

## **Materials Contract (IFB) Outline**

### **Introduction**

This is an outline for an Invitation For Bid (IFB) for a materials contract. The document was developed by the APTA Terms and Conditions Procurement Working Group as a recommended practice for use by transit agencies.

An Invitation For Bids (IFB) for a materials contract is generally used when the scope of work or specification is well defined; payment will be based on a lump sum or a per unit basis and there is no reason for discussions or negotiations. Examples of typical materials IFBs could include but are not limited to the procurement of finished goods or raw material such as:

Rail, rail parts, ballast  
Vehicle parts, fleet vehicles, inventory parts  
Office supplies, computers, furniture

The outline has been created to facilitate the development of IFB packages that are consistent throughout the industry, providing a uniform format for numbering and organizing such documents. The use of standard formats for commonly used procurement contracts will improve the ability of industry participants to prepare contracts that contain all necessary provisions and that facilitate the incorporation of best available practices.

Many industries have standard forms of contracts for the acquisition of goods and services. Buyers and sellers in those industries become familiar and comfortable with those forms. The goal of creating a common method of contracting enables participants to focus, when necessary, on negotiating only those issues for which a departure from the accepted norm is necessary or desirable. This approach will save considerable time and effort for the parties to a particular transaction. It also permits new provisions or evolving best practices to be incorporated into the standard contract for that industry efficiently and in a manner designed to benefit the entire industry. Finally, standardization leads to a consistency of interpretation which presumably should reduce the number of contract disputes and result in better prices for both the public and private sectors. \*

The Working Group that developed the recommended practice anticipates that agencies adopting this recommended practice will, for example, always show contract payment information under Article GC 5. It is understood that transit agencies will need to modify this document to reflect local and state rules, regulations and laws, and that they will insert the standard contract language that they have developed in the appropriate places in the document. However, modifications to the standard format should be made in a manner that will maintain the structural integrity of the outline: the numbering of unused articles should be maintained and accompanied by the notation that they are “Not Used” or are “Reserved”.

The outline for a materials contract IFB is organized as follows:

The **Invitation for Bid** (Section 1) contains general information for prospective bidders regarding the IFB package and can also be used as notification of the IFB to the public or an advertisement of the procurement opportunity.

The **Instructions to Bidders** (Section 2) provide detailed requirements that bidders must follow in submitting their bid. This section also includes ~~evaluation~~ award criteria and information of interest to the bidder regarding Agency contract award procedures.

The **General Conditions** (Section 3), once customized by each Agency, should be identical for all IFB contracts for materials issued by an Agency and should only be modified by language added in the Special Conditions section. For example, if the Agency does not want Article GC 8 to apply to a particular IFB, the Agency should indicate so in the special provisions section under a new article. The recommended language could read as follows: “The current IFB and ensuing Contract shall not be subject to Article GC 8.”

The **Special Provisions** (Section 4) should be customized to meet the Agency’s specific requirements for each individual contract, as well as local and state requirements. They are intended to amend and supplement the General Conditions to meet the individual requirements of each contract.

The **Federal Requirements** (Section 5) should be removed when the procurement is not funded with Federal funds. In this event, the agency should review the clauses to determine if these clauses should be inserted in the Special Provisions section.

The **Technical Specifications** (Section 6) include the specifications for the materials being procured.

The **Drawings** (Section 7) include drawings and references needed to complete the project work.

Under normal practice, the **Forms and Certifications** (Section 8) are submitted with the bid or the bid may be considered to be non-responsive.

A **Sample Contract** (Section 9) is included in the document for illustrative purposes.

**Appendices** (Section 10) are intended to be a place-holder for any other Agency documents that are not included elsewhere in the IFB document, such as a Safety Plan.

The table below represents the Working Group’s recommended outline in the left hand column. Where the Working Group thought it would be helpful, explanatory notes have been provided in the right hand column for ease in reviewing this document.

**Section 1. Invitation for Bid/Notice**

OUTLINE	EXPLANATION	COMMENTS
Date, time and location of bid receipt		
Pre-bid meeting information	If a pre-bid meeting is to be held, provide meeting information here.	
Title/Description of the items to be procured		
DBE/MBE/WBE/SBE goal	This section should include any additional locally required goals or program objectives.	
Contact person and address, phone and email		
Identification of source of funding	Federal, state or local funds	
Other locally required notice provisions	Optional section. Overview of local requirements such as license requirements, basis of award, wage requirements, bonds, etc. Details of the requirement are provided below in the Instructions, General Provisions or Special Provisions.	
Dated and signed for posting		

**Section 2. Instructions to bidders**

<b>OUTLINE</b>	<b>EXPLANATION</b>	<b>COMMENTS</b>
<b>IB 1 DBE / Civil Rights Requirement Instructions</b>	This section should include any additional local requirements or program objectives.	
<b>IB 2 Obtaining Bid Documents</b>	Describes locations or websites where bidders can review or obtain bid documents, plans and specs and other project information. Any costs for plans should be indicated.	
<b>IB 3 Pre-bid meeting/information for bidders</b>	May also include information about a site tour regarding the project.	
<b>IB 4 Questions and clarifications</b>	Include information regarding the process and deadlines for submission of questions.	
<b>IB 5 Addenda to IFB</b>	This section provides the Agency with the right to amend the solicitation documents during the process.	
<b>IB 6 Examination of contract documents</b>	This section notifies bidders that they are responsible for examining contract documents prior to submitting a bid.	
<b>IB 7 Protest procedures</b>	This section should include the procedure for protesting some element of the solicitation document or a contract award.	
<b>IB 8 Preparation of bids</b>		
IB 8.1. Use of Bid forms	Indicates that the forms included in the document must be used to submit a bid.	
IB 8.2. Alternate or multiple bids	Indicate whether alternate or multiple bids may be submitted.	
IB 8.3. Acknowledgement of Bid Addenda		
IB 8.4. Prices – Discrepancies in bid prices	Indicate any state or local practices regarding how discrepancies in the bid or pricing data will be handled.	
IB 8.5. Estimated quantities		
IB 8.6. Bid completion instructions - Modifications/Corrections		
IB 8.7. Signing of bid forms		
IB 8.8. Submittal of bids	Address / envelope / time and place of	

	submittal	
IB 8.9. Duration of validity of bids		
IB 8.10. Cash Discounts	Specifies whether cash discounts are included in the calculation of award.	
IB 8.11. Sales and/or Use Taxes	This section should reflect state requirements regarding taxes and should instruct the bidder whether to include them in the bid.	
IB 8.12. FOB Point		
<b>IB 9 Withdrawal of bids</b>		
IB 9.1. Withdrawal of Bids before Bid Opening		
IB 9.2. Relief of Bidders after Bid Opening	Indicate any state or local practices regarding how relief of bidders will be handled.	
IB 9.3. Late bids	Indicate procedure for handling the bids	
<b>IB 10 Public opening of bids</b>		
<b>IB 11 Evaluation and Award</b>		
IB 11.1. Basis of Award	By item or in the aggregate; evaluation of options	
IB 11.2. Pre-award responsibility review	Statement of qualifications and business references submitted with the bid form may be used in conjunction with this review process.	
IB 11.3. Agency Rights	Right to reject all bids, reject unbalanced bids, cancel, issue subsequent IFBs, waive informalities, etc.	
IB 11.4. Agency contract approval process	Describes Agency's process for contract approval. May include provision for debrief.	
IB 11.5. Execution of contract	Describes Agency's process for contract execution	
<b>IB 12 Omissions</b>	Indicate what the bidder's responsibility is if the agency omits information.	
<b>IB 13 Trade Names &amp; Alternatives/Brand Name or Equal</b>	Information about trade names and approved equal process should be included here.	
IB 13.1. Request for Approved Equals process		

<b>IB 14 Confidential Information</b>	Disclose that most contract information is public records. Explains how confidential information will be handled.	
<b>IB 15 Conflicts of interest; gratuities</b>		

**Section 3. General Conditions for Materials Contracts**

OUTLINE	EXPLANATION	COMMENTS
<b>GC 1 General</b>	Includes Definitions, Abbreviations, and use of Referenced Standards, etc.	
<b>GC 2 Materials and Workmanship</b>		
GC 2.1 Hazardous Material Identification and Material Safety Data Sheets		
<b>GC 3 Conformance with Specifications and Drawings</b>		
<b>GC 4 Inspection, Testing and Acceptance</b>		
GC 4.1. Acceptance/testing requirements		
<b>GC 5 Payment Terms</b>	Defines General Provisions regarding the payment terms and requirements related in paying the contractor.	
GC 5.1 Taxes	May reference applicable taxes and define responsibility for payment.	
<b>GC 6 Title; Warranty of Title</b>		
<b>GC 7 Warranty</b>		
<b>GC 8 Intellectual Property Warranty</b>	Access to proprietary information and/or ownership of the intellectual property should be addressed.	
<b>GC 9 Changes</b>	This article generally covers topics associated with the change order process that may be encountered during the performance of the work.	
<b>GC 10 Indemnification</b>		
<b>GC 11 Termination for Convenience, Default/Force Majeure</b>		
<b>GC 12 Legal Clauses</b>		
GC 12.1. Indemnification		
GC 12.2. Suspension of work		
GC 12.3. Excusable Delays/ Force Majeure		
GC 12.4. Termination for Convenience, Default		
GC 12.5. Compliance with laws and regulations		
GC 12.6. Changes of law	Describe responsibilities and mechanism	

	for implementing change of law during the term of the contract.	
GC 12.7. Governing law and choice of forum		
GC 12.8. Disputes	Explains the Agency's process for handling a dispute and the administrative review process for disputes including the use of Alternative Dispute Resolution process. Includes allocation of attorney's fees.	
GC 12.9. Maintenance of records; access by Agency; right to audit of records		
GC 12.10. Confidential information	Discloses that most contract information is public record. Explains how confidential information will be handled.	
GC 12.11. Conflicts of interest, gratuities		
GC 12.12. General non-discrimination clause		
GC 12.13. Modification of contract; waiver	Language should indicate case-by-case review of waivers and that they do not create a precedent nor modify the Contract.	
GC 12.14. Cumulative rights and remedies		
GC 12.15. Counterparts	Indicates that the original contract can be formed of several signature pages.	
GC 12.16. Severability		
GC 12.17. Third party beneficiaries		
GC 12.18. Assignment of contract		
GC 12.19. Independent parties		
GC 12.20. Survival		



#### Section 4. Special Provisions

OUTLINE	EXPLANATION	COMMENTS
SP1 D/M/W/SBE Participation	This section indicates the actual goals established for the project.	
SP 2 Insurance Requirements	Defines specified insurance requirements for this project	
SP 3 Options	Option quantities, pricing and assignability	
SP 4 Manuals		
SP 5 Training / Technical Assistance		
SP 6 Delivery location and schedule		

#### Section 5. Federal Requirements \*

OUTLINE	EXPLANATION	COMMENTS
FR 1 Access to Records		
FR 2 Federal Funding, Incorporation Of Federal Transit Administration (FTA) Terms, And Federal Changes		
FR 3 Federal Energy Conservation Requirements		
FR 4 Civil Rights Requirements		
FR 5 No Government Obligation to Third Parties		
FR 6 Program Fraud and False or Fraudulent Statements Or Related Acts		
FR 7 Suspension And Debarment		
FR 8 Recycled Products		
FR 9 Clean Water Requirements		
FR 10 Clean Air Requirements		
FR 11 Buy America		
FR 12 ADA Access		
FR 13 Cargo Preference		
FR 14 Fly America		

\* In the event of a Department of Homeland Security funded contract additional clauses may be required in addition to the Federal Requirements clauses listed above.

**Section 6. Technical Specifications**

**Section 7. Drawings (if applicable)**

**Section 8. Forms and Certifications**

<b>OUTLINE</b>	<b>EXPLANATION</b>	<b>COMMENTS</b>
<b>CER 1 Bidders check list</b>	Optional form that Agency may use to assist bidders in completing bid package.	
<b>CER 2 Bid and acceptance forms</b>		Acknowledge addendum
<b>CER 3 Statement of Qualifications and Business References</b>	Includes business references, etc.	
<b>CER 4 DBE/MBE/WBE/SBE Subcontractors and Suppliers</b>	This section should include any additional forms related to local requirements.	
<b>CER 5 Required Federal Certifications</b>		
CER 5.1. Buy America certificate		
CER 5.2. Certification of Prospective Contractor regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion		
CER 5.3. Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion		
CER 5.4. Non-collusion Affidavit to be executed by Bidder		
CER 5.5. Other Certifications	Insert any state or locally required certifications.	

## 9. Sample Contract

OUTLINE		EXPLANATION	COMMENTS
C 1	Order of Precedence		
C 2	Compensation	Includes Contract Price and Payment Schedule	
C 3	Contract Term and Period of Performance		
C 4	Notices	Should include notice, name and address for Contractor's, Surety's and Agency's Representative and also include the methods of communication: fax	
C 5	Entire Agreement (Integration Clause)		

## 10. Appendices

This is an alternative place for an Agency to place other forms and certifications, as well as the place to provide contractors with reference documents such as safety plans, DBE compliance manuals, etc. This may also include mention of invoice form, contract modification form.