

## **Rail Vehicle and Rail Equipment Procurement Outline (RFP)**

### **Introduction**

This document outlines a Request for Proposal (RFP) for a rail vehicle or a rail equipment contract. The document was developed by the APTA Terms and Conditions Procurement Working Group as a recommended practice for use by transit agencies.

An RFP is generally used when the scope of work or specifications are less well defined, or the procurement is highly complex, represents a high degree of risk to the agency, or needs to take into account functionality requirements, warranty provisions or design considerations. Types of equipment that might be purchased with such a contract include:

- Railcars
- Locomotives
- Overhaul of rail vehicles
- Railcar equipment such as motors, calipers, brake systems, seats, passenger information systems

The outline has been created to facilitate the development of RFP 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 will also permit 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 6. 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 rail vehicle contract RFP is organized as follows:

The **Request for Proposals** (Section 1) contains general information to prospective proposers regarding the RFP package and can also be used as notification of the RFP to the public or an advertisement of the procurement opportunity.

The **Instructions to Proposers** (Section 2) provides detailed requirements that proposers must follow in submitting their proposal.

The **General Conditions** (Section 3), once customized by each Agency, should be identical for all rail vehicle or equipment RFPs 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 2.6 to apply to a particular RFP, the Agency should include under Article SP2 the following language: “The current RFP and ensuing Contract shall not be subject to Article GC 2.6.”

The **Special Provisions** (Section 4) are numbered so that the main sections match the main sections of the General Conditions. The Special Conditions should be customized to meet the Agency’s specific requirements for each individual project or 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 project.

The **Federal Requirements** (Section 5) should be removed when the project is not funded with Federal funds.

The **Technical Specifications** (Section 6) include the specifications for the rail vehicles or rail equipment being procured.

The **Warranty Requirements** (Section 7) include requirements to warrant the operation of the vehicle.

The **Quality Assurance** (Section 8) covers manufacturing, inspection and acceptance procedures.

Under normal practice, the **Forms and Certifications** (Section 9) are submitted with the proposal or the proposal may be considered non-responsive.

**Form of Contract Document** (Section 10) are included in the document. The Contract will incorporate the surviving terms of the RFP as well as the Contractor's proposal in a binding document to be executed by the Agency and successful proposer within a designated time period following award.

**Appendices** (Section 11) details the requirements of import files.

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. Request for Proposals

OUTLINE	EXPLANATION	COMMENTS
Date, Time and Location of Proposal Receipt		
Pre-Proposal Meeting Information	If a pre-proposal meeting is held, provide meeting information here, including whether it is mandatory or not.	
Title/Description of the Rail Vehicles and/or Rail Equipment to be Procured		
Contact Person, Address, Telephone Number 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 Proposers

OUTLINE	EXPLANATION	COMMENTS
<b>IP 1 Quantities</b>	List types of description of rail vehicles and or rail equipment and expected base quantities and option quantities.	
<b>IP 2 Proposed Schedule for the Procurement</b>	Lists anticipated dates for major events such as pre-proposal meeting, questions and clarifications deadline, proposal due date and anticipated award date.	
<b>IP 3 Obtaining Proposal Documents</b>	Describes locations or websites where proposers can review or obtain proposal documents. Any costs for the documents should be indicated.	
<b>IP 4 Security Requirements</b>	Identifies the surety requirements that the agency may impose. This would include such things as proposal bonds, warranty bonds, performance bonds, etc.	
<b>IP 5 EEO/DBE Requirements for Transit Vehicle Manufacturers</b>	This section should include any additional locally required goals or program objectives.	
<b>IP 6 Pre-Proposal Meeting/Information for Proposers</b>	Describes overall procurement process including milestones and other issues critical to the Agency. May include a tour of existing equipment, as well as review of agency contracting requirements. For vehicle overhaul contracts this should include site inspection of equipment to be overhauled, such as a “deconstructed” pilot vehicle that exposes appropriate systems and structural elements.	
<b>IP 7 Questions and Clarifications</b>	Include information regarding the process for submission of questions	
<b>IP 8 Addenda to RFP</b>	This section provides the agency with the right to amend the solicitation documents during the process.	
<b>IP 9 Preparation of Proposals</b>		

IP 9.1. Use of Proposal Forms	Indicates that the forms included in the document must be used to submit a proposal.	
IP 9.2. Alternate, and Multiple Proposals	Indicates whether alternate or multiple proposals may be submitted.	
IP 12.3 Proposal Format Requirements	Indicate acceptable form of proposal submission (hard copy or electronic).	
IP 12.3.1 Technical Proposal Requirements		
IP 12.3.2 Price Proposal Requirements		
IP 12.3.3 Contact Administration Package Requirements		
IP 12.3.4 Proprietary/Confidential Information	Contains only information the proposer considers proprietary.	
IP 12.4 Signing of Proposal Forms		
IP 12.5 Modification or Withdrawal of Proposals		
IP 12.6 Duration of the validity of proposals		
<b>IP 10 Conditions, Exceptions, Reservations or Understandings</b>	Describes the process for taking exception to RFP and Technical Specification requirements.	
<b>IP 11 Pre-Award/Post Delivery Audit and Inspection Requirements</b>	Requirements in accordance with Buy America provisions in a federally funded contract or local/state agency requirements.	
<b>IP 12 Proposal Evaluation, Negotiation and Selection</b>	This section outlines the agency's evaluation procedures and criteria. Evaluation methodologies used in the industry include: weighted guidelines, acceptable technical low price, life cycles cost, best value (with or without technical tradeoffs).	
IP 12.1. Opening of Proposals		
IP 12.2. Selection Committee and Evaluation Team	Some agencies use only a Selection Committee.	
IP 12.3. Proposal Selection Process	Describes qualification requirements	

	(financial, human, facilities) and evaluation criteria	
IP 12.4. Evaluation Procedures	Explains (if applicable) the process for determining competitive range, conducting discussions and issuing BAFO.	
<b>IP 13 Response to Proposals</b>	This section enumerates the agency's rights and abilities after receipt of proposals.	
IP 13.1. Acceptance/Rejection of Proposals		
IP 13.2. Single Proposal Response		
IP 13.3. Cancellation of Procurement		
IP 13.4. Availability of Funds		
IP 13.5. Agency Rights	Right to reject all proposals, reject unbalanced proposals, cancel, issue subsequent RFPs waive informalities, etc.	
IP 13.6. Agency Contract Approval Process		
IP 13.7. Execution of Contract		
<b>IP 14 Protest Procedures</b>	This section should include the procedure for protesting some element of the solicitation document or a contract award.	
<b>IP 15 Omissions</b>	Indicate here what happens if Agency omits information	
<b>IP 16 Confidential Information</b>	Discloses that most contract information is public record. Explains how confidential information will be handled.	
<b>IP 17 Conflicts of interest; gratuities</b>		
<b>IP 18 Agency Specific Provisions</b>	Identify unique agency, state and local requirements	

### Section 3. General Conditions

OUTLINE	EXPLANATION	COMMENTS
<b>GC 1 General</b>	Includes Definitions, Abbreviations, and use of Referenced Standards, etc.	
GC 1.1. Intent of contract and scope of work	Includes requirement to meet all specifications, laws, standards and other requirements.	
GC 1.2. Performance Security		
GC 1.3. Subcontractors and Suppliers and Work of Subcontractors and Suppliers	Includes identification and agency approval of subcontractors and suppliers, rights to change subcontractors and suppliers, requirements of Contractors regarding their subcontractors and suppliers.	
<b>GC 2 Materials and Workmanship</b>		
GC 2.1. New Materials		
GC 2.2. Agency-furnished materials		
<b>GC 3 Conformance with Specifications and Drawings</b>		
<b>GC 4 Understanding Operating Conditions and Environment</b>	Indicates that contractors are responsible for apprising themselves of any conditions affecting where the railcars and/or rail equipment will operate and requiring all systems be selected by the contractor for the work are capable of functioning in the rail environment.	
<b>GC 5 Control of work</b>		
GC 5.1. Authority of Agency's Representative		
GC 5.2. Authority of Contractor's Representative		
GC 5.3. Review of Drawings, Designs and other Submittals		
GC 5.4. Inspection and Testing		
GC 5.4.1. First Article Testing		
GC 5.5. Corrections of Defective Work	This clause defines the process for	



	contractor notification regarding defective work and provides the Agency with remedies including withholding and using milestone payments, liquidated damages and payment adjustment factors.	
GC 5.6. Risk of loss	Defines responsibility for loss or damage to the vehicle prior to acceptance, based upon custody of the vehicle.	
<b>GC 6 Payment Terms and Procedures</b>	Defines General Provisions regarding the payment terms and requirements related in paying the contractor.	
GC 6.1. Withholding Payments and Use of Monies Withheld	Defines conditions under which the Agency can withhold payment for contractor's failure to perform. Also defines process for using withheld funds to pay third parties to resolve contractor's failure.	
GC 6.2. Claims	Details the Agency's process for filing a claim and the administrative review process for disputes of claims.	
GC 6.3. Taxes		
<b>GC 7 Title; Warranty of Title</b>		
<b>GC 8 Warranty</b>		
<b>GC 9 Intellectual Property Warranty</b>	Defines contractor's guarantee that the intellectual property is not infringing on registered patents.	
<b>GC 10 Limited Rights in Design, Technical and Proprietary Data</b>	Defines the ownership or rights to customized design and engineering work funded by Agency. Also defines Agency's right to use the contractor's propriety designs and drawings in the operation and maintenance of the railcar and rail equipment.	
GC 10.1. Access to Onboard Operational Data	Defines Agency's and OEM's rights to obtain operational data from onboard	

	systems such as the engine control modules.	
GC 10.2. Software Escrow Agreement	This details an agency's rights to access confidential data of the contractor, subcontractor and suppliers under situations such as bankruptcy of the contractor or material breach of the contract.	
<b>GC 11 Changes</b>	This article generally covers topics associated with the change order process that may be encountered during the performance of the work to include changes to price, schedule and constructive changes. For vehicle overhaul contracts this section should address how changes arising from hidden conditions will be handled.	
<b>GC 12 Audit</b>	Defines Agency's right to audit a proposal or changes to a contract.	
<b>GC 13 Legal Clauses</b>		
GC 13.1. Indemnification; Consequential Damages		
GC 13.2. Termination for Convenience, Default		
GC 13.3. Compliance with Laws and Regulations		
GC 13.4. Changes of law	Describe responsibilities and mechanism for implementing change of law during the term of the contract.	
GC 13.5. Governing law and choice of forum	States that mp third party beneficiaries exist.	
GC 13.6. 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 13.7. Maintenance of records; access by		

Agency; right to audit of records		
GC 13.8. Confidential information	Discloses that most contract information is public record. Explains how confidential information will be handled.	
GC 13.9. Conflicts of interest; gratuities		
GC 13.10. General non-discrimination clause		
GC 13.11. 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 13.12. Cumulative rights and remedies		
GC 13.13. Counterparts	Indicates that the original contract can be formed of several signature pages.	
GC 13.14. Severability		
GC 13.15. Third party beneficiaries	States that no third party beneficiaries exist	Add examples of where third party beneficiaries may exist
GC 13.16. Assignment of contract		
GC 13.17. Independent parties		
GC 13.18. Survival	Applies to obligations that survive the contract termination or expiration.	
<b>GC 14 Agency Specific Provisions</b>	Identify unique agency, state and local requirements, including environmental sustainability policies.	

## Section 4. Special Provisions

OUTLINE	EXPLANATION	COMMENTS
<b>SP 1 Prosecution and Progress of Work</b>		
SP 1.1. Notice to Proceed		
SP 1.2. Contractor's/Agency's Representative		
SP 1.3. Contractor to Develop Schedule for Work; Agency's Approval	Includes development of a baseline schedule at the beginning of the contract permitting measurement of progress or delays. The baseline schedule is generally related to liquidated damages specified in the contract.	
SP 1.4. Pre-Commencement Conference		
SP 1.5. Progress Meetings and Submittals		
SP 1.6. Correspondence control	Defines correspondence protocols or use of on-line collaboration tools which conform to agency standards.	
SP 1.7. Delays	Defines excusable delays (Force Majeure, delays caused by the Agency, etc.) and inexcusable delays.	
SP 1.8. Suspension of Work		
<b>SP 2 Inspection and Acceptance</b>	This section outlines inspection and acceptance requirements related to delivery of vehicles/equipment. Requirements related to manufacturing and subcontractor inspections and acceptance are outlined in the QA section.	
SP 2.1. Prototype vehicle/equipment	Describes requirement, if any, for how a prototype vehicle/equipment will be reviewed and approved, including timing of delivery.	
SP 2.2. Production Vehicles/equipment	Criteria for acceptance of vehicles	
SP 2.3. Conditional Acceptance		
SP 2.4. Repairs After Non-acceptance		
SP 2.5. Repair Performance		

SP 2.5.1	Repairs by Contractor		
SP 2.5.2	Repairs by the Agency	In this section, the following should be addressed: Parts Used, Contractor Supplied Parts, Defective Components Return, Failure Analysis, Reimbursement for Labor, Reimbursement for Parts, Reimbursement Requirements	
SP 2.6.	Final Acceptance		
<b>SP 3 Deliveries</b>			
SP 3.1.	Delivery Procedure		
SP 3.2.	Delivery Schedule		
SP 3.3.	Pre-Delivery Tests and Inspections		
SP 3.4.	Assumption of Risk of Loss		
SP 3.5.	Contract Deliverables	Identifies the items that the contractor is to provide to the Agency such as drawings, manuals, parts lists, test equipment, special tools, schedules, safety plans, car history books. Links deliverables with milestones payments and allows for withholding for failure to deliver.	
<b>SP 4 Options and Potentially Assignable Quantities</b>		Defines option quantities, how and when options are exercised including option pricing. Also defines assignable option quantities.	
<b>SP 5 Payment</b>			
SP 5.1.	Milestone Payments	Defines project milestones, milestone value and deliverables associated with each milestone payment. May also define conditions under which Agency can use withheld milestone payments to correct contractor failure to perform.	
SP 5.2.	Retention	Defines the process for retaining funds and the conditions for their release.	
SP 5.3.	Economic Price Adjustment	Optional Provisions to share project cost risk in market fluctuation relative to certain	

	commodities, currency exchange rates, etc.	
SP 5.4. Final Payment		
<b>SP 6 Liquidated Damages</b>	Defines the unit rate of damages that are due to the Agency, the events when they are applied, when they start and a process for withholding or forgiving them.	
<b>SP 7 Service and Parts</b>		
SP 7.1. Training		
SP 7.2. Engineer/Service Representatives		
SP 7.3. Contractor Service and Parts Support	Define the minimum inventory of parts contractor must maintain in support of the contract, and maximum delivery time for parts.	
SP 7.4. Documentation		
SP 7.5. Parts Availability Guaranty		
SP 7.6. Interchangeability		
<b>SP 8 Insurance Requirements</b>		
<b>SP 9 State and Local Requirements</b>	Identify unique agency, state and local requirements such as local preferences.	
<b>SP 10 Performance Surety</b>		
<b>SP 11 Agency specific provisions</b>	Identify unique agency, state and local requirements	

## Section 5. Federal Requirements

OUTLINE		EXPLANATION	COMMENTS
<b>FR 1</b>	Access to Records		
<b>FR 2</b>	Federal Funding, Incorporation Of Federal Transit Administration (FTA) Terms, And Federal Changes		
<b>FR 3</b>	Federal Energy Conservation Requirements		
<b>FR 4</b>	Civil Rights Requirements		
<b>FR 5</b>	No Government Obligation to Third Parties		
<b>FR 6</b>	Program Fraud and False or Fraudulent Statements Or Related Acts		
<b>FR 7</b>	Suspension And Debarment		
<b>FR 8</b>	Disadvantaged Business Enterprises		
<b>FR 9</b>	Clean Water Requirements		
<b>FR 10</b>	Clean Air Requirements		
<b>FR 11</b>	Compliance With Federal Lobbying Policy		
<b>FR 12</b>	Buy America		
<b>FR 13</b>	Pre-Award and Post Delivery Audit Requirements		
<b>FR 14</b>	ADA Access		
<b>FR 15</b>	Cargo Preference		
<b>FR 16</b>	Fly America		

## Section 6. Reserved for Technical Specifications

## Section 7. Warranty Requirements

OUTLINE	EXPLANATION	COMMENTS
<b>W 1 Warranty Requirements</b>	Defines warranty notification process, required response time and any penalties for failure to respond.	
<b>W 2 Contractor Warranty</b>		
W 2.1. Complete Vehicle/Equipment		
W 2.2. Extension of Warranty		
W 2.3. Minimum Warranty Parts Inventory		
<b>W 3 Voiding of Warranty</b>	This addresses Agency negligence.	
<b>W 4 Additions to Warranty</b>	Clause indicating that superior warranties provided by a manufacturer will be passed on to the Agency at no additional cost.	
<b>W 5 Exceptions to Warranty</b>	Describes any systems or components that are not covered by warranty such as consumables.	
<b>W 6 Detection of Defects</b>	Identifies the manner and form by which defects are reported.	
<b>W 7 Serialized Components Under Warranty</b>	Requires contractor to track and notify Agency of all components that fail and are exchanged by the contractor during warranty.	
<b>W 8 Scope of Warranty Repairs</b>	In this section, the following should be addressed: Parts Used, Contractor Supplied Parts, Defective Components Return, Failure Analysis, Reimbursement for Labor, Reimbursement for Parts, Reimbursement Requirements.	
<b>W 9 Warranty After replacement Repairs</b>		
<b>W 10 Fleet Defects</b>	Establish threshold for fleet failure. Defines remedies including any warranty extensions due to fleet wide failure. Updates to serialized components must be performed in the manner prescribed by the Agency.	



## Section 8. Quality Assurance

OUTLINE		EXPLANATION
<b>Q 1</b>	<b>Contractor's In-Plant Quality Assurance Requirements</b>	
Q 1.1.	Quality Assurance Requirements	
Q 1.2.	Quality Assurance Organization	
Q 1.3.	Quality Assurance Organization Functions	
Q 1.4.	Standards and Facilities	
Q 1.5.	Control of Subcontractors and Suppliers	Notifies the contractor that the agency retains the right to inspect subcontractor and supplier facilities.
Q 1.6.	Manufacturing Control	Includes imposition of configuration control requirements on vehicle/equipment builders including records maintained in field offices on agency property.
Q 1.7.	Inspection System	
<b>Q 2</b>	<b>Inspections</b>	
Q 2.1.	Inspection Stations	Identifies the inspection hold points during the manufacturing process
Q 2.2.	Resident Inspector	Identifies the office space and other requirements needed to support the agency's resident inspector.
<b>Q 3</b>	<b>Acceptance Tests</b>	
Q 3.1.	Responsibility	
Q 3.2.	Pre-Delivery Tests	
Q 3.3.	Post-Delivery Tests	
<b>Q 4</b>	<b>Agency Specific Requirements</b>	Identify unique agency, state and local requirements

## Section 9. Forms and Certifications

OUTLINE	EXPLANATION	
<b>CER 1 Proposer Checklist</b>		
<b>CER 2 Proposal Forms</b>		
<b>CER 3 Statement of Qualifications and Business References</b>	Include Agency requirements such as current projects, backlog of projects, completed projects, 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 Subcontractors</b>	Contractor to submit list of major subcontractors for Agency review.	
<b>CER 6 Required Federal Certifications</b>		
CER 6.1. Buy America certificate		
CER 6.2. Certification of Compliance with Federal Lobbying Requirements (49 CFR Part 20)		
CER 6.3. Certification of Prospective Contractor regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion		
CER 6.4. Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion		
CER 6.5. Non-collusion Affidavit to be executed by Proposer		
<b>CER 7 Other Certifications</b>	<p>This list may vary, depending upon local requirements. Examples include:</p> <ul style="list-style-type: none"> <li>- Certification regarding financial contributions</li> <li>- Safety certification</li> <li>- Quality assurance/control certification</li> <li>- Proposer's industrial safety record</li> <li>- Disqualification questionnaire due to violation of safety or violation of law</li> </ul>	

**Section 10. Form of Contract Document**

OUTLINES		EXPLANATION	COMMENTS
<b>C.1</b>	<b>Order of Precedence</b>		
<b>C.2</b>	<b>Compensation</b>	Include contract price and payment schedule	
<b>C.3</b>	<b>Contract Term and Period of Performance</b>		
<b>C.4</b>	<b>Notices</b>	Should include notice, name and address for Contractor's, Surety's and Agency's Representative and also include the methods of communication: fax	
<b>C.5</b>	<b>Entire Agreement (Integration Clause)</b>		
Sample Performance Bond			
Warranty Bond			

**Section 11. Appendices**

This is an alternative place for an Agency to place other forms and certifications it has developed, such as defect report forms, vehicle/equipment permission to ship form, and conditional and final acceptance forms. It is also the place to provide contractors with reference documents such as safety plans, DBE compliance manuals, etc.