

**NCTPA
POLICIES, PRACTICES AND PROCEDURES MANUAL**

SECTION 5: CONTRACTING AND PROCUREMENT

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CHAPTER 1 INTRODUCTION

These procurement procedures apply to purchases of goods and services that utilize federal, state and local funds. Where there is a conflict between federal and local requirements, federal requirements will prevail.

The Napa County Transportation and Planning Agency (NCTPA) receives transit funding from the federal government and the State of California, as well as other regional and local agencies. NCTPA will follow standard public agency contract law as set forth in California Government and Public Contract Codes for procurements that are funded with state or local revenues and do not have any federal funding. NCTPA is further committed to meeting all requirements in FTA Circular 4220.1(F) and its successors for procurements that involve federal funds. These procurement policies and procedures are consistent with federal regulations and the laws of the State of California. These procedures also apply to any revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity, or to create business opportunities utilizing a Federal Transit Administration (FTA) funded asset.

The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and architectural/engineering (A/E) services necessary for the operation of NCTPA's transportation and planning services. These procedures include guidelines for the solicitation, award and administration of formally advertised contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated and A/E contracts.

The procurement procedures are designed to:

- Instill public confidence in the transit procurement process of NCTPA;
- Ensure fair and equitable treatment of all vendors who seek to do business with NCTPA;
- Ensure maximum open and free competition in the expenditure of public funds; and
- Provide the safeguards to maintain a procurement system of quality and integrity.

Methods to implement the foregoing are described in the remainder of this document and the attachments hereto.

CHAPTER 2 QUICK REFERENCE GUIDE

A. Step-by-Step Guide

Step 1: The Project Manager (PM) must determine the following:

1. Project scope;
2. Expected cost of the procurement;
3. Funding source(s) and whether the procurement is already budgeted; and
4. Whether the procurement will be informal or formal.

Step 2: For procurement type, PM should refer to the policies described herein. Any questions regarding the procurement process should be immediately discussed with the Executive Director (ED)/general counsel to ensure that the policies are being followed and adhered to.

Step 3: The Administrative Technician (AT) is responsible for the administration of the procurement, which includes attaching the proper boiler plate agreements and clauses and obtaining the required review and approval(s), before initiating the procurement process.

Step 4: Over a certain threshold, approval of the procurement by the Board.

Step 5: Upon completion of the procurement process, execution of the contract prior to a notice to proceed, or initiation of work.

B. Methods of Procurement and Delegation

1. Goods and Services

Definition: Procurements of services, supplies, or other property, with the exception of professional and A/E services or labor and/or materials for public works/construction projects.

Contract Threshold	Method of Procurement	Required Approval Level	Notes
Less than \$3,000 (FTA) or \$5,000 (state & local funds)	Micro Purchase	Management / Senior Staff	With signed authorization form
>\$3,000 – \$50,000	Small Purchase / RFP / IFB	Executive Director	With signed authorization form
Greater than \$50,000	Small Purchase/RFP/ IFB	Board of Directors	
Less than \$25,000 (FTA)	Sole Source	Management / Senior Staff	With signed authorization form
Less than or equal to \$50,000	Sole Source	Executive Director	With signed authorization form
Greater than \$ 50,000	Sole Source	Board of Directors	
Less than or equal to \$175,000	Construction	Executive Director	Including UPCCAA*; with signed authorization form
Greater than \$175,000	Construction	Board of Directors	

*California Uniform Public Construction Cost Accounting Act (UPCCAA), dated July 2011.

Modifications to contracts or purchase orders which represent no change in the scope of the character of material or services provided in the original contract or purchase order may be approved by the ED or PM if the cumulative dollar value of the modification and the original contract amount are within the ED award authority.

NCTPA may acquire property and services valued at \$3,000 or less without obtaining competitive quotations. These purchases are exempt from FTA’s Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

2. Professional and Architectural/Engineering Services (A/E)

Professional services means services such as, but not limited to, the services of attorneys, physicians, architects, engineers, and other consultants or individuals or organizations possessing a high degree of technical skill.

A/E means program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services. A/E services require the use of an A/E method of procurement.

CHAPTER 3 POLICIES AND PROCEDURES

C. Procurement Policies

The NCTPA Board of Directors (Board) is responsible for governing the operation of the agency including all procurement policies that serve as a basis upon which procurement procedures can be developed.

1. Procurement Responsibility

a. Administrative Technician (AT) and Procurement

The AT is responsible for maintaining all official contract files.

The AT will be responsible for managing procurements and coordinating with the PM to ensure procurement files meet local, state, and federal requirements.

The AT is responsible for updating these procurement procedures on an as-needed basis.

- i. The AT shall ensure that a clear and accurate specification / scope of work is developed for each procurement.
- ii. The AT shall not recommend that NCTPA enter into a contract unless the AT has ensured that all applicable requirements of federal law, federal regulations and circulars, California law, and all other applicable procedures have been met.
- iii. The AT shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the policies specified in this manual.
- iv. The AT is also responsible for such tasks as writing, preparing and assembling contract documents; obtaining necessary pre-solicitation approvals; advertising RFP's and IFB's, issuing amendments, obtaining post-bid opening approvals for award, conducting investigations of proposed Contractor's past performance,

conducting consultant selection meetings for negotiated contracts and conducting negotiations, consulting with Project Managers to monitor Contractor's performance, and managing termination for default or convenience procedures whenever the need arises.

b. Project Manager (PM) and Procurement

A Project Manager (PM) will be a duly appointed staff member directly responsible for the daily technical administration of a contract including monitoring the contractor in its performance of the contract and performing those functions as specified. The PM should be a responsible individual assigned to and familiar with the procedures and requirements of NCTPA, general project management principles and state and federal procurement requirements. As such, the PM is the ED's technical expert to assist in ensuring contractor compliance with technical requirements of the contract. Normally, the PM approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the contractor for payment.

- i. The PM or his/her designee shall be the primary agency employee to determine that contract prices are fair and reasonable.
- ii. The PM is responsible for soliciting bids and proposals directly or working with the AT on such solicitation; for serving as the chairperson of pre-bid and pre-proposal conferences, qualification hearings and proposal evaluation meetings; for conducting contract negotiation sessions; for managing the non-technical aspects of post award contract administration including negotiation of modifications, claims, and supplemental agreements; and for maintaining procurement files.
- i. The PM shall ensure that sufficient unencumbered funds are available for obligation for each contract.
 - a. The PM shall develop a clear and accurate specification / scope of work for each procurement.
 - b. The PM is also the person to whom reports of warranted equipment malfunctions or failures, or any problems with the contractor's performance are submitted. The PM makes the initial request for contractor remedial action. The ED/counsel becomes involved when and if the lapse constitutes a serious, i.e., repetitive, or unresolved, breach of contractor's civil or contractual responsibility.
 - c. Should the contractor fail to respond in a timely or adequate manner to rectify any problem, the PM notifies the AT and ED/counsel that an apparent breach of the contract exists.

After investigating the situation, the ED/counsel and PM take any steps necessary and available to enforce NCTPA's rights under the contract. This may include withholding payment, imposing liquidated damages, negotiation and recommending a settlement, terminating the contractor for default, or referring the matter for legal action.

- d. The PM also has the following duties in relation to the contract:
 - i. Attends pre-bid and pre-proposal conferences as the technical expert;
 - ii. Conducts investigations of proposed contractor's technical past performance;
 - iii. Questions prospective contractors during clarifications and discussions as to their technical capability to perform the contract;
 - iv. Assists the ED with contract negotiations;
 - v. Ascertains the availability of funds prior to asking the ED to initiate the negotiation and approval process for change orders;
 - vi. Contract modifications and supplemental agreements; and
 - vii. Issues directions to correct or replace defective items of work.
 - viii. Coordinates and communicates with AT and includes AT in necessary meetings, conferences, and written communications.

2. Standards of Conduct and Conflict of Interest Policies

All NCTPA personnel involved in procurements will comply with NCTPA's procurement code of conduct as described in the contract and procurement manual, available on NCTPA's website at nctpa.net.

3. Purchasing Policies

a. Equal Employment Opportunity/Affirmative Action

All procurement documents issued by NCTPA require all interested vendors to certify:

- i. That the vendor does not discriminate against any employee or applicant for employment, because of race, religion, sex, age, creed, color, disability or national origin;
- ii. That the vendor is in compliance with all Executive Orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment; and
- iii. That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

b. Disadvantaged Business Enterprise

Disadvantaged business enterprises (DBEs) as defined in 49 C.F.R. Part 26 shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, all NCTPA procurements funded with Federal funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services, as set forth in NCTPA's DBE program.

At the time the procurement takes place, the PM will coordinate with NCTPA's DBE Liaison Officer for the effective tracking of DBE information as it relates to NCTPA's DBE program, goals and reporting.

c. Cooperative Procurement

When circumstances warrant, NCTPA may attempt to fill requirements through a cooperative purchasing agreement (without independent bids or quotations) with the State of California, or with other appropriate public agencies. In such cases, NCTPA will ensure all state and federal requirements are met.

d. Open Competition Required.

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- i. Unreasonable requirements placed on firms in order for them to qualify to do business;
- ii. Unnecessary experience and excessive bonding requirements;
- iii. Noncompetitive pricing practices between firms or between affiliated companies;
- iv. Noncompetitive award to any person or firm on retainer contracts;

- v. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable or potentially unable, to render impartial assistance or advice to NCTPA; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.
 - vi. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered;
 - vii. Exclusionary or discriminatory specifications; and
 - viii. Any arbitrary action in the procurement process.
4. Public Records Act

All bids and proposals received become the exclusive property of NCTPA. At such time as a contract award is recommended to the NCTPA Board of Directors, all bids and proposals become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" OR "PROPRIETARY." NCTPA shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

D. Procedures

1. Independent Cost Estimate

An independent cost estimate (ICE) shall be performed on all FTA, state, local and general funded procurements prior to receiving bids or proposals. The process for obtaining a cost estimate will depend on the type of procurement being pursued. For example, a cost estimate for a micro purchase (see explanation below) may only involve phone calls to obtain price quotes; while a cost estimate for the procurement of a commuter bus would require a more involved process to assess the market and to develop a reasonably accurate estimate. The cost required to research and prepare the estimate should not outweigh the potential benefits of the estimate. An ICE can be obtained from different sources including the following:

- Published competitive prices

- Results of competitive procurements
- Estimates by in-house estimators
- Outside estimators

The ICE will be included in the procurement records. All construction bids will require an engineering estimate as part of the plans, specifications and engineering phase of the project.

2. Excluded Parties List

Any procurement, contract or vendor contract exceeding \$25,000 is subject to the federal Excluded Parties List (EPLS/SAM).

After all qualified bids or quotes have been opened the EPLS/SAM database must be referenced, which contains all businesses that have been barred or suspended from receiving federal funds or participating in federal contracts. The AT will perform an EPLS/SAM business name search on each of the businesses for specific procurements. The AT will perform the EPLS/SAM search for procurements in which federal transit funding will be utilized.

- i. If a business reference returns a positive listing on the EPLS/SAM, a printout of the web page will be included in the procurement file, while a second copy will be forwarded to the bidding business with a notice that they have been removed from consideration in the procurement.
- ii. If the EPLS/SAM search returns no listing on a specific business, a copy of the web page, showing the negative return, will be made and included in the procurement file.

3. Business References

a. CA Secretary of State Business Entity Search

Prior to final award or completion of a draft contract (pre-counsel review), the AT will perform a Business Entity search on the California Secretary of State's website (<http://kepler.sos.ca.gov/> in 2013), to confirm the business is registered to do business in the State of California.

- i. If the business is not listed on the Secretary of State's website, a business representative will be notified of their status and be provided 30 calendar days to either correct the listing, or provide documentation that they have submitted an application to the Secretary of State and are pending approval.

- ii. If the business is registered in the State of California as a legal business, a copy of the web page listing will be included in the procurement file. If the procurement requires any kind of contract with NCTPA, a second copy will be included with the contract documents prior to them being forwarded to NCTPA Attorney for final review prior to award.

b. Business License Reference

Prior to final award or completion of a draft contract (counsel review), the AT will contact NCTPA's Finance Department (FD) to confirm that the business has a valid business license.

- i. If the business has a valid license, a license number will be recorded in the procurement file and, if a contract, will be forwarded to counsel with the draft contract.
- ii. If the business does not have a valid business license, they will be referred to the FD to discuss their services and the process for obtaining a license.

4. Reasonableness of Price – Price Analysis or Cost Analysis

In all FTA, state, local, and general funded procurements, a price analysis or cost analysis shall be used to determine the reasonableness of the bid price. A price analysis will normally be used to evaluate reasonableness. However, if a valid price analysis cannot be completed, a cost analysis of a bid price may be conducted.

a. Price Analysis

"Price analysis" is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Normally, price analysis may be accomplished through one or more of the following activities:

- i. Comparison of prices received in a bidding situation;
- ii. The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.);
- iii. The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point out apparent gross

inconsistencies which should be subjected to greater pricing inquiry;

- iv. The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, with discount or rebate arrangements;
- v. The comparison of proposed prices with estimates of cost independently developed by personnel within NCTPA; or,
- vi. The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

b. Cost Analysis

“Cost analysis” is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs in order to form an opinion on the degree to which the contractor's proposed costs represent the cost of performance of the contract, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the contractor's/offeror's proposal.

Normally, cost analysis may be accomplished through the following:

- i. Verify contractor's cost data.
- ii. Evaluate specific elements of costs and project these elements to determine the effect on prices of such factors as:
 - (i) The necessity for certain costs;
 - (ii) The reasonableness of amounts estimated for the necessary costs;
 - (iii) Allowances for contingencies; and
 - (iv) The basis used for allocations of particular overhead costs to the proposed contract.
- iii. When the necessary data is available, compare the contractor's estimated cost with:
 - (i) Actual costs previously incurred by the contractor;
 - (ii) The contractor's last prior cost estimate for the same or similar estimates;

- (iii) Current cost estimates from other possible sources; and
- (iv) Prior estimates or historical costs of other contractors manufacturing the same or similar items.

iv. Forecasting future trends in costs from historical experience:

- (i) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
- (ii) In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

- i. Is the cost allowable in accordance with guidelines in Section 31 of the Federal Acquisition Regulations (FAR)(2)?
- ii. Is the cost allocable to the particular project?
- iii. Is the cost reasonable?

If only one bid is received, the sole bidder must cooperate with NCTPA as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

5. Best Value

"Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the agency.

6. Tag-ons

"Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change. "In scope" changes are not tag-ons.

The use of tag-ons is prohibited and applies to the original buyer as well as to others.

7. Piggybacking

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

Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an Indefinite Delivery Indefinite Quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

8. Use of Brand Name

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

9. Options

NCTPA may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If NCTPA chooses to use options, the requirements below apply:

a. Evaluation of Options

The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement.

b. Exercise of Options

- i. NCTPA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
- ii. An option may not be exercised unless NCTPA has determined that the option price is better than prices available in the market or that

the option is the more advantageous offer at the time the option is exercised.

- iii. Options must be evaluated at the time of the original bid, and the cost basis for exercising the option must be established at the time of the bid.
- iv. Option prices and/or conditions cannot be negotiated at the time of the exercise of an option.

10. Advance Payments

NCTPA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs except as allowed by FTA requirements. There is no prohibition on NCTPA's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

11. Progress Payments

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

- a. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- b. NCTPA must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect NCTPA's interest in the progress payment.

12. Procurement by Micro-Purchases

Purchases below \$3,000 may be made without obtaining competitive quotations if it is determined by the PM that the price is fair and reasonable. The PM will document how this determination was derived. The Davis-Bacon Act applies to public works/construction contracts exceeding \$2,000.

13. Small Purchases

For goods and other professional services procurements between \$3,000 and \$100,000, insofar as is practical, no less than three bids shall be solicited. Oral quotes will be accepted with written confirmation received in 24 hours. The responsibility for soliciting quotations rests with the PM. Appropriate documentation, including but not limited to a list of the vendors contacted, a fair and reasonable price determination and the quotes received, shall be filed with the project documentation.

14. Construction and Major Capital Purchases exceeding \$4,000
 - a. Major FTA-funded capital projects must further follow FTA's Construction and Project Management Guidelines:
http://www.fta.dot.gov/FTA_Project_and_CM_Guidelines_-_July_2011_Update_12-01-26.pdf
 - b. Major FHWA/State-funded projects must further follow Caltrans' Local Assistance Guidelines:
http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_g/complete-2013-13-02.pdf
 - c. Additional references and procedures can also be found at:

Caltrans Construction Manual (Oct 2013)

http://www.dot.ca.gov/hq/construc/constmanual/construction_manual.pdf

Construction Contract Standards

http://www.dot.ca.gov/hq/esc/oe/construction_standards.html

Caltrans Engineering Guidelines, Manuals and Training

<http://www.dot.ca.gov/hq/esc/oe/guidance.html>

E. Competitive Procurement Process

The procurement files will contain an explanation for the choice of the procurement process being used.

1. Invitation for Bids (IFB)

The AT will work through the ED/PM and counsel for the release of all

- a. RFPs for goods and service;
- b. release of professional service contracts; and
- c. capital projects.

NCTPA procurement procedures and FTA guidance will be followed for IFB procurements.

2. Recording of Bids

To assist in having a complete record of the procurement history, for all IFBs records of the bid number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be kept in the official procurement file and be available for public inspection. When the items

are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record shall be completed as soon as practical after bids have been opened and read aloud. AT shall be responsible for maintaining files of these records and abstracts for goods and service, professional services, and capital projects.

3. Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the IFB. Award shall be made to the bidder submitting the lowest bid, unless NCTPA determines that the bid is not responsive and/or the bidder is found to be not responsible.

4. Analysis of Limited Bid Response

If one (1) bid has been received, the PM or AT will contact vendors to determine reasons for the single bids. The purpose of this examination is to ascertain and document the reason for the single bid. If the determination is that the IFB restricted competition, the procurement may be rebid. A price or cost analysis shall be performed to establish the reasonableness of the bid price before an award is made.

5. Determination of Responsiveness

- a. Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
- b. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

6. Responsible Bidder Evaluation

Before awarding the contract, NCTPA shall determine that a prospective contractor is responsible and that prices are reasonable. Bidders may be asked to provide any information required to determine the responsibility of the bidder. A responsible bidder is one who meets the standards set forth below:

- a. Have adequate financial resources, or the ability to obtain such resources as required during performance of the contract.

- b. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- c. Has a satisfactory record of performance. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible bidders. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
- d. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- e. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
- f. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

- i. A list of debarred, suspended or ineligible firms or individuals.
- ii. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
- iii. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
- iv. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
- v. Documented past performance on contracts with NCTPA.

The procurement files will document the determination of responsive and responsible bidders.

7. Rejection of Individual Bids

Any bid that fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

8. Award of the Contract

Unless all bids are rejected, award shall be by written or electronic notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.

When award is made to other than the lowest bidder, NCTPA will document in the procurement files the reason for not choosing the lowest bid.

9. Project Completion

All original documentation related to each procurement such as the IFB, bid, control record, board report, ICE, background data, evaluation criteria and scores, meeting reports/notes, as well as the logs documenting bid opening dates and bid receipt dates will be submitted to the AT for storage when the file becomes inactive. For audit purposes, complete procurement files will be maintained for a minimum of five (5) years after the project is closed out and completed unless a different time period is mandated by a funding entity.

10. Request for Proposals (RFP) / Request for Qualifications (RFQ)

The Request for Proposals (RFP)/Request for Qualifications (RFQ) competitive procurement process is used when conditions are not appropriate for the use of an IFB. The latter is generally the case in the purchase of services such as lease agreements, maintenance and service contracts, rental contracts, and professional service contracts. The RFP/RFQ process for goods and services is coordinated by the AT and managed by the PM. The RFP/RFQ process for professional services is managed by the PM.

The RFP/RFQ process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offeror.

a. Issuance of RFP and RFQ Packet

The RFP/RFQ packet will include the following:

- i. Instructions To Proposers - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.
- ii. Attachments - Required forms to be completed by the proposer and submitted with the proposal.
- iii. Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFP/RFQ.
- iv. Scope of Work - Each RFP/RFQ will contain a statement or scope of work prepared by the PM which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of NCTPA, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:
 - (i) A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
 - (ii) A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;
 - (iii) A proposed delivery schedule; and,
 - (iv) A proposed contract period.
- v. Evaluation Criteria – Each RFP/RFQ will contain the criteria and method that will be used to select the successful proposer. If the selection is to be made by lowest price, that will be stated in the solicitation documentation. If the selection process will be a “best value” determination, the solicitation will state so and the relative significance of each criteria will also be included in the solicitation document.
 - (i) Evaluation criteria will be developed and fully modeled prior to the release of the RFP, along with the development of any scoring methodology/forms to be used by the evaluation panel. Any consideration of price in the criteria will include separate evaluation for operations and maintenance (O&M) costs, and capital/procurement costs, placing emphasis on the impact of O&M costs to NCTPA.

b. Control Record

A control record will be maintained by the AT in the procurement file as RFP packets are distributed to prospective bidders. The control record profiles the following information:

- i. Date and time RFP/RFQ packets are distributed.
- ii. Names and addresses of vendors receiving the RFP/RFQ and if applicable vendors attending a pre-proposal conference.

The control record serves as a mailing list for the issuance of addenda and provides a record for verification in cases of vendor protests and other issues.

c. Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP/RFQ has been issued and before the proposals are received. Any information distributed at the pre-proposal conference will be made available to all other prospective proposers in a reasonable time prior to the closing of the bid period, and a copy will be maintained in the procurement file. A roster of attendees at the pre-proposal conference will also be maintained in the procurement file as part of the control record. NCTPA will never require vendor attendance at a pre-proposal conference as eligibility for submitting a qualified proposal.

d. Evaluation and Selection Process

Proposals submitted in response to the RFP/RFQ will be evaluated by an Evaluation Committee established by NCTPA, in accordance with the criteria set forth in the RFP/RFQ. The Evaluation Committee shall score the proposals and make a recommendation for award of the contract. Original scoring forms, or summary records of the Evaluation Committee scoring, will be maintained in the procurement file.

11. Architectural / Engineering Services Request for Qualifications

The Architectural/Engineering RFQ qualifications-based process will be used for the procurement of architectural and engineering (A/E) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services.

Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and

reasonable compensation. Under this method, NCTPA may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is conducted with only the most qualified offeror. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified offeror, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even through a firm that provides the above types of services are also potential sources to perform other services.

a. Issuance of an “A/E” RFQ

A notice of an RFQ will be prepared by the AT and will be advertised as a public notice in a newspaper of general circulation and/or in an electronic format on a website that is accessible by the public and vendor community. Additional sources for posting the A/E RFP may include national and state print or online transit community publications.

b. Pre-proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFQ has been issued and before the proposals are received. Any information distributed at the pre-proposal conference will be made available to all other prospective proposers in a reasonable time prior to the closing of the bid period, and a copy will be maintained in the procurement file. A roster of attendees at the pre-proposal conference will also be maintained in the procurement file. NCTPA will require vendor attendance at a pre-proposal conference.

c. Evaluation and Contract Negotiation

The steps to be used for proposal evaluation and contract negotiation for A/E and related services solicitations are as follows:

- i. A qualified evaluation committee shall be established by the PM to review eligible firms and all responses to a RFQ. The evaluation committee is briefed by the PM on NCTPA procedures and instructed to maintain confidentiality about the proposal evaluation process.
- ii. Evaluation Committee evaluates the firms based on:
 - (A) Professional qualifications for performance of the required services;

- (B) Specialized experience and technical competence in the type work required;
 - (C) Capacity to accomplish the work in the required time; and,
 - (D) Past performance in terms of cost control, quality of work and compliance with performance schedules.
- iii. Evaluation team holds discussions with the most highly qualified firms ("short list").
 - iv. Evaluation team prepares a selection report listing in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the review of the basis upon which the recommendations were made. A copy of the selection report will be maintained in the procurement file.
 - v. The final selection shall be made by the PM or ED.

12. Sole Source Procurements

Sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable.

Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- a. The item is available only from a single source;
- b. The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to NCTPA, or a situation requiring immediate action by NCTPA, as determined by NCTPA) for the requirement will not permit a delay resulting from competitive solicitation;
- c. FTA authorizes noncompetitive negotiations;
- d. After solicitation of a number of sources, competition is determined inadequate; or
- e. The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original

manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:

- i. That such manufacturer or supplier is the only source for such item; and
- ii. that the price of such item is not higher than the price for such item by like customers.

A cost analysis must be conducted before an award of sole source contract.

The reasons for the sole source procurement and the cost analysis will be documented in the Procurement File.

13. Emergency Procurements

Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical NCTPA function or activity) will be handled immediately and expedited as required. The ED has the authority to approve the purchase of all goods and services in emergency conditions. If the ED is unavailable to authorize an emergency procurement, the ED may provide the PM with the necessary authorization. Upon completion of the emergency procurement, the PM will document the actions taken and execute a proper requisition.

14. Vendor Protest Procedures

Protest procedures will be included directly or by reference in all procurements. For procurements under \$100,000 vendors need to be directed to NCTPA's website where a copy of the protest procedures can be obtained. For procurements over \$100,000 the protest procedures will be included in the procurement solicitation.

a. NCTPA Protest Procedures

A protest must be submitted by an Interested Party no later than 7 business days prior to the date and time designated for submittal of bids or proposals or within 5 business days after the allegedly aggrieved person or party is notified of the intent to award or recommend award of the contract. If the fifth day falls on a Saturday, Sunday or holiday it shall be submitted by 5:00 p.m. the following business day. All protests must be in writing and shall contain the following:

- the procurement title and/or number under which the protest is made;

- the name and address of the allegedly aggrieved party;
- a detailed description of the specific grounds for the protest and all supporting documentation;
- the specific ruling or relief requested; and
- the written protest shall be addressed to Executive Director, NCTPA, 625 Burnell Street, Napa, CA 94559 with copies sent to all other bidders.

1) Response to Protest.

- i. Upon receipt of a timely written protest, the ED will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the Chairman of the Board.
- ii. The decision made by the ED shall be final and conclusive unless appealed in writing to the Board Chair within 5 business days of receipt by the protestor. The Board Chair will consider the appeal and promptly issue a written decision, which shall be final and conclusive.
- iii. A Protestor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the protestor's right, if any, to commence litigation.
- iv. Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in its rejection by NCTPA.
- v. After the exhaustion of all administrative remedies, the protestor shall have 10 calendar days to commence litigation. Failure to commence litigation within this limitation shall constitute an absolute waiver of the protestor's right. State laws permit NCTPA to award and execute the Contract during this 10-day period.
- vi. Public Work/Construction Contracts. For construction contracts awarded by the NCTPA Board, the protesting party may appear and be heard at the meeting during which the contract is scheduled for award. In the event a protesting party has been declared non-responsible, the protesting party is entitled to a public hearing before the Board.

b. FTA Appeals

(Only if Federal funds are used in the procurement)

- i. A protestor adversely affected by a decision of NCTPA may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1(F) or its successors,
- ii. Under the provision of the FTA Circular, FTA will only review protests regarding:
 - (i) The alleged failure of NCTPA to have written protest procedures or the alleged failure to have followed such protest procedures;
 - (ii) The alleged failure to review a complaint or protest; or,
 - (iii) Alleged violations of federal law or regulation.
- iii. In accordance with the FTA Circular, such protest must be filed no later than five (5) days after the protestor knew or should have known of NCTPA's alleged failure listed above.
- iv. NCTPA may proceed with procurement in spite of a pending protest to the FTA under the following conditions:
 - (i) The items to be procured are urgently required;
 - (ii) Delivery or performance will be unduly delayed by failure to make the award promptly; or,

Failure to make prompt award will otherwise cause undue harm to NCTPA or the Federal Government.

CHAPTER 4 CONTRACT ADMINISTRATION

F. Contract Administration Guidelines

1. NCTPA will originate the agreement.
2. Once a contract has been fully executed, a Notice to Proceed will be issued to initiate contract work.
3. All agreements will be assigned a contract number, which must be referred to on all orders and the contractor's invoices.
4. PM, ED and FD will approve all invoices before payment is issued.
5. For each contract over \$100,000 a contracting administrator will be assigned to monitor contract terms and conditions. The contract administrator and the project manager should not be the same individual.
6. A contract amendment is necessary for a change in scope of work, term or compensation and must be completed before additional work or payment is authorized.
7. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.
8. The ED/PM will prepare a letter of completion for the NCTPA Board of Director's approval and recorded with the Napa County Recorder's office.

G. Federal Procurement Requirements

FTA procurement requirements are set forth in FTA Circular 4220.1(F) and its successors. NCTPA will comply with all requirements and use the Circular as a supplement to these procedures.

When FTA issues new requirements, they will be incorporated into NCTPA's procurement procedures. Additionally, each year when NCTPA signs its Annual Certification and Assurances, it will review the FTA website to determine if changes need to be made to any of the procurement policies or procedures. Also, NCTPA will review FTA's list of required clauses, which should be in the triennial review handbook on the web site, to update the clauses used by NCTPA. A list of the clauses as of October 1, 2012 is included in Appendix A.

APPENDIX LIST

- A. FTA Required Model Clauses
- B. Determination of Price Reasonableness
- C. Procurement File Checklist
- D. Procurement Documentation Checklist

APPENDIX A: FTA Required Clauses

The FTA requires certain contract provisions for each procurement depending on the nature, type and value of the procurement. As the federal government makes regular updates to procurement guidelines and the clauses required in such, the ASO will reference the required clauses tables provided by the FTA either through the Best Practices Procurement Manual (BPPM) or the Triennial Review Program latest workshop workbook available through the FTA website.

Updated: April 2014

- Triennial Review Program FY2014 Workshop Workbook:
http://www.fta.dot.gov/documents/FY_2014_Triennial_Review_Workshop_Workbook_Rev_2.pdf
- Best Practices Procurement Manual:
http://www.fta.dot.gov/grants/13054_6037.html
- Third Party Contract Requirements – FTA Circular 4220.1F
http://www.fta.dot.gov/documents/FTA_Circular_4220.1F.pdf
- FTA Frequently Asked Questions Procurement and Contracting
<http://www.fta.dot.gov/grants/14032.html>

APPENDIX B: DETERMINATION OF PRICE REASONABLENESS

PO/Contract Number: _____(If applicable)

Vendor: _____

Items Purchased: _____

The price(s) paid for item(s) received under this purchase are determined to be fair and reasonable, based on the following (as checked):

- Adequate competition
- Current price lists
- Catalog price
- Prices found reasonable on recent previous purchases
- Advertisements
- Similar items in a related industry
- Independent price estimate (based on a good understanding of what the item should cost)
- Other basis. Explain Below:

Prepared By: _____

Date: _____

APPENDIX C: PROCUREMENT FILE CHECKLIST

GENERAL INFORMATION

Procurement Summary Memo (utilize template)

- General Description of the Procurement Item
- Explanation of the choice of procurement being used
- Federal Clauses and Certifications Checklist
- Bid Number
- Procurement Control Record
 - Date/Time RFP is distributed
 - Names/Addresses of Vendors receiving such
- Independent Cost Estimate
- Price/Cost Analysis
- Bid Opening Date/Time
- Names of Bidders
- Bid prices
- Determination of Responsive and Responsible Bidders
- Bid Evaluation Information
- Original scoring forms, or summary records of the Evaluation Committee scoring
- Reason for not choosing the lowest bid, if such is not chosen
- California Secretary of State Business Entity Web Page Printout
- Santa Rosa Business License Number
- Selection Report

IF APPLICABLE

- Buy America Certifications
- Lobbying Certifications
- EPLS Web Page Printouts
- Pre-Proposal Conferences
 - List of information made available
 - List of vendors attending

APPENDIX D: PROCUREMENT DOCUMENTATION CHECKLIST

Contract #: _____

Date: ___/___/___

Project: _____

Contract Term: _____

TAB 1 - Project Identification:

- Project planning and identification
- Rationale for method of procurement
- Selection of Contract Type
- Written narrative of Procurement (over \$100,000)

TAB 2 - Solicitation Development:

- Independent Cost Estimate
- If only quotes required, check here
- State or local government purchasing schedule
- No geographic preferences
- Solicitation and specification development
- Appropriate supporting documentation
- Attachment of required federal clauses and certifications
- Bus Contract (less than five years)
- Progress payments-Provisions for title to property (materials, work in progress, and finished goods)
- Other provisions (e.g. performance bond)

TAB 3 - Solicitation and Bid Opening:

- Advertisement of the solicitation (no geographic preference)
- Approved Equals/Request for Clarifications process
- Documentation of Pre-Bid Meeting
- Proposal(s) opening and recording (if Sole Source, include justification)
- Review of all proposals in accordance with selection criteria
- Evaluation of all Proposals for responsiveness
- Tabulation of Proposal documents including selection criteria
- Cost or Price Analysis
- Award Selection and Justification
- Basis for contract price
- No advanced payments
 - Advanced payment justification
 - FTA approval, if required
- Progress Payments
- Written notice of activity approval given to proceed

TAB 4 - Award and Contract Administration:

- Progress Payments
- Contract w/appropriate clauses and certifications.
- Document "Change Orders" and associated "Cost or Price Analysis"
- Modify and report to oversight agency the changes to milestones and anticipated closeout.

TAB 5 - Project Closeout and Reimbursement:

- Request documentation to advance to reimbursement process
- Finalize milestones
- Begin physical and administrative closeout proceedings
- Review final project file for completeness and file away
- Request approval for project closeout

Procurement Complete : _____ (Reviewer)

Date: ___/___/___