense Goods, Operating Services, Minor Equipment. Acquisition of Rolling Stock (e.g., switcher locomotive or single passenger car) or Minor Equipment (e.g., maintenance vehicle) via short term lease transaction.	VP Procurement and Materials Management ^{3 4} . Leases of equipment greater than 12 months duration require approval of Chief Financial Officer before execution.	Contract value up to \$2M if covered by an approved Operating budget or \$1M if covered by an approved Capital budget or a Board approved Project Summary ⁵ .	Contract value up to \$250K only with respect to Capital items not covered by an approved Capital budget.	Lower of \$500K or 25% of initial contract value.	For operating items: unlimited if the value of the contract is covered by an approved Operating budget; for capital items: contract value up to the value of an approved Project Summary ⁽⁵⁾ or up to \$1M if otherwise covered by an approved Capital budget, or up to \$500K if not covered by an approved Capital budget.
Construction Services, Rolling Stock and Major Capital equipment such as a substation.	VP Procurement and Materials Management ⁽³⁾ ⁽⁴⁾ . Leases of equipment greater than 12 months duration require approval of Chief Financial Officer before execution.	Contract value up to \$1M if covered by an approved Operating or Capital budget or Board approved Project Summary ⁽⁵⁾ .	Contract value up to \$250K only with respect to Capital items not covered by an approved Capital budget.	Lower of \$500K or 25% of initial contract value	For operating items: unlimited if the value of the contract is covered by an approved Operating budget; for capital items: contract value up to the value of an approved Project Summary ⁽⁵⁾ or up to \$1M if otherwise covered by an approved Capital budget, or up to \$500K if not covered by an approved Capital budget.
Professional Services: Architectural and Engineering Design, Advertising and Marketing, Software Development and Support, Computer Programming, Training, Construction Management, and Environmental Services.	VP Procurement and Materials Management ⁽³⁾⁽⁴⁾	Contract value up to \$500K if covered by an approved Operating or Capital budget or a Board approved Project Summary ⁽⁵⁾ .	Contract value up to \$125K only with respect to Capital items not covered by an approved Capital budget.	Lower of \$250K or 25% of initial contract value	For operating items: unlimited if the value of the contract is covered by an approved Operating budget; for capital items: contract value up the value of an approved Project Summary ⁽⁵⁾ or up to \$1M if otherwise covered by an approved Capital budget, or up to \$500K if not covered by an approved Capital budget.

DELEGATIONS OF CONTRACTING AUTHORITY

<i>Expenditure/Revenue Category</i>	<i>Executive Staff Member⁽¹⁾</i>	<i>Executive Staff Authority</i>			<i>CEO Authority</i>
		<i>Budgeted⁽²⁾ or 100% Reimbursable</i>	<i>Unbudgeted</i>	<i>Contract Amendments</i>	
<u>I. CONTRACTING FOR GOODS AND SERVICES continued</u>					
Consultant Services: Services involving professional advice or assistance in the areas of organizational structure, policy development, strategy, operations management or analysis of areas requiring improvement	VP Procurement and Materials Management ⁽³⁾⁽⁴⁾	- 0 -	- 0 -	N/A	Contract value up to \$199,999.
Employee Health and Benefit Agreements	VP Procurement and Materials Management ⁽³⁾⁽⁴⁾	Contract value up to \$1M per year provided benefit program costs for a Fiscal Year are no more than 10% greater than the prior year.	N/A	N/A	Unlimited except if benefit program costs for a Fiscal Year are 10% more than prior year.
Executive Recruitment Agreements	VP Human Resources	Contract value up to \$100K	N/A	N/A	Unlimited
Labor Arbitration Services	General Counsel	Contract value up to \$1M	Contract value up to \$250K	N/A	Unlimited
Investigative and Audit Services	Inspector General	Unlimited	Unbudgeted expenses are to be discussed with the Chairman of the Board of Directors	N/A	N/A
Electric Propulsion Agreements including those involving commuter agencies.	VP Planning and Business Development	Contract value up to \$2M per year if covered by an approved Operating budget	Contract value up to \$500K	Lower of \$500K or 25% of initial contract value	Unlimited if covered by an approved Operating budget

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<i>Expenditure/Revenue Category</i>	<i>Executive Staff Member⁽¹⁾</i>	<i>Executive Staff Authority</i>			<i>CEO Authority</i>
		<i>Budgeted ⁽²⁾ or 100% Reimbursable</i>	<i>Unbudgeted</i>	<i>Contract Amendments</i>	
II. REVENUE CONTRACTS					
Revenue Agreements for Mail and Express	Senior Vice President – Operations	Contract value up to \$2M per year	N/A	Lower of \$500K of 25% of initial contract value	Unlimited
Lease out of Amtrak Rolling Stock or Equipment	Senior Vice President – Operations; also requires approval of Chief Financial Officer before execution of lease	Leases up to \$1M	N/A	\$500K	Unlimited
Revenue Agreements relative to special trains, charters, marketing and/or sales promotions, participation agreements, film agreements, and business alliances, music licenses, corporate trademarks and service marks, etc.	VP Marketing and Sales	Contract value up to \$2M	N/A	Lower of \$500K or 25% of initial contract value	Unlimited
Other Business Development agreements including insourcing and joint venture initiatives	VP Planning and Business Development	- 0 -	- 0 -	- 0 -	Unlimited, except Board of Directors' approval is required for proposals for joint venture agreements for revenue enhancement projects and cogeneration projects.

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		<i>Executive Staff Authority</i>			<i>CEO Authority</i>
<i>Expenditure/Revenue Category</i>	<i>Executive Staff Member⁽¹⁾</i>	<i>Budgeted⁽²⁾ or 100% Reimbursable</i>	<i>Unbudgeted</i>	<i>Contract Amendments</i>	
III. SALE OF AMTRAK PROPERTY (OTHER THAN REAL ESTATE)					
Sale of Rolling Stock	VP Procurement and Materials Management; also requires approval of Chief Financial Officer before execution of conveyance documents	Unlimited if fully depreciated	N/A	N/A	Unlimited if fully depreciated; Board notice required if asset residual value exceeds \$250K
Sale of assets other than Rolling Stock and Real Estate (e.g. salvage materials, maintenance, equipment).	VP Procurement and Materials Management; also requires approval of Chief Financial Officer before execution of conveyance documents except for trade inventory and related scrap items	Sale of assets having book or sale value up to \$750K	N/A	N/A	Sale of assets having book or sale value up to \$1M

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<i>Expenditure/Revenue Category</i>	<i>Executive Staff Member⁽¹⁾</i>	<i>Executive Staff Authority</i>			<i>CEO Authority</i>
		<i>Budgeted ⁽²⁾ or 100% Reimbursable</i>	<i>Unbudgeted</i>	<i>Contract Amendments</i>	
IV. STATE, FREIGHTS, COMMUTER, AND OTHER GOVERNMENT ENTITY CONTRACTS					
Non-competitive bid services for other railroads e.g., maintenance activities on non-Amtrak property, repairs to foreign railroad equipment.	Senior Vice President – Operations	Contract value up to \$1M, except that proposals for rail welding and locomotive projects require Board approval prior to responding to an RFP	N/A	Up to 25% of initial contract value	Unlimited, except that proposals for rail welding and locomotives/car overhaul projects require Board approval prior to responding to an RFP
Demonstration Trains	Senior Vice President – Operations	All demonstration trains require prior Board approval	N/A	N/A	All demonstration trains require prior Board approval
Commuter Service Operating Agreements; State (403b) Operating Agreements; Commuter Access (on NEC) Agreements	VP Planning and Business Development	All new agreements require Board approval before responding to an RFP or, if no bidding process, before executing agreement. Contract value up to \$1M for an extension of an existing agreement, but only if no significant change in terms.	N/A	Contract value up to \$1M for an extension of an existing agreement, but only if no significant change in terms.	All new agreements require Board approval before responding to an RFP or, if no bidding process, before executing agreement. Unlimited for an extension of an existing agreement only if no significant change in terms.

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<i>Expenditure/Revenue Category</i>	<i>Executive Staff Member⁽¹⁾</i>	<i>Executive Staff Authority</i>			<i>CEO Authority</i>
		<i>Budgeted⁽²⁾ or 100% Reimbursable</i>	<i>Unbudgeted</i>	<i>Contract Amendments</i>	
IV. STATE, FREIGHTS, COMMUTER, AND OTHER GOVERNMENT ENTITY CONTRACTS continued					
Amtrak Operating Agreements on host railroad property; Freight Railroad Access (on NEC) Agreements	Senior Vice President – Operations	Contract value of up to \$1M per year.	N/A	Contract value up to \$1M for an extension of an existing agreement, but only if no significant change in terms.	Unlimited with respect to new or amended Operating Agreements provided that Board is advised of amendments involving significant departures from previously approved agreements.
State, Freight, Commuter, and other government entities Capital Agreements, e.g. agreements involving the provision of Amtrak services and/or Amtrak's Third Party contractors for sole benefit or joint benefit improvement for States and Commuters (e.g., construction of maintenance facility or track improvements). This includes station planning, station capital funding agreements and extra work under commuter operating agreements.	VP Planning and Business Development	Contract value up to \$1M per year	- 0 -	N/A	Unlimited
Force account agreements for flagging protection and inspection services, relocation of track, catenary, signals, etc. in connection with discrete projects where work is 100% reimbursable.	Senior Vice President – Operations	Contract value up to \$1M	- 0 -	Lower of \$500K or 25% of initial contract value	Unlimited

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		<i>Executive Staff Authority</i>			<i>CEO Authority</i>
<i>Expenditure/Revenue Category</i>	<i>Executive Staff Member⁽¹⁾</i>	<i>Budgeted⁽²⁾ or 100% Reimbursable</i>	<i>Unbudgeted</i>	<i>Contract Amendments</i>	
V. <u>REAL ESTATE CONTRACTS</u>					
Real Property Sales, Purchase and Leases	General Counsel provided that sales, purchases and leases (other than retail space leases where Amtrak is the Lessor) require prior approval of Chief Financial Officer.	Sales contracts and leases up to \$250K	N/A	N/A	Sales contracts up to \$499,999. All other purchases and leases, unlimited.
Real Property financing or development transactions, including all rights developments projects, surveys, appraisals, property management services, and other services related to the real estate transactions provided that any long-term obligations are also approved by the Chief Financial Officer.	General Counsel provided that financing or development transactions require prior approval of Chief Financial Officer.	Revenue-producing real estate transactions and management agreements: up to \$500K. All development agreements involving use of Amtrak real property require prior Board approval. All other transactions: up to \$500K	N/A	N/A	Revenue-producing real estate transactions and management agreements: up to \$500K. All development agreements involving use of Amtrak real property require prior Board of Directors' approval. All other transactions: unlimited.

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		<i>Executive Staff Authority</i>			<i>CEO Authority</i>
<i>Expenditure/Revenue Category</i>	<i>Executive Staff Member⁽¹⁾</i>	<i>Budgeted ⁽²⁾ or 100% Reimbursable</i>	<i>Unbudgeted</i>	<i>Contract Amendments</i>	
VI. LEGAL AND FINANCIAL CONTRACTS					
Litigation Settlements	General Counsel	\$1M for claims against Amtrak; unlimited for claims by Amtrak	N/A	N/A	\$1M for claims against Amtrak. Unlimited for claims by Amtrak.
Outside Counsel, expert witnesses, arbitrators, court reporters, investigators, etc.	General Counsel	\$1,000,000	N/A	N/A	Unlimited
Audit services, insurance requirements, banking transactions, and equipment, real property and other tax-advantaged financing transactions unsecured credit line agreements.	Chief Financial Officer	Transactions and contracts, not requiring provision of security or retention of audit services, up to \$1M. \$175M for credit line agreements	Transactions and contracts up to \$250K	Lower of \$500K or 25% of initial contract value	Unlimited for transactions and contracts not requiring provision of security or retention of audit services. \$175M for credit line agreement.
Licenses, easements, relocations of utilities, roads, pipelines, and waterlines within the Right of Way.	General Counsel with approval of Senior Vice President – Operations on technical issues.	Unlimited	N/A	N/A	Unlimited
Collective Bargaining Agreements	VP Labor Relations	Unlimited after pattern agreement is approved by Board	N/A	N/A	Unlimited after pattern agreement is approved by Board of Directors.

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¹ Listed Executive staff member is authorized to delegate his/her contracting authority in accordance with Amtrak policy and procedures. See P/I 7.39.0 (formerly FY-12).

² A transaction is deemed budgeted if it is specifically approved by the Board of Directors as part of an approved Capital or Operating Budget.

³ For contracts authorized by the VP Procurement and Materials Management, the delegations noted herein assume the awards to be on a competitive basis. Any non-competitive award exceeding \$100,000 (pursuant to P/I 11.39.0 (formerly FI-12), such procurements may be subject to audit requirements), with the exception of the purchase of OEM parts and components, shall be supported by a Sole Source Justification submitted by the Requestor's department head to the VP Procurement and Materials Management. In addition, any non-competitive award (other than OEM parts and components) exceeding \$500,000 will require the approval of the Chief Executive Officer.

⁴ In an emergency which threatens the interruption of service or when there is a serious threat to health, safety, or significant monetary loss to Amtrak, the Senior Vice President – Operations is authorized to take action as necessary. He/she shall report such actions to the VP Procurement and Materials Management within 48 hours.

⁵ The term "Project Summary" as used herein has the same meaning as "Capital/Lease Commitment Approval Requests" ("CARS") as that term is used in the current Board of Directors Statement of Policy.

PAYMENT REQUESTS AND EXPENSE REPORTS

Management Level	Purchase Requisition	Payment Request	Expense Report
1. Executive Committee	Over \$500,000 ⁽¹⁾	Over \$25,000 ⁽¹⁾	Over \$5,000 ⁽¹⁾
2. Vice Presidents and Chiefs Reporting to Level 1 Members (above)	\$100,001 to \$500,000	\$10,001 to \$25,000	\$2,501 to \$5,000
3. Assistant Vice Presidents, Deputy General Counsels and other Chiefs (e.g., CTO, CSOs, General Superintendents)	\$50,001 to \$100,000	\$5,001 to \$10,000	\$2,501 to \$5,000
4. Senior Directors and Superintendents	\$25,001 to \$50,000	\$5,001 to \$10,000	\$2,501 to \$5,000
5. Directors and Assistant Superintendents	\$5,001 to \$25,000	\$1,001 to \$5,000	\$501 to \$2,500
6. Manager	To \$5,000	To \$1,000	To \$500
7. Staff	- 0 -	- 0 -	- 0 -

⁽¹⁾ Not to exceed the maximum amount allowable as specified in Exhibit I of this policy.

Appendix B.3

PROCUREMENT AND MATERIALS MANAGEMENT

**AUTHORIZATION TO EXECUTE PURCHASE ORDERS, CONTRACTS AND
INVENTORY REQUISITIONING APPROVAL AUTHORITY**

EXPENDITURE CATEGORY	Award Type	Vice President Procurement and Material Management	AVP Materials Management, AVP Acquisition Management, and Sr. Director Procurement	Director Procurement	Sr. Contracting Agent	Contracting Agent
Inventory or Expense Goods, Operating Services, Minor Equipment. Leases of equipment greater than 12 months duration require approval of CFO before execution.	Competitive	\$2,000,000	\$1,000,000	\$500,000	\$250,000	\$100,000
	Non-Competitive	\$500,000	\$250,000	\$100,000	\$50,000	\$25,000
Construction, Rolling Stock, Major Capital Equipment. Leases of equipment greater than 12 months duration require approval of CFO before execution.	Competitive	\$1,000,000	\$1,000,000	\$500,000	\$250,000	\$100,000
	Non-Competitive	\$500,000	\$250,000	\$100,000	\$50,000	\$25,000
Professional Services—A&E, Advertising, Marketing, Software Development, Computer Programs, etc.	Competitive	\$500,000	\$500,000	\$250,000	\$100,000	\$50,000
	Non-Competitive	\$500,000	\$250,000	\$100,000	\$50,000	\$25,000
Consultants	Competitive	\$0	\$0	\$0	\$0	\$0
	Non-Competitive	\$0	\$0	\$0	\$0	\$0
Change Orders (Consultants)		\$0	\$0	\$0	\$0	\$0
Change Orders (All Others)		\$500,000	\$250,000	\$100,000	\$50,000	\$25,000

Appendix B.3

PROCUREMENT AND MATERIALS MANAGEMENT

AUTHORIZATION TO EXECUTE PURCHASE ORDERS OR CONTRACTS

REVENUE CATEGORY	Transaction	Vice President Procurement and Materials Management	AVP Materials Management, AVP Acquisition Management, and Sr. Director Procurement	Manager of Material Disposal
Sale of Rolling Stock Requires approval of CFO before execution of conveyance documents	Sale	Unlimited if fully depreciated	\$250,000	\$100,000
Sale of Assets other than Rolling Stock/Real Estate Requires approval of CFO before execution of conveyance documents except for trade inventory and related scrap items	Sale	\$750,000	\$250,000	\$100,000

In addition to the contract delegations noted above, the following Inventory Material Requisition Approval Authorities apply to manually generated material requisitions only. DRP generated requisitions are excluded from this Approval Authority.

REQUISITION CATEGORY	Vice President Procurement and Materials Management	AVP Materials Management	Senior Director, Director and Senior Manager	Manager and Administrator	Inventory Planner
Inventory Material	Unlimited	\$500,000	\$200,000	\$100,000	\$10,000

BSN723: Untitled Bid/Sales Notification

Title: Untitled Bid/Sales Notification

Behalf Of:

ne:

Telephone:

Email Address:

Notification Type:

Bid/Sales Number:

Bid/Sales Date:

Bid/Sales Close Date:

Sourcing:

Description of Bid/Sales:

Recommended Publications:

Appendix B.4

Status: Composing**Preview of Approvals**

Required?	Status	Reason	Approver	Approved By	Date
Required	Pending	Procurement Representative must approve all requests.	Procurement Advertising Approver		
Not Required	Pending	Procurement Representative may review all requests.	Procurement Advertising Watcher		
Not Required	Pending	Procurement Representative may review all requests.	Supplier Diversity Bid		

Appendix B.5

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The prospective lower tier participant (offeror/prospective contractor) certifies, by submission of this offer or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant (offeror/prospective contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer or proposal.

Offeror/Contractor:

Name of Company

Signature of authorized representative:

Title: _____

Date: _____

*Instructions for this Certification may be found at 49 CFR part 29, App. B.

Appendix B.6

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Offeror/Contractor:

Name of Company

Date

By

Title

RCA85

Appendix B.7

On Behalf Of:

Include Staff Summary: No
 Expenditure Type: Inventory or Expense Goods
 Equipment Lease: No
 Telephone Number:
 Dollar Value:
 Contract Length:
 Contract duration:
 Funding Source: Operating
 Bid/Proposal Scoring Results:
 Basis of Award: Non-Competitive
Evaluation Matrix:

Vendor Name	Tech Score	Price Score	Total Score	Total Price	Rank
-------------	------------	-------------	-------------	-------------	------

Statement of Award Justification:

Outstanding Issues:
 Purchase Order Number:
 Purchase Requisition Number:
 PR Final Approver:
 PR Final Approve Date:
 RFQ, RFI, RFP Number:
 ASN Title (RFX Name)::
 Date Mailed:
 No. of Vendors Solicited:
 Proposal/Bid Closing Date:
 User Department Evaluation: No
 EvalRequired:
 Scheduled Start Date:
 Scheduled End Date:
 Legal Review: No
 Attorney Required: Not Required

Status: Composing

Preview of Approvals					
Required?	Status	Reason	Approver	Approved By	Date
Required	Pending				
Required	Pending				
Required	Pending				

Appendix B.8

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Sole/Single Source Procurement	Procurement	February 23, 2004	11.47.0

1.0 RESPONSIBILITY

Vice President Procurement and Materials Management

2.0 PURPOSE

To define the thresholds, acceptable criteria and procedure for justification and authorization of a Sole/Single Source procurement.

3.0 DEFINITIONS

3.1 Sole Source – Sole Sourcing exists when only one source of supply is available.

3.2 Single Source – Single sourcing exists when only one vendor is chosen although several are available.

4.0 PROCEDURES

4.1 POLICY

It is the policy of Amtrak to acquire products and services through a competitive process to the maximum practical extent. However, contracting without competition may be permitted under the following circumstances:

4.1.1 Sole Source Circumstances

- Only one responsible source is known that will satisfy Amtrak’s requirements, e.g., original equipment manufacturer (OEM) replacement parts.
- Products protected by patent or copyright, e.g., upgrade of proprietary software.
- Contracts with Federal, State or Local agencies, public utilities.

4.1.2 Single Source Circumstances

- To respond to unusual and compelling urgency in a timely manner, such as the need to purchase products or services to respond to a derailment, fire, terrorist act or other emergency, or to protect Amtrak from suffering serious harm.
- To acquire the services of an expert or neutral person for any litigation, dispute resolution, investigation or personnel recruitment.
- To demonstrate a unique and innovative concept not otherwise available to Amtrak.
- To qualify a vendor’s product.
- Amtrak’s need for the product or service is of such compelling urgency that Amtrak would suffer serious harm if it does not acquire the product or service.
- The products to be purchased are required to ensure standardization and interchangeability of inventory.

APPROVED	REVISION NO.	SUPERSEDES	PAGE
David L. Gunn President and Chief Executive Officer	New	MMM-5.11 & MM-5.12	1 of 1

Appendix B.8

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Sole/Single Source Procurement	Procurement	February 23, 2004	11.47.0

- Award of a follow-on contract to an incumbent contractor when it is likely that award to a new source would cause substantial costs, duplication or unacceptable delays or risks.

4.2 DOCUMENTATION

- 4.2.1 Each proposed sole or single source purchase in excess of \$25,000 must be supported by a written conclusive and logical justification, approved by the Department head.
- 4.2.2 It is the responsibility of the using department to supply the written justification for a sole/single source procurement, and a copy also forwarded to the Director Supplier Diversity. (See attached form.)
- 4.2.3 If it is claimed that time requirements dictate a sole/single source, the initiator of the Purchase Request must factually demonstrate that the delivery schedule is critical to Amtrak's needs and must furnish a precise statement as to the damage that will be sustained if the delivery schedule is changed to allow for competition. A statement as to an administratively established deadline, commissioning date, or implementation schedule will not be sufficient to fulfill this requirement.
- 4.2.4 If it is claimed that only one source can furnish a particular product or service needed by Amtrak, the initiator must demonstrate why an alternate product or service which is obtainable competitively cannot be purchased. It will not be sufficient merely to conclude generally that a certain source is uniquely qualified. In the event a unique capability is claimed, specific details must be furnished defining such uniqueness. Mere preferability or desirability is not sufficient, nor are general conclusions and statements as to such factors as capability, experience, personnel or know-how.

4.3 APPROVAL

A Director/Senior Director in the Procurement Department must approve all proposed sole/single source purchases (with the exception of OEM parts) with an estimated value in excess of \$25,000, prior to solicitation. The Vice President Procurement and Materials Management must approve all such purchases with an estimated value in excess of \$100,000. If the estimated value is greater than \$500,000, the President and Chief Executive Officer must approve the purchase. In an emergency which threatens the interruption of service or when there is a serious threat to health, safety or significant monetary loss to Amtrak, the Senior Vice President Operations is authorized to take actions as necessary. Any such emergency acquisition shall be reported to the Vice President Procurement and Materials Management within 48 hours.

4.4 REPORTING

On a quarterly basis, the Vice President Procurement and Materials Management will submit a report to the Vice President Business Diversity regarding the use of sole/single source contracts. Said report shall include each sole or single source contract, the contract period, and the full value of the contract.

APPROVED	REVISION NO.	SUPERSEDES	PAGE
David L. Gunn President and Chief Executive Officer	New	MMM-5.11 & MM-5.12	2 of 2

Procurement Sole/Single Source Request

Title:			
Requisition Number:		Program and Project:	
Account Coding:		Person In Charge:	
Estimated Cost/Price:	\$0.00USD	Department:	
		Estimated Delivery Time:	to
Reason(s) for Sole/Single Source			
	Unique capability, expertise, facilities, or equipment that no other source can provide to satisfy Amtrak's requirements.		To demonstrate a unique or innovative concept or qualify a vendor's product.
	Standardization of parts and/or compatability with existing equipment.		Acquire services of expert or neutral for litigation, dispute resolution, investigation or recruitment.
	Follow-on work when it is likely that award to a source other than the original source would result in substantial cost duplication or unacceptable delays.		Amtrak's need for the product or service is of such a compelling urgency that it would be seriously harmed without acquisition of the product or service.
	Unusual or compelling urgency (e.g. to respond to an emergency such as a fire or derailment.		Other:
Name of prospective contractor:			
Scope of Work			
Minimum Requirements			
Market Analysis			
Justification			
Follow-on Work			

Status: Composing

Preview of Approvals					
Required?	Status	Reason	Approver	Approved By	Date
Not Required	Pending	Person in Charge's supervisor must always approve			
Required	Pending	Chain of Command for Person in Charge			
Not Required	Pending	Archive Review must view all submissions			

Appendix B.9

**NATIONAL RAILROAD PASSENGER CORPORATION
STANDARD PROCUREMENT CONTRACT DOCUMENTS**

Table Of Contents

1. Services Request for Proposal and Proposal Form (8/16/04)
2. Services Contract (8/16/04)
3. Services Contract General Provisions (8/16/04)
4. Master Software Development Agreement (2/13/05)
5. Software License Agreement (2/13/05)
6. Source Code Escrow Agreement (2/13/05)
7. Minor Services Agreement (8/18/98)
8. Supplies Request for Proposal and Proposal Form (7/21/05)
9. Supplies Invitation for Bid and Bid Form (10/26/05)
10. Supplies Contract (7/21/05)
11. Supplies Contract General Provisions (7/21/05)
12. Architectural & Engineering Request for Proposal and Proposal Form (8/3/99)
13. Architectural & Engineering Contract (8/9/99)
14. Architectural & Engineering Contract General Provisions (8/9/99)
15. Construction Request for Bid and Bid Form (6/17/99)
16. Construction Request for Proposal and Proposal Form (6/17/99)
17. Construction Contract (6/17/99)
18. Construction Contract General Provisions (4/1/99)
19. Design-Build Request for Proposal and Proposal Form (to be issued)
20. Design-Build Contract (to be issued)

Appendix B.9

**NATIONAL RAILROAD PASSENGER CORPORATION
STANDARD PROCUREMENT CONTRACT DOCUMENTS**

Table Of Contents (cont'd)

21. Design-Build Contract General Provisions (to be issued)
22. Construction Management Request for Proposal and Proposal Form (to be issued)
23. Construction Management Contract (to be issued)
24. Construction Management General Provisions (to be issued)
25. Supplementary General Provisions for Non-Construction Contracts (7/1/03)
26. Supplementary General Provisions for Construction Contracts (7/1/03)
27. Representations and Certifications (07/16/07)
28. Equipment Lease Agreement (Amtrak as Lessor) (9/21/98)
29. Equipment Lease Agreement (Amtrak as Lessee) (to be issued)
30. Reimbursable Travel Expenses Schedule (8/16/04)
31. Non-Disclosure and Confidentiality Agreement (7/5/05)
32. Supplemental Terms and Conditions for Contracts funded by the Federal Transit Administration or Commonwealth of Pennsylvania (6/1/02)
33. Technical Evaluation Committee Statement (10/27/06)
34. Master Services Contract for Information Technology Contracts (4/20/06)
35. Master Services Contract General Provisions for Information Technology Contracts (4/20/06)
36. Master Services Contract Statement of Work Change Control Procedures (4/20/06)
37. Form of Statement of Work for Master Services Contract (4/20/06)
38. Request for Information (7/16/07)

Staff Summary Sheet - SSS38195

Requester:	Executive Officer:
Title:	Department Head:
Extension:	Director/Manager:
Date Submitted:	Date Approved:
Technology Impact:	
Personnel Action:	
Equipment Removal:	
Purpose:	
Discussion:	
Alternatives:	
Funding:	
Recommendations: null	

Routing Flow			
Routing	Approver	Concur	Non-Concur
	Chief Operating Officer		
	Chief Engineer		
	Chief Financial Officer		
	Chief Information Officer		
	Chief Mechanical Officer		
	VP - General Counsel & Corp. Sec.		
	Inspector General		
	VP - Office of Security Strategy and Special Operations		
	VP - Environmental Health & Safety		
	VP - Government Affairs & Comm.		
	VP - HR & Diversity Initiatives		
	VP - Labor Relations		
	VP - Marketing & Product Mgmt		
	VP - Planning & Analysis		
	VP - Procurement & Materials Mgmt.		
	VP - Strategic Partnerships & Business Development.		
	VP - Transportation		
President & CEO Response			
Final Approver		Action Required	
President & CEO		Awaiting full approval	

RFP Number _____

**STATEMENT OF CONFIDENTIALITY AND
NO CONFLICT OF INTEREST**

(To be signed by RFP Technical Evaluation Committee members)

In order to ensure fairness in the evaluation of proposals submitted in response to an RFP, it is important that the contents of proposals and the evaluation process remain confidential. Unauthorized sharing of information may have the result of giving one Offeror an unfair advantage over another, thereby jeopardizing the integrity of the process. Members of an RFP technical evaluation committee must not divulge to any person (other than another member of the committee, the Contracting Official, or other persons authorized by the Contracting Official) information pertaining to any aspect of the RFP evaluation process which has not already been made available to the public or all interested Offerors. Such information includes: contents of Offerors' proposals, scoring methods, points allotted, evaluator scores, and costs.

It is also important to ensure that no person participates in the selection of a firm or award of a contract if a real or apparent conflict of interest could be involved. Such a conflict would arise if a member of the technical evaluation committee or any member of his/her immediate family has a financial or other interest in the firms responding to an RFP.

I certify as follows:

- 1) I understand that the contents of proposals and the evaluation process are confidential and that they may not be disclosed or discussed with others, except as set forth above.
- 2) I do not have a conflict of interest and neither I nor a member of my immediate family has a financial or other interest in any of the Offerors submitting proposals.
- 3) I will not solicit or accept any gratuity, favor or anything of monetary value from any of the Offerors submitting proposals.
- 4) I am not employed by nor do I have an arrangement for future employment with any of the Offerors submitting proposals.
- 5) If at any time during the solicitation process, I encounter circumstances where my participation might result in a real, apparent, or potential conflict, I will immediately notify the Contracting Official in writing.

Name

Date

Signature

Appendix C.1 - Glossary

Acquisition & Contracting Electronically (ACE)

Acquisition & Contracting Electronically (ACE) is an electronic procurement system using the internet and Amtrak's intranet. The system is based upon Ariba Contracts Modules and allows for the issuance of solicitations to prospective vendors using the internet and the receipt of proposals, bids, and quotations from vendors via the internet.

Addendum (Addenda – plural)

A modification of a solicitation (IFB or RFP).

Advertisement

Classified advertisement placed in a generally distributed publication notifying the public and interested contractors of forthcoming solicitations.

Allocable Cost

A direct or indirect cost which may be traceable and charged to a cost-based contract and/or change order.

Allowable Cost

A direct or indirect cost which, by its nature, may be reimbursable to a cost-based contract and/or change order in accordance with applicable Federal Acquisition Regulations – 48 CFR 31.201-2.

Amendment

A modification of the terms of a contract which, although within the general scope of a contract, must be executed by both Amtrak and the contractor. (See Contract Modification.)

Approved Equal (also “or Equal”)

A substitute offered by a prospective contractor which is accepted by Amtrak, in accordance with procedures stipulated in the Solicitation Documents, as having met minimum requirements as set forth in the specification.

Architect/Engineer (A/E)

The person lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture and/or engineering identified as such in separate correspondence. The A/E may be a person or entity under contract to Amtrak for architectural and/or engineering services or a person employed by Amtrak.

Award

Amtrak's approval of a bid or proposal, and written notice of such approval to the tenderer of the successful bid or proposal.

Bid

An offer to provide goods or services submitted on a bid form including a list of bid items and charges.

Bid Bond

The purpose of the Bid Bond, which is submitted with a bid, is to indemnify Amtrak in the event the successful bidder refuses to enter into a contract after award. If the successful bidder does not accept award of the contract, the bidder is liable for the amount of loss suffered by Amtrak. Such loss may be partially or completely recovered by Amtrak by exercising its rights against the surety.

Bid Protest

Bidder/Offeror challenges the appropriateness of a contract award decision. Amtrak does not have a formal bid protest procedure.

Bidder

Any individual, firm, partnership, corporation, or combination thereof submitting a bid for goods or services in response to an Invitation for Bids.

Bidders'/Offerors' List

A list of prospective bidders/offerors for a particular solicitation consisting of firms that have indicated an interest or are determined to be potential sources.

Bid Samples

Materials furnished by a bidder in conjunction with its bid to display the characteristics of a product offered in its bid. Samples are provided on an as-needed basis.

Bilateral Contract Modification

A modification that is signed by the Contractor and the Contracting Official; also referred to as a supplemental agreement. They are used to (1) make negotiated equitable adjustments to the contract price, delivery schedule and other contract terms resulting from the issuance of a change order, (2) formalize letter contracts, and (3) reflect other agreements of the parties modifying the terms of the contract.

Blanket Order

An open contract with a supplier for certain goods or services over a predetermined amount of time at predetermined prices, or at prices to be determined on market or other conditions.

Blanket Release

Typically issued under the terms of a blanket order that has been competitively procured under formal procedures. The blanket release is simply an ordering mechanism under that order and is not an independent contract like a purchase order.

Brand Name Product

A name of a product or service that is limited to the product or service produced or controlled by one entity or by a closed group of entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one manufacturer.

Capital Equipment

Any equipment having a useful life of at least one year, including rolling stock and all other such property.

Cardinal Change

A contract change which is "outside the scope" of the original contract, and thus not an appropriate basis for a change order. Such changes are, in effect, "sole source" procurements.

Catalog Price

A price contained in a catalog or price list for a commercial item sold in substantial quantities to the general public.

Change Notice

A document issued to the contractor specifying a proposed change to the contract documents.

Change Order

A written order signed by the Vice President Procurement and Materials Management or a duly authorized representative and the contractor and issued to the contractor amending the contract documents. (See Contract Modifications.)

Change Request

A document submitted by the contractor to Amtrak specifying a proposed change to the contract documents.

Changes Clause

A clause which permits Amtrak's Contracting Official to make unilateral changes, in designated areas, within the general scope of the contract, to be followed by such equitable adjustments in the price and delivery schedule as the change makes necessary. Although Amtrak has a unilateral right, two general principles are important: (1) the right exists only because it is specifically conferred by the terms of the contract; and (2) when such unilateral rights are exercised, Amtrak has an obligation to adjust the price and/or other provisions to compensate for the alteration in the contractor's obligations.

Competition

When two or more vendors attempt to secure the business of a third party by the most favorable price, quality, and service.

Competitive Proposal Method of Procurement

(See Request for Proposals.)

Competitive Range

Determined by the Procurement Department, in keeping with the recommendations of the technical evaluation committee, composed of those firms that are determined to have a reasonable chance of being selected for award based on cost/price and other criteria as stated in the solicitation.

Construction Manager

That entity, if any, awarded a contract by Amtrak for construction management services.

Consultants

As defined in Amtrak's Consultant Services Policy (P/I 1.6.0), consultants are individuals or organizations that provide services or assistance in the area of organizational structure, policy development, strategy and corporate direction, operations or maintenance management, or the identification and analysis of areas within Amtrak requiring improvements. Contracts for consultants define a deliverable product for which the consultant is contractually responsible.

Contract

An agreement between parties in which a promise to pay is made in exchange for the furnishing of goods or services.

Contract Administration

The post-award administration of the contract to ensure compliance with the terms of the contract by both the contractor and Amtrak.

Contract Administration File Documentation

The documentation contained in the contract file maintained by, or on behalf of, the Contracting Agent. It reflects the actions taken by the contracting parties in accordance with the requirements of the contract and documents the decisions made, and the rationale therefor, of matters which may result (or have resulted) in controversy or dispute.

Contract Closeout

The process whereby closure of the contract with the contractor is consummated. The closeout indicates that required services or work have been provided and full payment has been made. Contract closeout does not necessarily mean that the contractor is released from any claim which Amtrak may have for negligence, malpractice and breach of contract.

Contract Documents

Consist of the Contract and all other documents specifically identified and incorporated therein. The Contract Documents may include: General Provisions; Supplementary General Provisions; the Pricing Schedule; Drawings; Specifications; Contract Modifications; and any other documents identified as Contract Documents in the Contract. Unless specifically identified in the Contract, the Contract Documents do not include solicitation documents (e.g., RFPs, IFBs, Contractor's bid or proposal, etc.).

Contract Drawings

The plans, elevations, cross-sections, supplemental drawings and details included or referred to in the specifications which have been approved by Amtrak which show the dimensions, character, and details of the work to be performed.

Contract Modifications

Any written alteration in the specifications, price, delivery date, contract period, quantity, or other contract provision of an existing contract, accomplished by unilateral action in accordance with a contract provision or by a mutual action of the parties to the contract. A Contract Modification is: (a) a written amendment to the Contract signed by both parties; or (b) a Change Order issued by the Contracting Official.

Contract Time

The amount of time as set forth in the Contract for completion of the Contract, including any authorized amendments thereto; also referred to as Period of Performance.

Contracting Agent (CA)

Duly appointed member of the Procurement Department who is subordinate to the Contracting Official and is responsible for all contractual actions other than those reserved to the Contracting Official.

Contracting Official (CO)

The Vice President Procurement and Materials Management or such person as may be authorized in writing by Amtrak to execute, administer and make changes to the Contract and to make related determinations and findings on behalf of Amtrak. This includes a duly appointed successor or an authorized representative of the Contracting Official acting within the limits of his/her authority. He/she assumes no personal liability under the Contract.

Contracting Official's Technical Representative (COTR)

That Amtrak representative designated by the Contracting Official to handle one or more technical administrative functions, as set forth in the contract or separate correspondence from Amtrak. (Also known as the Project Manager.)

Contractor

The person or organization identified as having been awarded a contract in the contract documents. Contractor means the contractor or its authorized representative.

Cost Analysis

A detailed review and evaluation of the separate cost elements and proposed profit of a vendor's cost or pricing data and the judgmental factors applied in estimating the costs. A cost analysis is generally conducted to form an opinion on the degree to which the proposed cost, including profit, represents what the performance of the contract should cost, assuming reasonable economy and efficiency.

Days

As used in the contract documents, "Days" shall be understood to mean calendar days, unless otherwise designated.

Debarment

A condition wherein a certain contractor is not permitted to contract or subcontract with the government for a specified period of time in accordance with applicable laws and regulations. Lists of debarred contractors are available through federal and state sources. Amtrak does not have a debarment procedure.

Debriefing

A factual discussion with unsuccessful bidders/offerors as to the selection process and reasons for their non-selection based only upon their submittal. Debriefing is not required.

Design Specifications

Specifications based on the design of a product or service. Typical design specifications may include dimensions, materials used, commonly and competitively available components, and non-proprietary methods of manufacturing.

Direct Cost

The cost that can be identified specifically with a particular cost objective.

Disadvantaged Business Enterprise (DBE)

Small business concern owned and controlled by “socially and economically disadvantaged individuals” (as that term is defined in 49 CFR Part 26).

Emergency

A condition existing when the public exigency requires the immediate delivery of goods or services. Such conditions may also cause significant inconveniences to the public, i.e., service delays, hazardous conditions or danger to property.

Equipment

All machinery, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper and acceptable completion of the project.

Equivalent

An approved substitution, equal in engineering design, function, performance, and service life to that item specified in the Contract Documents.

Execution of the Contract

The signing of the contract by the authorized representative of Amtrak and the authorized representative of the contractor.

Facility

Those structures, buildings, and property which are to be erected, renovated, reconditioned, remodeled or removed under the project.

Failure (Defect)

Any detected inability of a component, equipment, and/or system to function or perform in accordance with the indicated requirements of the Technical Provisions.

Federal Acquisition Regulations (FAR)

The regulations which govern procurements by Federal Government agencies. Amtrak is subject to certain (but not all) of these regulations when Federal grant funds are utilized for a procurement.

Federal Requirements

Federal regulations to which Amtrak is subject via its grant agreement with the FRA. They set forth standards for the procurement of goods and services with Federal funds. The requirements are set forth in 49 CFR 19.40 – 19.48 (with exception of 19.44 (b)). (See Appendix A.3)

Fixed Costs

Costs that remain constant throughout the life of the contract.

Force Majeure

An unforeseeable event which results in an excusable delay in the performance of contract obligations; protects the party from sanctions for late performance.

Federal Railroad Administration (FRA)

Federal grantor providing financial assistance and operational oversight to Amtrak.

General Provisions

Part of the contract documents. These provisions set forth the rights and responsibilities of the contracting parties and are generally standard in all contracts of a specific type (e.g., construction).

Grantee

Amtrak as a recipient of an outside source of funds, most notably from the FRA.

Indemnification

Compensation or reimbursement of a person for losses suffered by such person.

Independent Contractor

As defined in P/I 1.6.0, an independent contractor is an individual retained on a temporary basis to perform work under the supervision of an Amtrak manager. This work may be professional or clerical in nature. However, the distinguishing feature from either a Consultant or Professional Services Contract is that the individual's work is administered and monitored by an Amtrak manager. (See also P/I 7.13.1.)

Invitation For Bids (IFB)

A method of procurement used to solicit sealed bids where a firm, fixed price contract is to be awarded to the lowest responsive and responsible bidder.

Labor and Material Payment Bond

A bond (sometimes known as a payment bond) assures payment by the prime contractor as required by law of all subcontractors supplying labor and material in the performance of the work under a contract.

Late Bid or Proposal

A bid or proposal that is received after the close date noted in the IFB or RFP when all bids or proposals must be received.

Liquidated Damages

A specific sum of money expressly stipulated by the parties as an amount to be recovered by Amtrak if the contractor fails to complete the work or deliver the goods by a certain specified date. They do not represent actual damages but are established in the contract as a substitute for actual damages.

Lowest Responsible Bidder

The bidder who is eligible to be awarded a contract because its bid in unit price, total cost, or value per dollar is lower than any other bid submitted for consideration, and who is a responsible contractor.

Maximum Extent Practicable

Means to the greatest degree possible, taking into consideration economic feasibility and the needs of Amtrak.

Negotiation

Mutual discussion concerning the terms of a transaction or agreement between a purchaser and supplier.

Non-Competitive Procurements

(See Sole Source and Single Source Procurements.)

Notice of Award

A letter issued to the successful bidder/offeror stating that its bid/proposal has been accepted for contract. The letter requests the signature of the bidder/offeror on the contract documents, as well as other requirements within a prescribed period of time. The notice of award serves as notification only and is not contractually binding, nor does it authorize the awardee to buy materials or commence work.

Notice to Proceed

A written notice from Amtrak to the contractor to perform work, provide a service or deliver materials as prescribed in the contract.

Offer

A promise to provide goods or services according to specified terms and conditions in exchange for material compensation. May take the form of a bid or proposal.

Offeror

Any individual, firm, partnership, corporation, or combination thereof submitting a proposal for goods, services or work in response to a Request for Proposals.

Overhead or Indirect Costs

The costs which are generally associated with or attributed to the operating of a business and which may be allocated to one or several cost pools identified as General and Administrative, Labor Fringes & Benefits, etc.

Payment Bond

A payment bond (sometimes known as a labor and material payment bond) assures payment by the prime contractor as required by law of all subcontractors supplying labor and material in the performance of work under a contract.

Performance Bond

A performance bond ensures the completion of the project by the contractor guaranteeing that if it defaults, the bonding company will step in and finish the work.

Performance Specifications

Specifications based on the function and performance of a product or service under specified conditions, preferably conditions that can be reproduced for testing purposes. Performance specifications may include useful life, reliability in terms of average intervals between failure, and capacity.

Pre-Award Survey

The evaluation of a prospective contractor's facility, equipment and ability to perform that may be conducted prior to awarding of a contract.

Pre-Bid or Pre-Proposal Conference

A conference featuring representatives of Procurement Department and the User Department, to discuss questions and concerns raised by the prospective bidders/offerors regarding the preparation of their bids/proposals.

Pre-Construction Meeting

A meeting with the contractor and Amtrak after awarding the contract and before beginning construction.

Pre-Qualified Sources

Means competent, eligible contractors chosen objectively prior to the formal solicitation of bids/proposals.

Price Analysis

The process of examining and evaluating the reasonableness of a bidder's/offeror's price without evaluation of the separate cost elements and proposed profit, usually by comparing the price to verifiable data such as a published price list or previous purchases.

Procurement

Procurement and Materials Management Department.

Procurement File Documentation

The documentation contained in a procurement file which details the history of the procurement through award of the contract. It includes, at a minimum, the rationale for the method of procurement, the selection of the contract type, the reasons for selection or rejection of the contractor, and the basis for the contract price.

Professional Services

As defined in P/I 1.6.0, professional services are performed by individuals or organizations that provide services of a technical or intellectual nature within the field of finance, accounting, architecture, land surveys, professional engineering, law, medicine, computer programmer/support, advertising and communication, etc. Contracts for professional services define a deliverable product for which the contractor is contractually responsible.

Progress Payments

Reimbursements for costs incurred by a contractor at a percentage or stage of completion of the work. These payments are generally used when the contract requires an extended period of time for completion of the work.

Progress Reports

Periodic reporting of progress relating to specific requirements set forth in the contract.

Project Manager (PM)

The person delegated the authority to act on behalf of the requesting department for the daily technical administration of a contract including the monitoring of the contractor's performance in accordance with the contract. (Also known as the COTR.)

Proposal

An Offeror's response to a Request for Proposals that describes the goods or services being offered by a prospective vendor. Typically submitted as two separate proposals, technical and price.

Purchase Order

A type of contractual agreement in which a promise to pay is offered in exchange for goods or services.

Purchase Requisition

A hardcopy or electronic document used to initiate the procurement process which contains: descriptions, technical specifications, and cost estimates of the intended purchase; and authorizing approvals of the appropriate officials.

Qualified Bidder/Offeror

A bidder/offeror meeting minimum standards of business competence, reputation, product quality and financial ability.

Qualified Products List

A list of products which have satisfied tests and evaluations and can properly comply with the specifications requirements.

Request for Information (RFI)

A formal request to determine what type of products/services are available in the marketplace when a large or complicated purchase is being considered and the potential pool of suppliers must be pre-qualified. (Sometimes used interchangeably with Request for Qualifications.)

Request for Proposals (RFP)

A method of procurement used to solicit technical and price proposals that are jointly considered for the basis of award. Contract award is based on offerors' rating on various evaluation factors listed in the solicitation.

Request for Qualifications

A formal request to solicit statements of interest and firm qualifications to allow Amtrak to pre-qualify products or firms. (Sometimes used interchangeably with Request for Information.)

Request for Quotations

A less formal method of soliciting competitive prices from potential vendors using the telephone, facsimile, email or written transmittal. This form of solicitation may be used when the requirement is for a small dollar procurement (less than \$100,000). This method may also be used for procurements of \$100,000 or greater when the use of a formal Request for Proposals (RFP) or Invitation for Bids (IFB) is not feasible due to extenuating circumstances such as an Amtrak emergency situation.

Requesting Department

The segment of Amtrak responsible for determining the scope, budget, and necessity for the acquisition of particular goods or services. Also known as the User Department.

Responsible Bidder/Offeror

A bidder/offeror with the ability to perform successfully under the terms and conditions of a proposed contract taking into account such matters as integrity, record of past performance, financial and technical resources.

Responsive Bidder/Offeror

A bidder/offeror whose submitted bid/proposal conforms in all material aspects to the requirements of the solicitation.

Retainage

Withholding of a portion of undisputed amounts invoiced to Amtrak for services performed. Upon satisfactory completion of all services, Amtrak shall pay the retained portion of each invoice.

Revision

An architectural/engineering change to a project drawing. Revisions may be issued during the solicitation stage and/or the construction stage of the project.

Scope of Work

Complete description clearly defining the supplies or services being procured either through performance specifications setting forth the minimum acceptable performance standards expected of the end product or through a description of tasks to be performed. (May also be referred to as the Statement of Work.)

Sealed Bids Procurement

(See Invitation for Bids.)

Shop Drawings

Copies of original drawings submitted to Amtrak by or through the contractor, subcontractor or any lower tier subcontractor pursuant to the work, showing in detail: the fabrication and assembly of a product or equipment; the installation (that is, the form, fit and attachment details) of product or equipment; set-up of product or equipment with instruments for testing; function of the product or equipment; and breakdown of product or equipment to its lowest level of repairable/replaceable parts.

Single Source

Single sourcing exists when only one vendor is chosen although several are available. (See P/I 11.47.0)

Site Visit

Amtrak conducted tour of project site to acquaint prospective bidders/offerors with the existing conditions at the site of the proposed work.

Small Dollar Procurements

Acquisition of goods or services that cost less than \$100,000.

Small Dollar Procurement Procedures

Those relatively simple and informal procurement methods used to make small dollar procurement purchases.

Sole Source

Determined as the one and only source available. Sole sourcing exists when only one source of supply is available. (See P/I 11.47.0)

Sole Source Contract

A contract for the acquisition of goods or services from the only contractor/ vendor available to provide the goods or services. A type of non-competitive contract. (See P/I 11.47.0)

Solicitation

A purchasing entity's request for offers, including a Request for Quotations, an Invitation for Bids, or a Request for Proposals.

Specifications

The portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the project, and performance of related services.

Statement of Work (SOW)

Complete description clearly defining the goods or services being procured either through performance specifications setting forth the minimum acceptable performance standards expected of the end product or through a description of tasks to be performed. (May also be referred to as the Scope of Work.)

Subcontractor

Any party which takes portions of a contract from the prime contractor or another subcontractor for the performance of some portion of the prime contractor's work under the original contract.

Supplemental Agreement

A written bilateral document which amends the contract to cause a change in the scope of the contract. If a change would be outside the scope of work either in nature or magnitude but there is sufficient justification to award the change to the original contractor, a Supplemental Agreement is required. (See also Contract Modification.)

Supplementary General Provisions for Non-Construction [or Construction] Contracts.

Mandatory provisions which must be incorporated into all contracts where funding is provided by the FRA under its grant agreement with Amtrak.

Supplier

Any individual, partnership, firm or corporation which provides materials or equipment (but not labor or services) to the contractor in partial fulfillment of the work and which is responsible to the contractor by virtue of an agreement.

Surety

An entity authorized to issue surety bonds which undertakes to pay money or to do any other act in event that its principal fails to perform in accordance with the terms and conditions of contractual obligations.

Technical Evaluation Committee (TEC)

The Committee whose duties include evaluation and rating of technical proposals and selection of a contractor.

Technical Data

Written, typed or printed material prepared by the contractors, subcontractors, vendors, suppliers or others, whether or not copyrighted, and submitted in response to the requirements set forth in the contract documents. Technical data may include, but are not limited to, product data, shop drawings, pictorial representations, reports, schedules, studies, and assessments.

Technical Evaluation

Conducted by a technical evaluation committee in accordance with the evaluation criteria as established in the solicitation documents.

Technical Provisions (Specifications)

The Technical Provisions are specific requirements setting forth the technical material, methods and provisions pertaining to the contract.

Trade Secret

A plan, process, tool or other intellectual property which is used in some process of commercial value and which is known to a group of individuals who have been intentionally restricted by the trade secret owner. The key attribute of a trade secret is that the owner has diligently and effectively restricted knowledge so that its competitors cannot obtain the information.

Unilateral Contract Modification

A contract modification or change order that is signed only by the Contracting Official.

User Department

The term used for any department within Amtrak that initiates a request for procurement action and that will ultimately benefit from the goods or services acquired. (Also known as the Requesting Department.)

U.S. Department of Transportation (USDOT)

U.S. Department of Transportation means the Secretary of the U.S. Department of Transportation, and other persons who may at the time be acting in the capacity of the Secretary, or an authorized representative or other persons otherwise authorized to perform the functions to be performed by USDOT, including representatives of the Federal Railroad Administration (FRA).

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