



*AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION*



TRANSIT PROCUREMENT

A GUIDE FOR TRANSIT BOARD MEMBERS



APTA VISION
Be the leading force in
advancing public
transportation.

MISSION
APTA serves and
leads its diverse
membership through
advocacy, innovation and
information-sharing to
strengthen and expand
public transportation.

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INTRODUCTION

Effective procurements bring great value to transit agencies through cost effective contracts, smooth project rollouts, and goods and services that meet agency needs. This handbook is intended to help transit board members better understand the procurement process, their role in the process and the opportunities they have to improve the process.

Carefully crafted procurement policies and supportive boards are critical to effective procurement. Board members can help optimize the procurement function at their agencies by adopting policies that protect and support agencies and suppliers alike. Fair procurements and open communication among procurement participants facilitates appropriate pricing, healthy competition, legal compliance and public acceptance of procurement decisions.

Specific areas where transit boards can boost procurement efficiency and effectiveness include:

- Advocating the use of simplified procurement methods and streamlined contract and change order approval processes, where appropriate, and empowering agency staff to approve certain procurement awards
- Applying business acumen to procurement development, evaluation and approval
- Encouraging staff to use more sophisticated negotiated procurements
- Encouraging state and local governments to amend laws to reflect current best practice
- Encouraging the use of APTA procurement standards and incorporating industry best practices into agency procurement policies

The guide addresses each of these areas, providing an overview of issues to consider and recommendations for action. It also highlights other topics that often concern transit board members.

Agencies that utilize federal funds for procurements must comply with federal procurement requirements (FTA Circular 4220.1F) and key in those requirements is that the procurement process provides for full and open competition. Agencies are also required to protect the integrity of the procurement process by adopting written standards of conduct that assure that employees, board members and others do not participate in the selection, award or administration of contracts if they have real or apparent conflicts of interest.

This handbook was originally developed and distributed in 2003 by APTA's Procurement Task Force. The work of the task force is now carried on by the APTA Procurement Steering Committee which was created to support a stronger business environment in the public transportation industry and to oversee the development of industry procurement standards. The committee is comprised of members from the executive level of both transit agencies and industry suppliers, and includes the chair of the Transit Board Members committee. APTA hopes that the handbook will help transit board members better understand the issues around transit procurement and provide a basis for ongoing discussion among the industry, public officials and the public we serve.

APTA Procurement Steering Committee

OCTOBER 2010



PROCUREMENT APPROVAL

For every \$1 invested in public transportation, \$4 in economic returns is generated.

The Federal Transit Administration (FTA) does not require transit boards to approve contract actions. Boards are free to set their own policies and decide which contract matters require their oversight.

State and local governments, however, may mandate board approval of certain contract awards. As a result, procurement approval policies should reflect both current best practices and any requirements imposed by state or local laws.

ESTABLISHING A POLICY

Factors to consider when determining which actions should be subject to board approval include:

- **Policy issues:** Some contracts may involve policy issues important enough to require board approval.
- **Dollar value:** Agencies should establish a minimum threshold that must be met to trigger board review. The costs of reviewing low-dollar actions typically outweigh the benefits.
- **Discretion:** If there is little discretion in making an award such as in sealed bid contracts, submitting an action for board approval makes little sense.
- **Delays:** The time required to schedule board approval of contract awards and issue contract change orders can increase costs, reduce supplier interest and impact the smooth administration of contracts. The benefits of a lengthy board approval process must be weighed against the potential costs of project delays.
- **Staff productivity:** Preparing materials for board review can be time-consuming. By focusing only on actions that truly need board input and approval, transit boards allow staff to concentrate on other important tasks.

DIFFERENT ACTIONS, DIFFERENT NEEDS

Board approval policies also should reflect the type of contract action under consideration. Informal, low-dollar value procurements, sealed bids and requests for proposals (RFPs) may each need to be treated differently:

INFORMAL, LOW-DOLLAR VALUE PROCUREMENTS

Most agencies do not bring low-dollar value procurements to their boards for approval. Examples of such actions include obtaining one or more low value quotes for office supplies or oil filters.

SEALED BIDS

Under FTA policy and most state and local laws, sealed bids (also called Invitations for Bids or IFBs) must be awarded to the lowest bidder that is both **responsive** and **responsive**. More specifically, this means that in addition to providing the lowest price, the winning bidder must:

- Offer what the agency specified
- Have the technical and financial capacity to successfully complete the work
- Have a satisfactory record of integrity and business ethics and a satisfactory current and past performance record
- Be in compliance with all other Federal, state and local requirements including DBE requirements, public policy and not being suspended or debarred.

Because sealed bids allow little discretion and generally do not involve policy issues requiring board oversight, some boards delegate approval authority to their General Managers. The General Managers, in turn, may delegate it further, depending on the amount of the contract. These delegations eliminate the need to wait for the next monthly board meeting, allowing awards to be made more quickly.

RFPs/COMPETITIVE NEGOTIATIONS

Boards often approve awards through a Request for Proposal (RFP) process, also known as competitive negotiations. The RFP process gives agencies the ability to discuss the proposal with proposers (which can not be done with sealed bidding) and in addition to price, the qualitative differences in proposals can be considered. In some cases, differences in a company's project schedule, approach to the project or the personnel working on the project will differentiate which proposal provides the best value to the agency. Or a proposed product may provide more durability during the life of the product and lower long term costs to the agency. Sometimes a higher-priced supplier may provide the most advantageous proposal for the agency, and under the RFP process they can be awarded the contract.

If there are no policy issues to consider, some boards delegate approval of lower value to their General Managers. RFP awards that meet a certain minimum dollar value threshold or involve significant policy issues are almost always subject to board review.

Award recommendations for RFPs should be brought to the board **after** the agency has reached an agreement with the recommended supplier. If an agency recommended an award before negotiations, proposers have far less or no incentive to negotiate a good deal.

THE DOWNSIDE OF DELAYS AND CANCELLATIONS

Delays are an important factor to weigh in the procurement approval process. Particularly for large projects, suppliers may have project teams on hold, ready to go to work, and other project arrangements may be adversely affected if awards are delayed. Agencies that routinely delay projects may find less supplier interest or increased costs as suppliers add contingencies to account for anticipated delays.

Canceling procurements, especially after suppliers have gone through the entire process, should not be done lightly. Firms spend significant resources on their proposals; costs can reach hundreds of thousands of dollars on large projects. In addition, suppliers risk exposing their pricing and creative thinking to competitors or its unintentional dissemination if the agency decides to issue a new solicitation that reflects the knowledge it acquired during the initial RFP. In both cases, firms may be reluctant to submit future proposals if the risks to them outweigh perceived benefits, resulting in reduced competition for agency procurements.

REJECTING RFP SUBMISSIONS

Boards may reject agency recommendations for award of RFPs as long as the rejection is based on the evaluation criteria set forth in the RFP and considers the specific proposals offered. Boards that do not adhere to these requirements invite protests and concerns about the integrity of the procurement process.

The proposal evaluation process takes considerable time and generally boards do not have the time needed to devote to evaluate proposals. The most effective way to ensure sound award recommendations is through solid procurement processes conducted by skilled and experienced staff.

CHANGE ORDERS/CONTRACT MODIFICATIONS

In some cases, concerns about cost overruns or other issues lead boards to require that change orders and/or contract modifications obtain their approval. Because this can drive up costs or delay work while approvals await the monthly board meeting, many boards delegate approval authority of some change orders to staff. This is especially true when delays would result in substantial cost increases or interfere with orderly project completion.

For large projects, agencies may want to adopt special change order approval thresholds. For example, rolling stock contracts often involve much higher dollar amounts than other agency contracts because delays in issuing changes for rail cars or buses on a production line, which disrupt the production process, can be expensive.

WAYS TO IMPROVE THE PROCESS

Procurement Approval

Boards should review their procurement approval requirements and streamline them where possible. A balance must be struck between oversight and efficiency—unless contract awards involve high dollar amounts or important policy issues, reviewing contract awards with little discretion reduces the productivity of both board members and the agency staff that prepares materials for board consideration.

Similarly, boards should review change order and contract modification approval requirements, modifying them as necessary to reduce costs and ensure smooth rollouts of projects.

BUSINESS ACUMEN

Good knowledge of the market can help agencies reduce costs and conduct efficient procurements. To make the best use of limited funding in a time of rising costs, agencies must understand the effect their procurement terms and conditions have on costs and competition.

Specific areas where strong business acumen helps include:

COST CONTAINMENT

Agencies that understand what drives suppliers' costs can help minimize them while still obtaining what the agency needs. Progress payments for deliverables, for example, can help suppliers maintain positive cash flow; and the elimination of unnecessary insurance requirements or limiting other liabilities will reduce supplier costs. These all could reduce the procurement costs for an agency.

In addition, communicating with vendors and other agencies in advance of solicitations helps agencies understand the information suppliers need to accurately price their goods and services. Including this information in the solicitation makes it more likely suppliers' pricing information will be accurate and competitive.

*Every \$1 billion invested
in public transportation
supports and creates
36,000 jobs.*



RISK ALLOCATION

Agencies and suppliers both should be able to identify, articulate and allocate risk as part of the contracting process. Agencies that don't do so are vulnerable to higher costs and loss of suppliers.

Consider an agency that places all the price risk on the supplier. If the supplier does not properly estimate a price that covers its risk, it may go out of business, leaving the agency with a half-completed project and a smaller pool of competitive suppliers. If the supplier did include sufficient contingency to cover its potential risk, the agency may be paying more than it has to if the risks do not materialize. For highly variable costs on major projects, economic price adjustments eliminate the need for suppliers to add contingencies to cover price risk.

Where agencies place undue risk on suppliers such as indemnification requirements or onerous delays, they will pay a premium. Suppliers that perceive the risk burden to be too high may decline to do business with particular agencies, shrinking the pool of potential competitors. Performance and payment bond requirements could eliminate a portion of the supplier pool, depending upon bond market conditions, and more creative solutions are available to agencies and should be considered.

Agencies are well-served by thoughtful risk allocation in contracts and skillful project administration. Addressing potential problems early in the process is critical to effective procurement.

SYSTEM SELECTION

Agencies need to understand their business needs and the market to differentiate between “need-to-have” and “nice-to-have” components of new systems and projects. While custom-designed systems have their merits, they also put agencies at risk for higher costs, potential delays, and/or functionality issues. Deep knowledge of the market allows agencies to make intelligent selection decisions that balance cost, risk, business needs and desires.

WAYS TO IMPROVE THE PROCESS

Business Acumen

Boards that encourage and support staff in the careful assessment and allocation of risk rather than insisting that the agency not be vulnerable to *any* risk, can help contain agency costs and promote good competition for agency procurements.

PROCUREMENT METHODS

Agencies use a range of solicitation methods, depending on the dollar amount of the procurement, as well as what is being purchased. Board members should note this is another area where federal, state and local laws may differ.

In general, solicitation methods fall into one of two categories: informal quotes or formal solicitations:

INFORMAL PROCUREMENT METHODS

MICROPURCHASES

Because the cost of obtaining multiple quotes on small items generally exceeds any potential savings, the FTA allows agencies to procure goods and services based on single quotes as long as the price of the goods and services is fair, reasonable and less than \$3,000.

Some states and localities require that the threshold be lower, permitting single quotes only for purchases under \$1,000, for example.

SMALL PURCHASES

The FTA requires agencies to obtain two or more oral or written quotations before purchasing goods, services and/or other property priced between \$3,000 and \$100,000. Again, the threshold is lower in many states and localities so knowledge of state/local law is crucial.

Agencies like the small purchases method because it provides enough competition to ensure an economical purchase, it saves time and uses fewer resources than more formal processes such as sealed bids and RFPs. Some suppliers estimate that formal sealed bids cost two to three times more than small purchase procurements due to the required paperwork and a bid bond which might be required.

Steps agencies can consider to maximize the effectiveness of small purchase procurements include:

- **Provide flexibility within the small purchase procurement policy.** While two quotes may be enough for some purchases, other more expensive procurements may benefit from additional solicitations. Policies should give agencies the flexibility they need to decide on a case-by-case basis the number of quotes required.
- **Use technology to reduce the cost of seeking quotes.** Just the simple act of using e-mail to send quote requests to all qualified vendors cuts mailing costs and saves time in the procurement process.
- **Rotate through vendor lists.** Including different vendors at different times deepens the supplier pool and ensures more businesses have the opportunity to compete.



Every \$10 million in capital investment in public transportation yields \$30 million in increased business sales.



WAYS TO IMPROVE THE PROCESS

Informal Procurement Methods

Board support for the use of informal procurement methods to the fullest extent possible, can improve the process. Agencies benefit from the ability to reallocate staff time saved on lower dollar value procurements to more complex procurements and suppliers benefit from reduced costs which should translate into cost savings for agencies.

Board support for the adoption of FTA's \$3,000 threshold for micropurchases and \$100,000 threshold for small purchases, either by modifying their own policies or working with state and/or local governments to amend more restrictive laws, can lead to cost savings and a more efficient procurement process.

FORMAL PROCUREMENT METHODS

Once the price of desired goods or services surpasses either \$100,000 or the maximum small purchase threshold set by state or local law, agencies must shift to more formal procurement methods.

The two most common formal methods are sealed bids and RFPs. The FTA gives agencies wide latitude to choose which formal method is best. States and localities, however, may require sealed bids for certain kinds of procurements. Construction contracts and/or purchases of materials, equipment or supplies are two common examples.

Agencies typically find the RFP process elicits more competitive prices and better performance outcomes, especially for complicated items and projects. This holds true despite the complexity, the longer time required and the needed scrutiny associated with the RFP process. Over the last several years, agencies have both increased usage of RFPs and/or sought changes in state or local laws to allow broader application of RFPs.

SEALED BID OR RFP?

Choosing the appropriate formal method is a critical decision for agencies. In general, sealed bidding takes less time than an RFP and is useful for straightforward purchases of standard items or ones with well-defined specifications. Parts, fuel and most construction projects are three such examples.

Because the agency strictly defines its requirements in its solicitation, the bidder who meets the agency's requirements at the lowest price receives the award. As long as the winning bidder is both responsive and responsible (*see definition on p.5*), it automatically receives the award.

THE DOWNSIDE OF SEALED BIDS

Because the sealed bid process requires selection decisions to be made on price and price related factors, they are ill-suited for procurements where there is likely to be significant variations among offers. If, for example, one bus manufacturer offers to deliver buses considerably earlier than another and that earlier date is advantageous to the procuring agency, it would be detrimental to the agency to rely on price alone in selecting the contractor. Other important differentiators that the sealed bid process precludes are things like the strength of the management team of one service provider over another or the depth of each bidder's experience with a particular technology.

Another potential drawback to sealed bids is the inability to exchange information that could be helpful to the agency in selecting the most advantageous supplier. Discussions and negotiations between the agency and individual bidders are not permitted with sealed bids, limiting the ability to negotiate commercial terms or discuss differences in approach with individual suppliers.

ADVANTAGES OF RFPS

RFPs, which traditionally have been used to solicit for professional services, are increasingly used for other procurements. Advantages of RFPs include:

Obtaining information that improves the procurement. With complex projects, it may be difficult for agencies to identify their exact requirements at the outset. The RFP process allows them to generally describe their requirements, discover what different firms offer, and select the proposal that best suits their needs. An agency may, for example, know that it wants certain reports from a planning study, but is unsure how the study should be conducted to obtain that data. An RFP allows the agency to discuss with prospective providers how the study might be done, giving them not only knowledge about how a study might be performed, but the depth of different suppliers' expertise.

Signal system procurements are another example of where RFP procurement is more suitable. If an agency were forced to provide a definitive list of specifications as required for sealed bids, competition could be reduced and available new technologies might be eliminated from the agency's choice. In addition to the specification likely being slanted toward one firm, it might eliminate other potential bidders who could satisfy the general need, albeit through different methods than





Every \$10 million in operating investment yields \$32 million in increased business sales.

those outlined in the bid. Supplier submissions also may reflect added costs of changing products or methods of providing services to meet a sealed bid specification. The RFP process provides the agency with the flexibility needed to find the system best suited to its requirements, permits broader competition and can also help focus on life cycle cost benefits that could provide significant cost savings to the operating budget.

Full communication and negotiation with proposers. Agencies and suppliers often are well-served by the full communication that the RFP process allows. Both sides gain from talking through the procurement, ensuring they understand the work and each other's expectations. This often allows suppliers to reduce contingency amounts they otherwise would have included in their bids to cover uncertainties. The process also gives agencies insight into pricing, helping them determine whether a proposal is realistic. Sometimes an unusually low price indicates that the bidder did not understand the work and would not be able to complete it for the price offered.

In addition, negotiations can reveal cost drivers for different bidders. Matters such as insurance, allocation of risk, and payment schedules, are likely to affect cost differently for various firms. Negotiations give agencies the opportunity to consider whether it would be advantageous to change such terms and what they might achieve through trade-offs. It allows for refinement of the technical parameters of the project which may result in cost reductions during the best and final offer process, and allows proposers to submit the most optimal final offer possible.

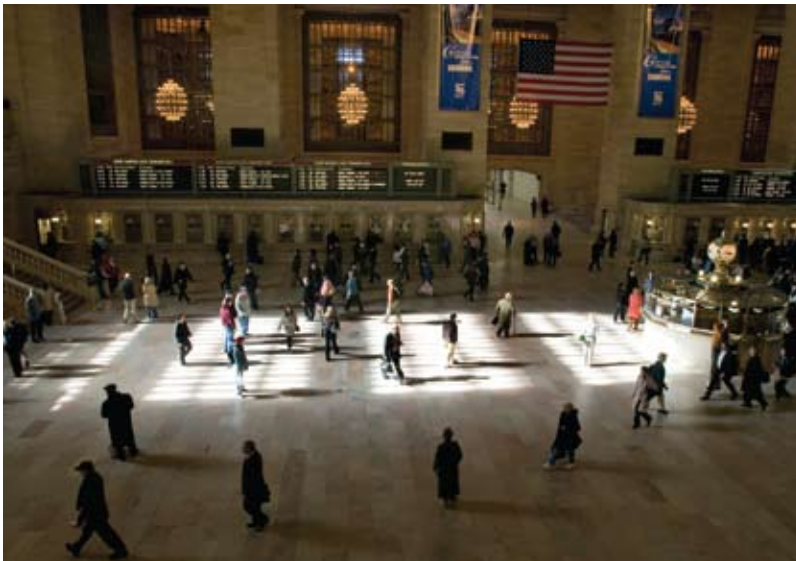
Flexibility to award contracts on more than just price alone. Agencies that want to consider factors beyond price when making awards must use RFPs. Examples of such factors include the project schedule, the experience of the firm and its team and innovative approaches to the work including proposed savings that agency could obtain.

Choosing a supplier whose price is not the lowest can be troubling to both board members and a public accustomed to low bid contracts. Selecting based solely on price can be a false economy, however. The products and projects transit agencies must purchase are complex and the differences among various suppliers in terms of services and ability should be considered.

WAYS TO IMPROVE THE PROCESS

Formal Procurement Methods

The support and encouragement of boards for use of the RFP process for appropriate procurements can improve the agency's ability to obtain services, projects and products that provide the best value for the agency. If necessary, boards should seek changes in state and local laws to permit wider use of RFPs.



THE SEALED BID PROCESS

As part of the sealed bid process, agencies:

- Develop solicitations with completely defined specifications, contract terms and conditions, and identifying other submission requirements such as DBE plans, bonds, and insurance.
- Advertise bids and issue the solicitation.
- Respond to written questions submitted by prospective bidders. Often there is also a pre-bid conference where bidders may ask oral questions. The agency provides the questions and answers in writing to all prospective bidders to assure that everyone has the same information and is bidding on the same specifications.
- Open bids publicly. The agency determines whether the low bid is responsive and the bidder is responsible.
- Award the contract to the lowest responsive and responsible bidder.

EXAMPLES OF SEALED BID PROCUREMENTS

Parts, supplies and equipment procurements: The procurement process for parts, supplies and equipment is typically very straightforward. The agency has definite specifications and no need to discuss potential suppliers' methods of work. Payment almost always comes after delivery. Cost issues that could be mitigated through negotiation, such as insurance or indemnification, also are absent, making a sealed bid appropriate.

Small construction projects: Small construction projects are also often well-suited for sealed bidding. The projects are straightforward with little need to discuss how the work will be done or to assess qualitative differences among bidders. In general, sealed bids are effective procurement tools for many construction needs.

THE RFP PROCESS

There are several acceptable forms of RFP procurements, and agencies are free to tailor the process to meet their needs. In a typical scenario, agencies may:

Solicit feedback from the industry on a draft specification or scope of work. This allows the agency to obtain comments about potential risk factors or unique issues, and to make changes to improve the specification or scope before the solicitation is issued. This is particularly useful if the agency has not purchased the item recently and for all areas of rapidly changing technology. While this step also can be taken for sealed bids, it is more common with RFPs given the complexity of those procurements.

Research the market. The agency obtains information from other transit agencies or industry sources that will be used to develop the technical specification and to identify potential sources of supply.

Develop a solicitation. The solicitation typically includes a scope of work or technical specification, proposed contract terms and conditions, and other submission requirements as needed, such as bonds, Disadvantaged Business Enterprise plans, and insurance. The solicitation also must define proposal evaluation criteria that reflect issues critical to the agency, listed in order of importance.

Many kinds of evaluation procedures are acceptable. In some solicitations, evaluation criteria are weighted and point systems are used to score proposals. Others call for narrative evaluations. While a thorough discussion of this issue is beyond the scope of this handbook, agencies must use care in choosing methodologies, which can vary from procurement to procurement. Most importantly, they must follow the procedures established in the solicitation for evaluating proposals.

Advertise the solicitation to the industry. Advertisements should reach both past and new suppliers to ensure healthy competition.

Respond to written questions submitted by potential prospective bidders. Most agencies hold a pre-proposal conference where firms may ask questions orally. After the meeting the agency provides the questions and answers in writing to all prospective bidders to ensure everyone has the same information. (Proposers often do not ask any questions, instead waiting until they are involved in negotiations with the agency so as not to tip their hand to their competitors.)

Receive both technical and cost proposals from interested firms. The former describes how they would do the work and their qualifications; the latter establishes the costs.

Open and review proposals. Proposals generally are opened privately and the number and content of proposals kept confidential until the agency makes a proposed award public. A handful of states may require full disclosure, but in the vast majority of cases, proposals can be kept confidential until the contract award.

Generally, only people directly involved in the evaluation and procurement process



are privy to the discussions and negotiations. In many instances, the number of people involved in the negotiations is tightly controlled to protect the interests of both the suppliers and agencies. If prospective bidders think their unique solutions and practices might be shared with competitors, they may not offer their best available options.

Typically, selection committees read the proposals and narrow the field by weed-ing out the least attractive proposals. Those that remain may be invited to give oral presentations.

Usually selection committees review technical proposals without reference to cost proposals so that evaluators are not influenced by price in their analysis of the mer-its of technical proposals. While that review is underway, other agency staff typically will determine if the cost proposals are realistic and what cost issues to focus on in negotiations. After the review of technical proposals is complete, the committee will review cost proposals and make another cut considering price and technical proposals together. Those still in contention may be invited for discussions or negotiations.

Begin negotiations. During negotiations, agencies may seek to better understand the technical proposals and companies' capabilities, request changes in certain aspects of the proposals, and discuss pricing to understand what drives the proposers' costs to determine if changes could be made to reduce costs. Negotiations often are useful to assure that both parties understand the work and have realistic expectations.

Request best and final offers (BAFOs) and make recommendations. BAFOs are matched against all of the evaluation factors—technical as well as price—and a deci-sion is made to recommend a specific firm for approval. Award recommendations gen-erally include a short summary of the procurement and an assessment of the recom-mended firm's capabilities.

Public transportation is a \$48.4 billion industry that employs more than 380,000 people.

EXAMPLES OF RFPS

Typical scenarios in which RFPs are used include:

Professional services: RFPs traditionally have been used to procure professional services, such as consultants, lawyers, accountants and so on. Specialties within these professions and differences in qualifications should be considered in the selection process.

Nonprofessional services: Even nonprofessional services such as janitorial services may benefit from an RFP process. The services may be difficult to describe and the agency may benefit by allowing firms to explain the way they intend to provide the services, with the chosen proposal incorporated in the contract. Moreover, in the RFP process, an agency would have the flexibility to select a firm with sterling references even if it were higher in cost. Of course, it is up to the agency to determine what price differential it is willing to pay and to negotiate a reasonable price.

Rail car procurements: Rail car procurements are excellent candidates for RFPs, and the RFP method should be considered the preferred method of acquisition. Rail cars are increasingly complex and car builders now function as systems integrators, meshing complex computer-driven systems into a car body structure. Accordingly, agencies must assess the variations in vendors' ability to complete that integration, and consider both those capabilities and price into their award decisions. APTA has developed a standard light rail vehicle procurement RFP, including technical specifications, for use by transit agencies.

In addition, agencies benefit by discussing the technical specifications with each car builder to ensure the best, most cost-effective solutions are considered. Commercial factors that significantly influence cost such as indemnification, payment terms, insurance, and bonding requirements can be negotiated with each supplier. These factors are likely to affect costs differently for different suppliers and discussions will allow each firm to make its case. This process also allows each firm to make the best offer it can, benefiting both agencies and suppliers.

NOTE: APTA has developed standard RFPs for bus and light rail vehicle procurements for use by the transit industry. Drawing upon the expertise of transit agency staff and vehicle manufacturers, these documents reflect industry best practices and provide a uniform format and organization for vehicle procurements. The documents are available on the APTA website and include both commercial terms and conditions and technical specifications.

Bus procurements: Over the years, more and more agencies have turned to the RFP method to buy buses. Agencies use RFPs to consider the merits of different bus designs and features in addition to price. Since generally no two bus manufacturers can offer the same delivery schedules, many agencies also use RFPs to weigh the value of different delivery schedules in their award decisions. APTA has developed a standard bus procurement RFP, including technical specifications, for use by transit agencies.

Transportation services: RFPs are particularly useful in procuring transportation services. For large-scale service contracts, evaluating providers' management teams is similar to selecting a general manager for the agency's transit services. The process allows suppliers to offer different ways of providing the services and gain credit in the evaluation process for innovative approaches. Discussions can be invaluable in assuring smooth roll-out of services.

Signal, communication, and other systems procurements: RFPs are excellent for systems for which there is no single standard design. Even if agencies could develop the definite specifications needed for sealed bids for such a system, suppliers would incur substantial costs adapting their systems to the specifications. There also would



be a substantial risk of increased problems and delays if the winner had to build something it had never built before.

Construction projects: Agencies may wish to use an RFP even with relatively small construction projects if the project is new to them. Construction of a CNG refueling station could be such a case. Although this might be a relatively low-dollar value project, an RFP may nevertheless be useful to allow both sides to talk through the issues posed by an unfamiliar technology.

The RFP process also can be used for construction projects that present unusual challenges, such as complicated staging requirements. The agency may benefit from suppliers' thinking and give credit in the evaluations process to the suppliers whose approaches best overcome the problems. Similarly, if a construction project involves complicated community issues, the agency may be well-served by evaluating the qualitative differences in bidders' understanding of those issues and their ability to manage them.

Agencies increasingly are using the design-build method for construction projects to achieve substantial time savings over traditional design, bid and build methods. Procurement through RFPs allows agencies to assess qualitative issues like design approach and management capability.

NOTE: As noted previously, the FTA gives agencies wide discretion to choose which formal method—sealed bid or RFP—is appropriate. State and local laws, however, often impose greater constraints. Accordingly, some agencies may not be able to use RFPs in all the examples cited here.

SPECIAL RFP METHODS

Architectural and Engineering Services/Brooks Act Procurements: Architectural and engineering services represent another type of negotiated procurement. The FTA requires these procurements to be conducted pursuant to the Brooks Act or in accordance with applicable state law. Most states also require a similar methodology when procuring architectural and engineering services.

A key difference between RFPs for these procurements compared to others is the elimination of price considerations. Agencies must choose the most technically qualified firm, excluding price as an evaluation factor, and negotiate with that firm only.

Two-step Procurements: Two-step procurements are used when an agency wants to base its selection of any technically acceptable proposal on price alone.

In the first step, firms submit technical proposals describing how they would do the work. The agency evaluates the technical proposals and eliminates those they find unacceptable. The agency may then revise its proposed contract based on discussions with the bidders.

The agency next invites bids from the suppliers whose technical proposals were acceptable, with the award going to the lowest bidder. Because this process does not allow the agency to consider the degrees of difference in qualitative factors among suppliers in this round, a firm with a technically acceptable, but not stellar, proposal whose price is only a few dollars less than that of a firm with a much better proposal wins the award.

WAYS TO IMPROVE THE PROCESS

APTA Procurement Standards

The support and encouragement of boards for the use of APTA's standard bus and light vehicle RFPs can save time and money for agencies and suppliers in developing procurements. Their use can also lead to consistency in interpretation that should reduce the number of contract disputes and result in better prices for both the public and private sectors, and permits new provisions and evolving best practices to be incorporated in the procurement.

NON-COMPETITIVE PROCUREMENTS

The FTA authorizes non-competitive procurements only in certain specified circumstances:

- An item is available from only a single source
- A public exigency or emergency will not permit a delay resulting from competitive solicitation
- The FTA authorizes non-competitive negotiations
- Competition is inadequate after solicitation of a number of sources

OTHER PROCUREMENT ISSUES

GEOGRAPHIC PREFERENCES

Agencies may favor firms in their own states and localities in the procurement process only where a contract is funded solely by state or local funds. Even then, state or local law may restrict the use of geographic preferences because preferences may entail spending more agency money than would be the case without the preference. Agencies cannot grant geographic preferences in contracts funded using federal funds, except in a limited instance for architectural and engineering services. This includes all operating contracts where the agency receives federal operating funds.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Some contracts have goals for Disadvantaged Business Enterprise participation. Goals are set when it is reasonably possible to find DBE subcontractors able and available to perform a portion of the work. For some contracts, one or both of these conditions may not be present so goals are not established.

Many agencies solicit quotations from DBE firms when they conduct informal procurements for lower dollar value items to provide such firms with business opportunities.

BOARD MEMBER CONTACT WITH SUPPLIERS

Sometimes suppliers or potential suppliers contact board members about a procurement that is underway or to express concern about a contract matter. In both cases, the best thing for the board member to do is to refer the supplier to the procurement department. The board member should not get in the middle of communications between agency staff and suppliers or try to broker the relationship. This could easily lead many suppliers to try and leverage their communications and impede agency staff in their dealings with suppliers, and it raises questions about the appearance of impropriety on the part of board members.

For additional information on individual transit agency procurement practices, Transit Board Members are encouraged to talk to their agency's General Manager or Procurement Officer.

MAINTAINING THE INTEGRITY OF THE PROCUREMENT PROCESS

Agencies subject to the FTA must conduct procurements in a manner that provides for full and open competition among suppliers. To protect the integrity of the process, agencies also must adopt written standards of conduct that ensure employees, board members, and others do not participate in the selection, award or administration of contracts supported by FTA funds when there are real or apparent conflicts of interest.

Transit board members play a critical role in shaping the environment in which transit procurement is conducted. From building effective partnerships between the public and private sectors and to fairly sharing procurement risks, transit board members can guide their agencies to more effective procurement practices.



**AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION**

1666 K Street NW
Washington DC 20006
202-496-4800

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For additional information on individual transit agency procurement practices, Transit Board Members are encouraged to talk to their agency's General Manager or Procurement Officer.

For additional information on transit industry procurement practices information is available from the Federal Transit Administration. FTA's website at www.FTA.DOT.gov includes copies of the Best Practices Procurement Manual as well as copies of the relevant procurement policies and guidance issued by the agency.

APTA's procurement standards and recommended procurement practices are available on the APTA website at www.apta.com.

APTA regularly includes program sessions on procurement topics at its conferences. The APTA procurement committee holds meetings throughout the year, usually in conjunction with major APTA conferences, which are open to all APTA members. Additional information on the Committee and APTA conferences is available on the APTA website at www.apta.com.

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