

COLTS PROCUREMENT POLICIES

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1. APPLICABILITY

1.1 COLTS Contracts

These policies apply to all COLTS contracts and purchases, except as specifically excluded herein.

1.2 Federal Funds

The Agency's procurement actions are primarily governed by the State of Pennsylvania Procurement Code – 62 Pa. Cons. Stat.¹ and by Federal Transit Administration (FTA) Circular 4220.1F.² In all procurements utilizing any amount of Federal funds, Federal requirements will generally supersede State law. Where no Federal funds are involved, procurement actions will be governed by applicable State law. References to statutes or regulations herein shall be deemed to refer to any subsequent revisions or amendments that may be enacted from time to time.

1.3 Federal Contract Law

If no applicable State or Federal law or regulation exists regarding a particular aspect of procurement, then Federal contract law principles defined in the Federal Acquisition Regulations may be applied.³

2. CONTRACTING AUTHORITY

2.1 The Contracting Officer

The COLTS Executive Director is the Agency Contracting Officer.

2.2 Delegation of Contracting Authority

¹ <http://law.onecle.com/pennsylvania/procurement/index.html>

² http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html

³ <https://www.acquisition.gov/far/>

The Executive Director may delegate contracting authority in whole or in part to other Directors or Officers of COLTS within the general scope of their responsibility. This authority may not be re-delegated without the approval of the Executive Director.

2.3 Contract Provisions- Legal Counsel

The Executive Director will ensure that the COLTS legal counsel is tasked to keep all solicitation provisions and contract clauses current with respect to FTA and PA State requirements. FTA requirements are set forth in the current FTA Master Agreement, which is published on the FTA web page as of October 1 of each year.⁴ The FTA Procurement Circular 4220.1F, Appendix D, contains guidance in the form of a contract clause matrix for various types of commodities and services being procured. The FTA Best Practices Procurement Manual, (BPPM) Appendix A.1, contains instructions for the contract clauses required by FTA as shown in FTA Circular 4220.1F.

3. GENERAL PROCUREMENT STANDARDS

3.1 Competition

It is the policy of COLTS that all procurement transactions be conducted in a manner intended to maximize full and open competition. For procurements above the small purchase threshold of \$100,000, the Procurement Director will advertise the procurement in local, regional and trade publications, and prospective known contractors will be directly informed of the project and encouraged to bid. For procurements below the small purchase threshold, bids or proposals will be solicited from an adequate number of qualified sources, preferably two. The Agency will only make awards to responsive offers from responsible offerors. A responsive offer is one that complies with all material

⁴ <http://www.fta.dot.gov/documents/16-Master.pdf>

requirements of the solicitation. A responsible offeror is one possessing the technical, physical, financial and ethical capacity to successfully perform a specific contract.

3.2 Standards of Conduct

The Agency shall maintain a written code of conduct governing the performance of employees, officers, agents and members of the Board of Directors related to the solicitation, award and administration of contracts, conforming to applicable laws and regulations, including but not limited to FTA Circular 4220.1F and Chapter 23 of the Pa. Procurement Code – 62 Pa. C. S. as they may be amended from time to time. The Executive Director will ensure that all persons involved in the procurement process have read and signed a copy of the Standards of Conduct. The Director of Human Resources will keep the signed copies on file.

3.3 Economic Purchasing

Procurement activity will be reviewed by the Director of Procurement at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Where appropriate, analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.

3.4 Specifications

All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be acquired. Whenever practical, COLTS will describe its requirements in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product

specifications will be avoided if at all possible. 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; however, when this method is used, the specification must set forth the salient characteristics that the product must meet, and vendors will be allowed to offer “equal” products meeting the salient characteristics. See also paragraph 4.1(f) below.

3.5 Value Engineering

COLTS will use value engineering clauses for construction and other capital projects of sufficient size to offer reasonable opportunity for increased efficiency. Value engineering is a systematic and creative analysis to ensure that the project is designed and constructed to perform its essential functions in the most cost-effective manner. The process may include consideration of life-cycle costing, and intangible or indirect benefits such as sustainability.

3.6 Records

The procurement office shall maintain records detailing the history of a procurement in a manner consistent with the size, complexity and cost of the contract. Purchase order and contract files will be kept in storage for three years from date of final payment. Contract files for bus purchases will be kept for five years from date of final payment. At a minimum, these records shall include:

- a. The rationale for the method of the procurement,
- b. selection of the contract type,
- c. reasons for each contractor’s selection or rejection, and
- d. the basis for the contract price.

3.7 Existing Contracts: GSA, PA Purchasing Schedules, and Piggybacking

3.7.1 GSA and PA Purchasing Schedules

To foster greater economy and efficiency, intergovernmental agreements, contracts, and schedules of the U.S. General Services Administration and the State of Pennsylvania may be used as permitted and appropriate. When GSA or PA state contracts are used to acquire goods or services, all FTA requirements apply. This will require COLTS to incorporate FTA terms and conditions (contract clauses and required vendor “certifications,” such as Buy America, etc.), in the first purchase order issued by COLTS under the GSA or state contract. This will be necessary since GSA and the state of PA may not have incorporated required FTA terms, including Buy America, when the contracts were awarded. COLTS will therefore require a Buy America certification in all cases, and if the product being acquired is not Buy America compliant, COLTS will obtain a waiver from FTA before proceeding with the procurement.

3.7.2 Piggybacking -Exercising Options In Other Agency Contracts

The term “piggybacking” is often used to describe one transit agency’s use of another transit agency’s existing contract when the awarding agency’s contract did not originally envision its use by the piggybacking agency. When another agency’s contract has been identified for potential use by COLTS, a number of FTA requirements must be met before the contract may be used.⁵ FTA requires that the existing contract contain an assignability clause and all required FTA contract clauses and certifications (Buy America, etc.). If the existing contract does not contain both an assignability clause and required contract clauses, it may not be used. This requirement differs from GSA and PA state contracts,

⁵ See FTA Circular 4220.1F, Chapter V, Paragraph 7, for a full discussion of all FTA requirements for piggybacking.

where FTA contract clauses may be added later with the first purchase order issued. In the case of an existing agency contract, FTA contract clauses may not be added later. Additionally, the items being acquired by assigned contract rights must not cause the original contract quantities (including options) to be exceeded by the piggybacking action. COLTS must also determine that a cost or price analysis was performed for the existing contract prices, including options, and then COLTS will perform a price analysis to determine that the option prices are fair and reasonable. If the contract options were not evaluated as part of the original award, exercising those options after contract award will result in a sole source award. In conclusion, COLTS will determine that an existing contract meets all FTA requirements before using that contract, and will document the file accordingly.

3.8 Protests

Any actual or prospective bidder, proposer, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest with the COLTS Executive Director. The COLTS Executive Director will inform FTA immediately of a protest received by COLTS that involves a procurement funded by FTA.

The procedures for submitting protests are as follows:

If a bidder/proposer perceives that a segment of the specifications is either too restrictive for competition or if the bidder/proposer perceives any improprieties in the solicitation or specifications, a written protest must be filed with the COLTS Executive Director at least five (5) business days prior to bid opening or the due date for proposals. Any protests concerning the award of a contract after the bid opening, or after a public announcement by COLTS of a

contractor selection decision, or after an evaluation of proposals submitted under an RFP, must be made within five (5) days after the bid opening, or public announcement in the case of an RFP, in order to permit COLTS the opportunity to resolve the issue prior to contract award.

Contents of Protest to COLTS

A bidder or proposer filing a protest with COLTS must submit the protest in writing, via certified United States mail with a return receipt request, to County of Lackawanna Transit System (COLTS) c/o Executive Director, 800 North South Road, Scranton, PA 18504. The protest must include:

- (1) The name and address of the bidder;
- (2) Project number and the number of the solicitation;
- (3) A detailed and factual statement of the grounds for protest and any supporting documentation. The documentation submitted to COLTS must be fully supported to the extent possible;
- (4) The desired relief, action or ruling from COLTS.

Following an adverse decision by the Executive Director, the bidder or proposer may file a protest with FTA Regional Office III for resolution.

FTA Review of Protest: A protester must exhaust all administrative remedies with COLTS before pursuing a protest with FTA. Review of a protest by FTA will be limited to:

- (1) COLTS' failure to have or follow its protest procedures, or its failure to review a complaint or protest; or

- (2) Violations of Federal law or regulation.

Following any adverse decision by the Executive Director, the bidder may file a protest if there has been a violation in connection with 1 and 2 above. An appeal to FTA must be received by the U. S. Department of Transportation, Federal Transit Administration (“FTA”), Region III, 1760 Market Street, Suite 500, Philadelphia, PA 19103, within five (5) working days of the date the protester learned or should have learned of an adverse decision by the Executive Director or other basis of appeal to FTA.

Contents of Protest to FTA

A bidder filing a protest with FTA must submit the protest in writing, via certified United States mail with a return receipt request, to the U. S. Department of Transportation, Federal Transit Administration (“FTA”), Region III, 1760 Market Street, Suite 500, Philadelphia, PA 19103. The protest must include:

- (1) The name and address of the bidder;
- (2) Identification of the grantee (COLTS), project number and the number of the solicitation;
- (3) A detailed and factual statement of the grounds for protest and any supporting documentation. The documentation submitted to FTA must be fully supported to the extent possible;
- (4) A copy of the protest filed with COLTS, and a copy of the COLTS decision, if any; and
- (5) The desired relief, action or ruling from FTA.

FTA will not consider any data that was not submitted to COLTS. If new data becomes available after the exhaustion of administrative

remedies with COLTS, that data should be submitted to COLTS with a request for reconsideration. If the request is denied or if the protestor's administrative remedies with COLTS are again exhausted, the protestor may then submit the new data to FTA.

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged, and clear.

Bid protests must be filed with FTA no later than five (5) days after the exhaustion of administrative remedies with COLTS is known or should have been known, whichever is earlier.

3.9 Contract Period

The period of contract performance for rolling stock and replacement parts shall not exceed five years, inclusive of options, as defined in FTA C 4220.1F. The length of all other contracts shall be based upon sound business judgment, including consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with the Agency, and the relative benefit to the Agency of a longer or shorter contract term. All contracts must specify a contract period of performance, either in the form of delivery schedules for contract deliverables such as commodities, or a specific end date for service contracts.

3.10 Cost Principles

The Federal Acquisition Regulation Part 31 cost principles will be incorporated by reference in all contracts where allowable costs must be determined for payment (e.g., all cost reimbursement contracts), and for negotiating all fixed price contracts and

modifications where costs are estimated by the contractor and then negotiated for purposes of establishing a contract price.

4. FULL AND OPEN COMPETITION

4.1 Restrictions on Competition

All procurement transactions over \$3,000 will be awarded competitively, without providing an unfair competitive advantage to any potential vendor. Some of the situations considered to be restrictive of competition include, but are not limited to:

- (a) Unreasonable requirements placed on firms in order for them to qualify to do business.
- (b) Unnecessary or excessive experience, excessive bonding, insurance, warranty or similar requirements which affect an otherwise qualified firm's ability to compete. Such requirements must also, however, be established in a manner consistent with protection of the Agency's interests.
- (c) Noncompetitive pricing practices between firms or between affiliated companies.
- (d) Noncompetitive awards to any person or firm on retainer contracts.
- (e) Organizational conflicts of interest - An organizational conflict of interest exists where other activities, relationships, or contracts of a contractor inhibit, affect or prevent the contractor from rendering impartial assistance or advice to COLTS; a contractor's objectivity in performing the contract work is or might be otherwise impaired (e.g. a contractor assisting with a design might have a financial interest in a product or system that could be utilized in implementing that design); or a contractor has an unfair competitive advantage which might be gained through its involvement in writing, or reviewing the solicitation and contract documents, including

the scope or specification except as part of a general industry review.

- (f) Specifying only a “brand name” product, without specifying that equivalent products will be accepted and providing salient characteristics or other descriptive information sufficient to allow bidders to identify and propose such equivalent products.
- (g) The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.
- (h) Any arbitrary action in the procurement process.

4.2 Geographic Preferences

Procurement transactions using Federal funds will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids or proposals, except in those cases where applicable Federal statutes or regulations expressly mandate or permit geographic preference. This does not preempt State or local licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

5. METHODS OF PROCUREMENT

5.1 General Standards

Every competitive solicitation above the small purchase limit shall adhere to the following standards:

- 5.1.1 It shall be publicized in a manner intended, at a minimum, to notify potential sources in the Agency’s service area of the nature and type of the solicitation and the date for responses. It may also be advertised regionally or nationally as appropriate.

- 5.1.2 Every reasonable effort should be made to encourage the maximum number of responses. Pre-qualification or other methods of restricting responses shall not be used unless required for security or public safety reasons or by law.
- 5.1.3 The solicitation document shall contain, at a minimum, instructions on how the response is to be prepared and submitted; the deadline for submittals and other key dates in the process (such as the date and time of a pre-bid or pre-proposal conference); the basis upon which an award will be made; a statement reserving to the Agency the right to reject any and all offers and the right to award to other than the offer containing the lowest price; a clear and comprehensible statement of the Agency's needs and the technical requirements to be met by the successful offeror; a set of terms and conditions intended to be used for any resulting contract; and representations and certifications as required by law or deemed necessary by the Agency.
- 5.1.4 The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to the Agency's needs. The minimum bid period for competitive procurements will normally be 30 days, except in cases of urgency a shorter time may be specified. Whenever a period shorter than 30 days is considered necessary, every effort will be made to contact prospective bidders to ensure they can submit bids or proposals in the desired response time.
- 5.1.5 Responses to any questions from prospective sources, or any amendments to the solicitation, shall be distributed to all parties known to have received the solicitation. Should the amendment substantially change the terms of the solicitation, the period for receipt of offers shall be extended to allow offerors to change their proposals accordingly.

5.1.6 A determination shall be made by the Contracting Officer that (1) the apparently successful offer is responsive (i.e. complies with all material elements of the solicitation), (2) the offeror is responsible (i.e. possesses the technical and financial resources to successfully perform the contract, and has a satisfactory record of past performance, compliance with public policy, and integrity), and (3) the offeror is not on the Federal Excluded Parties List System.⁶ The Contracting Officer shall also determine that the price(s) are fair and reasonable.

5.2 Micro-purchases

Micro-purchases are those purchases up to but not exceeding \$3,000. Purchases below that threshold may be made without obtaining competitive quotations, but shall provide for competition whenever practicable. Award may be made if it is determined that the price is fair and reasonable, and that there are no significant differences in quality or price among available vendors. Typically this would involve items sold “off-the-shelf” to the general public or a specific market. Documentation for a non-competitive micro-purchase need only include a notation that the price is fair and reasonable and the reason for the determination. The determination of price reasonableness may be recorded on preprinted forms or a checklist on the receipt. A pre-printed form similar to the following will be used to document the determination of a fair and reasonable price:

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

⁶ <https://www.epls.gov>

- _____ Adequate competition (two or more quotes received and award made to lowest)
- _____ 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)
- _____ GSA or PA state contract pricing
- _____ Other (cite basis)”

Micro-purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers, and requirements may not be split to avoid a competitive solicitation process. Colts will maintain a log of micro-purchases to ensure that there is an equitable distribution of purchases among qualified suppliers. The Davis Bacon Act (40 U.S.C. §3141 et seq.) applies to construction micro-purchases in excess of \$2,000.

5.3 Small Purchases

Small purchases are relatively simple and informal solicitations for services, supplies, or other property that cost more than \$3,000 but do not exceed the limits described in 62 Pa. C. S. §3742 (2008) of the Pennsylvania Procurement Code (currently established at the Federal Simplified Acquisition Threshold of \$100,000). In no case shall small purchase procedures be used for procurements above the Federal simplified acquisition threshold as defined in 41 U.S.C.

§403(11), currently \$100,000. If small purchase procedures are used, price or rate quotations shall be solicited from an “adequate number of qualified sources.” The number of sources will depend upon the availability of qualified sources, but the objective should ordinarily be to obtain quotes from at least two vendors. If items are purchased from GSA or PA state contracts then no other solicitations are required. Both the solicitation and quotes should be written, in either electronic or hard copy form.

5.4 Competitive Sealed Bidding

5.4.1 Bids in excess of \$100,000 are publicly solicited through a formal Invitation for Bids (IFB) with a fixed-price contract (lump sum or unit price) being awarded to the lowest-priced responsive bid from a responsible bidder.

5.4.2 Competitive sealed bidding is the preferred method of solicitation, and justification for any other method of procurement must be documented as part of the procurement record.

5.4.3 All bids will be publicly opened at the time and place prescribed in the IFB. Bidders shall be afforded a suitable opportunity to examine all bids received after they are opened.

5.4.4 A fixed-price contract award will be made in writing to the responsible bidder submitting the lowest responsive bid at the price stated in the bid. A fixed-price contract type does not preclude consideration of the use of price-varying provisions such as escalation or incentives/disincentives if suitable for the circumstances. The price reasonableness analysis shall consider whether bids are materially unbalanced.

5.4.5 When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs may be

considered in determining the low bid if specified in the solicitation. Payment discounts shall be requested or considered only when prior experience indicates that the Agency is able to avail itself of such discounts.

5.4.6 If the IFB includes pricing for any options or alternatives, the solicitation must define whether or not they will be considered in determining the low bid, and, in the event of multiple options, the basis for and order in which they will be accepted. In order to exercise contract options after award, and also consider them as part of the original competitive process, the options must have been considered during the award of the basic contract.

5.4.7 In the event that a single responsive bid is received from a responsible bidder, the Agency may negotiate with the bidder to ensure that a fair and reasonable price is obtained. If the responsive bid from the lowest responsible bidder exceeds available funds, the Agency may negotiate with the apparent low bidder to obtain a contract price within available funds, provided that the Agency has established in writing conditions and procedures for such negotiations prior to issuance of the IFB and summarized them therein. The Agency may not, as part of a negotiation process, modify or alter the scope and specification defined in the IFB in a manner that might have attracted additional bidders if incorporated in the solicitation.

5.5. Two-Step Sealed Bidding

Two-step sealed bidding is a procurement method involving the submittal of unpriced technical proposals in the first step, and a sealed bid submittal in the second step.

5.5.1 The Two-Step process is appropriate when all of the following conditions exist:

- (1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation and any necessary discussion of the technical aspects of the requirement to ensure mutual understanding between each source and the Agency.
- (2) Definite criteria exist for evaluating technical proposals.
- (3) More than one technically qualified source is expected to be available, and more than one technical solution is considered possible.
- (4) Sufficient time will be available for use of the two-step method.
- (5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

5.5.2 The first step requires offerors to submit technical proposals for evaluation, generally under the procedures for competitively negotiated procurements. Proposals are evaluated for technical merit including, if appropriate, discussions with offerors and requests for revised proposals. The objective of the process is to negotiate one or more technical solutions acceptable to the Agency. At the end of this step, each offeror offering an acceptable technical solution is invited to submit a sealed bid to provide the goods or services defined in its technical proposal as negotiated. Award is based upon the lowest responsive price from a responsible offeror.

5.6 Competitive Negotiation

5.6.1 The competitive negotiation procurement process is conducted through a formal Request for Proposals (RFP). This method of procurement is generally used when

conditions are not appropriate for the use of sealed bids. This method may be used for acquisition of supplies or services only if the Agency determines in advance and in writing that competitive sealed bidding is not practicable or fiscally advantageous, pursuant to 62 Pa. C. S. §513. The process for procuring architect/engineering services, or for other types of professional services if federal funds are not involved, is described in section 5.7 below.

5.6.2 The competitive negotiation method of procurement is appropriate when the Contracting Officer determines that the following conditions exist:

- (a) A complete, adequate, and realistic specification or purchase description is not available.
- (b) Two or more responsible offerors are willing and able to compete effectively for the award.
- (c) The selection of the successful offeror requires consideration of factors other than price.
- (d) Discussions with offerors are anticipated to be needed.

5.6.3 Either a fixed price or cost reimbursable type contract may be awarded.

5.6.4 Each RFP will include a description of the factors other than price by which proposals will be evaluated. Evaluation factors and sub factors will be listed in order of their relative importance. For RFPs other than small purchases, technical and pricing proposals shall be submitted in separate volumes.

5.6.5 Selection Procedures –

The Contracting Officer will ensure that all solicitations (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to

be procured, and (2) Identify all requirements that proposers must fulfill and all evaluation factors, and their relative importance, to be used in evaluating proposals. The sequence of the selection process will be as follows:

a) Appointment of SEC:

The Executive Director will appoint at least three persons who have knowledge of the procurement's subject matter/technology to evaluate technical proposals. The evaluation process shall be confidential, and each participant shall sign a confidentiality agreement prior to distribution of the proposals. Technical personnel may be from other public agencies if necessary. The Contracting Officer will also serve as a member of the Source Evaluation Committee (SEC).

b) Technical Proposal Evaluations:

The SEC will:

- (a) Develop the technical evaluation factors and their relative importance for inclusion in the RFP. Price will not be assigned a weight or "point scored" as an evaluation factor, but will be considered as a separate factor along with the weighted technical factors for award of the contract. When the scope of the work or product specifications are not precise and will allow for a range of quality or performance characteristics in the proposals, RFPs will advise proposers that the award will be made on the basis of "best value" to COLTS. Best value is the best combination of price and technical performance, not necessarily the lowest price or the highest technical rating, but the best

combination of price and technical performance. When the scope of work or product specifications are sufficiently precise, award may in fact be made to the lowest price, technically acceptable proposer, and the RFP will notify proposers when this is the case.

- (b) Evaluate technical proposals in accordance with the technical evaluation factors in the RFP and score the proposals in accordance with the scoring method chosen (i.e., points, adjectives, etc.).
- (c) Prepare a preliminary report of the technical strengths, weaknesses, performance risks (if any) and ambiguities in the proposals. Merely assigning a score or adjective rating is not sufficient - scores are simply indicators of quality, but the actual qualitative differences among the proposals must be explained in narrative form.
- (d) Once the technical evaluations are complete, prior to review of price, the CO will distribute the price proposals to the SEC members.

The Contracting Officer will be responsible for evaluating price proposals with assistance from the COLTS user department. The CO will prepare a spreadsheet of the prices for the items and services being procured, showing the comparative prices being proposed by line item if applicable.

- (e) Determine, with the CO, those proposers in the “competitive range” for the purpose of conducting discussions that will clarify proposal ambiguities and enable further evaluation by the SEC. The objective of determining the competitive range is that those proposers having no reasonable chance of winning

the contract, whether for technical or price reasons will not have to expend further unnecessary effort on their proposal, enabling them to release their teams to other opportunities. These proposers should be advised by the Contracting Officer immediately following the competitive range determination that they were not included in the competitive range and no further discussions with them will be held prior to contract award.

- (f) Where the procurement is for A&E services (see section 5.7 below), the selection process will not involve prices (in accordance with FTA regulations); however, for all other procurements, including non-A/E professional services, such as legal, medical, auditing, etc., prices must be considered in the selection process in accordance with FTA regulations.⁷

c) Interviews/Discussions:

The SEC will conduct discussions with the competitive range proposers in order to further evaluate the proposers' key personnel, their technical approach, pricing issues, etc. Upon completion of the interview process, the Proposers will again be rated (Final Rating).

d) SEC Report:

The SEC will prepare the final evaluation report that (1) describes the technical strengths, weaknesses, and risks (if any) of the proposals in accordance with the technical

⁷ FTA Circular 4220.1F, Chapter VI, 3.f.(2) limits qualification - based selection to A&E services. All other services require prices to be considered.

evaluation criteria; (2) evaluates the proposals' estimated costs for reasonableness (for cost type contracts); or prices offered (for fixed priced contracts), and (3) recommends the "best value" offer – that proposal which offers the best combination of technical merit/performance and pricing. The SEC will submit its report to the Contracting Officer, who is the Executive Director unless the Executive Director appoints another COLTS official to be the Contracting Officer for that particular procurement.

e) Negotiations:

The CO will lead the conduct of negotiations with the selected Proposer. Members of the SEC will support the negotiations. Negotiations will address pricing and technical issues. Any areas of potential later dispute will be addressed in the contract with "Advance Agreements." When the Proposer's technical proposal is incorporated in the contract, care must be taken to ensure that COLTS agrees with everything being incorporated in the contract by reference – and that there is no conflict between the technical proposal language and the terms of the contract.

f. Records:

The CO will ensure that a copy of all proposals and related SEC documentation is kept in the official contract file, which is to be retained for three years following final payment.

5.7 Architectural and Engineering (A&E) and Other Professional Services

5.7.1 COLTS will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for A&E services.

5.7.2 The Brooks Act requires that:

- (a) An offeror's technical qualifications be evaluated;
- (b) Price be excluded as an evaluation factor;
- (c) A pricing proposal be requested from, and negotiations be conducted only with the most qualified offeror; and
- (d) Failing agreement on price, the proposal must be rejected and negotiations conducted with the next most qualified offeror, until a contract award can be made to the most qualified offeror whose price is fair and reasonable; if the pool of qualified offerors is exhausted without an agreement, the solicitation must be canceled.

5.7.3 The Brooks Act "qualifications-based" procurement method can only be used for the procurement of A&E services which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services, where any amount of Federal funds is utilized. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services. It is also recognized that the Federal policy to restrict qualifications-based selection procedures to A&E contracts is not consistent with 62 Pa. C. S. §518 of the Pennsylvania Procurement Code, which requires a

qualifications based selection for certain professional services, including accountants, clergy, physicians, lawyers, and dentists. However, the Agency hereby determines that acceptance of Federal funds and compliance with the Federal standard is in the public interest even though the Federal limitation of the use of qualification-based procurement procedures is inconsistent with the Pa. Procurement Code.

5.7.4. When no Federal funds are involved in funding a procurement for professional services including accountants, clergy, physicians, lawyers, and dentists, the Agency will comply with the Pa. Procurement Code at 62 Pa. C. S. §518, and select the contractor on the basis of professional qualifications, excluding price.

5.8 Noncompetitive Proposals

5.8.1 Noncompetitive (Sole Source) procurements are accomplished through solicitation and acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph. Guidance as to what is “within the scope” of a contract may be found in the FTA Best Practices Procurement Manual, Section 9.2.1- *Contract Scope And Cardinal Changes*.⁸ *“Tag-ons” are defined by FTA as additions to the scope of work or deliverable items that were not included in the original contract competition, and which must be treated as sole source additions to the*

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http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6192.html#BM9_2_1

contract. Tag-ons are not to be treated as changes within the scope of the contract.

5.8.2 Procurement by noncompetitive proposals may be used when only one source is practicably available and 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:

5.8.2.1 The item is available only from one responsible source because:

- a. It involves a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the Agency only from one source and has not in the past been available to the Agency from another source.
- b. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
- c. Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- d. Unacceptable Delay. In the case of a follow-on contract for the continued development or

production of highly specialized equipment or major component thereof, award to another contractor would result in unacceptable delays in fulfilling the Agency's needs.

5.8.2.2 The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

5.8.2.3 FTA authorizes noncompetitive negotiations (e.g., in the original grant application and approval process);

5.8.2.4 Other circumstances described in Part 6.3 of the Federal Acquisition Regulations exist;

5.8.2.5 After solicitation of a number of sources, competition is determined inadequate and an evaluation of the specifications determines they are not unduly restrictive of competition; or

5.8.2.6 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, and no other sole source justification applies. The Agency must first certify to the FTA in writing that the manufacturer or supplier of the capital maintenance item is the only source for the item and that the price is no higher than the price paid by like customers.

5.8.2.7 Receipt of a single responsive and responsible bid or proposal is not, by itself, conclusive evidence that competition was inadequate; the Contracting Officer must determine if there was a perception of competition which would affect the bid or proposal. Under these circumstances, award is not considered

a sole source. The Contracting Officer, however, must investigate the reason why no other bids or proposals were received; verify that the specification was not unduly restrictive and that the solicitation cannot be modified in a manner that would result in greater competition; and document the file accordingly.

5.8.2.8 A cost analysis is required for each sole source acquisition.

5.8.2.9 The contract file must include a sole source determination signed by the Executive Director explaining the reasons for the award on a non-competitive basis.

5.9 Options

5.9.1 An option is a unilateral right in a contract by which, for a specified time, the buyer may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. The use of options must be limited to quantities of goods or services that are reasonably anticipated to be required by the Agency during the term of the contract; options may not be included solely with the intent of assigning them to another entity in the future; however, contracts may include a provision allowing assignment to other agencies in the event of a change in the Agency's anticipated requirements, in accordance with FTA regulations and guidance.

5.9.2 The option quantities or periods must be defined in the solicitation; contained in the offer upon which a contract is awarded; and evaluated as part of the initial award process; i.e., the options must be evaluated in combination with bid prices for the base quantity to determine the low bidder.

When an option has not been evaluated to determine the low bidder for award of the contract, exercise of the option will be considered a sole source procurement and must be justified as such.

5.9.3 The exercise of an option must be in accordance with the terms and conditions of the option as stated in the initial contract, and an option may not be exercised unless it is 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, cost and other factors considered.

5.9.4 If sequential options (e.g., a series of one-year extensions) exist, the failure to timely and properly exercise any option will void all subsequent options.

5.9.5 COLTS may exercise options in contracts of other public agencies (“piggybacking”) in accordance with FTA regulations and guidance.⁹

5.10 Time and Material Contracts

Time and Material contracts are to be used only after a documented determination that no other type of contract is suitable. Such contracts will specify a ceiling price (a limitation of funding) that the contractor shall not exceed except at its own risk. Prior to the use of a T&M contract, the Contracting Officer shall make a determination that the contractor’s accounting system is adequate to properly segregate and bill costs.

5.11 Cost Reimbursement Contracts

Prior to the use of a cost-type contract, the Contracting Officer shall make a determination that the contractor’s accounting system is

⁹ See FTA Best Practices Procurement Manual, Section 6.3.3
http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6189.html#BM6_3_3

adequate to properly segregate and bill costs, and also adequate to allocate indirect costs in accordance with generally accepted accounting principles. In no event shall fixed indirect cost rates, that are not subject to audit and adjustment, be used in a cost-type contract, as such agreements constitute an unlawful cost-plus-percent-of-cost method of compensation. Provisional indirect billing rates may be used but must be subject to later audit and adjustment.

5.12 Cost Plus Percent Of Cost Contracts

Contracts that are structured with payment provisions based on the incurrence and payment of actual costs, such as direct labor, with a fixed mark-up on the actual costs incurred for (a) profit, (b) indirect costs, (c) or both, are prohibited by Federal statute and shall not be used.

5.13 Construction Contracts For Publicly Funded Buildings

All construction projects for publicly funded buildings costing more than \$4,000 require separate specifications and separate bids for plumbing, heating, ventilation and air conditioning work. This requirement is based on the Pennsylvania "Separations Act" of 1913. In addition to the trades enumerated in the Separations Act, it will also be necessary to solicit bids for a General Contractor who will be responsible for all other aspects of the building construction not done by the trade contractors identified above.

5.14 Design Build

Design-build refers to a procurement for design and construction simultaneously with contract award to a single contractor, joint venture, etc., that will be responsible for both the project's design and construction. Design build projects for publicly funded buildings will not be permissible under the PA Separations Act (see 5.13 above). When design build is feasible for projects other than publicly funded buildings, the procurement must comply with FTA

policies.¹⁰ The contractor selection process will be determined by the value of the design work as compared to the value of the construction work. If the value of the design work exceeds that of construction, then an A&E (qualifications – based) selection, without competing price proposals, must be used. Where, however, the value of construction work exceeds that of design (the usual case), then competitive negotiation or sealed bids must be used for the entire procurement.

6. CONTRACT COST AND PRICE ANALYSIS

6.1 Requirement

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. The “*FTA Pricing Guide for Grantees*” will be used as guidance to perform the appropriate degree of cost or price analysis.¹¹

6.2 Independent Cost Estimate

Any cost or price analysis must be based on an independent cost estimate, which should be developed before a solicitation is issued, but in no event after the receipt of bids or proposals. For contract modifications, the independent estimate must be prepared without knowledge of the contractor’s proposed pricing.

6.3 Cost Analysis

6.3.1 A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost.

6.3.2 A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements

¹⁰ FTA Circular 4220.1F, Chapter VI, Paragraph 3 (h).

¹¹ http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6038.html

(which include contract modifications and change orders), unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

- 6.3.3 Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- 6.3.4 Costs or prices based on estimated costs for contracts will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles contained in Part 31 of the Federal Acquisition Regulations.
- 6.3.5 The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

6.4 Price Analysis

- 6.4.1 A price analysis looks at the price as a whole without examination of its various components, and is usually performed by comparing prices to those from other comparable procurements.
- 6.4.2 A price analysis may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed contract price.

6.4.3 Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.

7. BONDING REQUIREMENTS

7.1 Construction

COLTS shall specify bonds in compliance with (1) FTA requirements for construction or facility improvement contracts in FTA 4220.1F, Chapter IV, 2. h., and (2) the Pa. Procurement Code at 62 Pa. C. S. §902 and §903.

7.2 Non-Construction

For non-construction contracts, bonding requirements are discouraged except where applicable law or regulation provides for such bonding, or COLTS determines that such a requirement is necessary as part of the risk management plan for a project.

8. PAYMENT PROVISIONS

8.1 Advance Payments

The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from FTA. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services, rents and subscriptions. FTA approval of such advance payments is required when the amount exceeds \$100,000. COLTS should not make advance payments using other funds (including local match funds) except where (a) it is customary in the industry, or (b) there are sound business reasons (e.g. to enable a more cost-effective

pricing structure) for doing so; in the latter case, the file shall be documented to fully justify the advance payment.

8.2 Progress Payments

Progress payments are to be made only for costs incurred in the performance of the contract. When progress payments are used, COLTS must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis; this method may not be used for non-construction contracts.

9. LIQUIDATED DAMAGES

9.1 Risk Management

COLTS shall determine whether to use or not to use a liquidated damages provision for a specific procurement, as part of an overall risk management program.

9.2 Calculation

The amount of liquidated damages must be reasonably calculated to reflect anticipated damages COLTS might suffer as the result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine.

9.3 Measurement

Liquidated damages may be imposed for an entire contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate.

9.4 Solicitation Requirements

If it is determined that a liquidated damages provision will be included, the solicitation shall identify with specificity the circumstances in which the liquidated damages will be imposed and the rate to be charged. The file shall document the derivation of the rate of assessment and ensure it is reasonable, proper and not arbitrary or punitive.

9.5 Recovery Credited To Project

All liquidated damages recovered under an FTA funded contract will be credited to the project unless FTA agrees otherwise.

10. CONTRACT APPROVAL REQUIREMENTS

10.1 Board of Directors Approval

No contract (or contract modification) for goods or services may be awarded without the advance written approval of the COLTS Board of Directors if the aggregate or the sum of all phases is expected to exceed \$25,000.

10.2 Emergencies

The Executive Director may authorize the award of contracts or contract modifications exceeding \$25,000 without prior Board approval in the following cases:

- a. When emergency action is required to prevent loss of life, damage to property, a threat to public safety or the environment, or the disruption of transit service or other essential functions of the Agency.
- b. Where an emergency has been declared by local, state or national officials affecting the Agency's service area, directly or indirectly.
- c. In cases where a delay in approving a contract modification will cause the Agency to incur substantial additional costs (by delaying a contractor, for example) or potential liabilities.
- d. In cases where the Board is unable to take action at its scheduled meeting (due to a lack of a quorum, for example).

Any authorization by the Executive Director under this paragraph shall be supported by written documentation identifying the reasons for the action, and shall be subject to confirmation by the Board at its next meeting. Wherever possible at least two bids will be solicited when emergencies preclude more extensive competition.

11. CONTRACT AWARD ANNOUNCEMENTS

FTA does not require announcements of contract awards utilizing Federal funds; however, when announcements of contract awards using Federal funds are made by COLTS, they will be made in accordance with FTA policy. FTA policy requires that announcements of contract awards, if they are made, identify (1) that FTA is or will be providing assistance, (2) the amount of FTA assistance that is provided or expected to be provided, and (3) the Catalog of Federal Domestic Assistance (CFDA) Number of the program that authorizes the Federal assistance.¹²

12. CONTRACT PROVISIONS

12.1 Sound and Complete Agreement

All contracts shall include provisions to define a sound and complete agreement, appropriate to the type and complexity of the project. At a minimum these include a well-defined statement of work or specification, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws and regulations. Contracts will not contain so called “un-priced options,” either for extending services or for additional items. All purchase orders and contracts will be drafted by COLTS and contain standard terms and conditions drafted by COLTS and approved by COLTS legal counsel. COLTS will not execute contracts drafted by vendors.

12.2 Termination for Default - Remedies for Breach

¹² FTA Circular 4220.1F, Chapter III, Section 3 (e).

All contracts in excess of the small purchase limit as defined herein shall include contractual provisions that allow for administrative or legal remedies in instances where contractors violate or breach the contract terms. The following clause will be inserted in all contracts:

Termination for Default – (a) (1) COLTS may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a) (2) of this clause); or
- (iii) Perform any of the other provisions of this contract (but see paragraph (a) (2) of this clause).

(2) COLTS right to terminate this contract under subdivisions (a) (1) (ii) and (1) (iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If COLTS terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to COLTS for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the

failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) fires, (3) floods, (4) epidemics, (5) quarantine restrictions, (6) strikes, (7) freight embargoes, and (8) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, COLTS may require the Contractor to transfer title and deliver to COLTS, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for

manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. COLTS may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect COLTS against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of COLTS

(h) The rights and remedies of COLTS in this clause are in addition to any other rights and remedies provided by law or under this contract.

12.3 Termination for Convenience

Termination for cause and for convenience provisions shall be included in all contracts in excess of \$10,000, including the manner by which termination will be effected and the basis on which a settlement will be accomplished. The following clause will be inserted in all contracts:

Termination for Convenience - COLTS may terminate this contract, in whole or in part, for its convenience at any time by giving at least 10 days' written notice to Contractor of such termination and specifying the effective date thereof.

If the contract is terminated for the convenience of COLTS, the Contractor shall be paid in accordance for its allowable costs (as determined by 48 C.F.R. Part 31.2) and overhead incurred through the effective date of termination, less payments of compensation previously made. Contractor

shall also be paid that portion of the Fee earned to the date of termination. Further, Contractor shall be reimbursed for the actual eligible costs and overhead, not otherwise reimbursed under this contract, incurred by Contractor to implement the termination, to the extent allowable pursuant to 48 C.F.R. Part 31.2.

Upon receipt of the notice of termination, Contractor shall immediately (1) discontinue those Contract Services affected (unless the notice directs otherwise), and (2) deliver to COLTS all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated or prepared in performing the affected Contract Services, whether completed or in process. In the event of termination for any reason, all finished or unfinished documents and other materials shall immediately become the property of COLTS.

13. CONTRACTS OUTSIDE THE SCOPE OF THIS POLICY

13.1 Other Acquisitions

This policy will not apply to transactions involving the purchase, sale, lease, or other transactions for real property; for joint development projects; for purchases from government-regulated entities such as public utilities which are granted market exclusivity by the regulating agency; for purchases of professional subscriptions, memberships, seminars, and expenses in connection with industry meetings and conferences; for travel and living expenses on Agency business; and other similar expenditures incidental to the routine conduct of the Agency's business.

13.2 Revenue Contracts

Contracts whose principal purpose is to generate revenue for the Agency are not subject to this policy. However, where feasible, a competitive process suitable to the type and scope of the activity involved and the availability of competition should be conducted.

14. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of COLTS that disadvantaged business enterprises (DBEs), as defined in 49 C.F.R. Part 26, shall have an opportunity to participate in awards of its contracts and subcontracts. COLTS shall take positive actions to ensure utilization of DBEs through its DBE Program. A review of DBE subcontracting opportunities shall be conducted for each U.S. Department of Transportation funded solicitation over \$50,000, and a percentage goal for DBE participation established where appropriate subcontracting opportunities exist. The FTA Best Practices Procurement Manual (BPPM), Chapter 7, will be used as guidance to implement the DOT DBE policy.¹³

15. CONTRACT ADMINISTRATION FUNCTIONS

15.1 Contract Administration

Contract administration is the post-award administration of the contract to ensure compliance with the terms of the contract by both the contractor and COLTS.

15.2 Contract Administration File Documentation

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

¹³ http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6190.html

Different COLTS personnel will be involved in any particular procurement (maintenance, QA, engineers, inspectors, financial, DBE office, legal, etc.) and each may have their own individual files relating to the contract, reflecting their involvement with the administration of the contract, but it is important for the procurement office to maintain the "official" contract file. The "official" file would include all official correspondence relating to the administration of the contract so as to verify the contractor's adherence to the terms of the contract and demonstrate that the agency is following good administrative practice and sound business judgment in settling all contractual and administrative issues arising during contract performance.

Any contract involving the expenditure of public funds will be subject to review/audit during and after performance to ensure that, at the very broadest level, the Agency and the Government got what it paid for. This concept means that at the contract administration level, the contract file (standing alone and without need of interpretation or augmentation of the contract administrator or other staff element) must demonstrate that the Contracting Officer and the contractor have complied with the terms of the contract (i.e., bonds have been submitted, contractual issues requiring the approval of the Contracting Officer have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.), and that contractual and administrative issues in dispute have been addressed and settled in accordance with good administrative practice and sound business judgment. Purchase order files will be kept in storage after final payment for a period of three years. Contract files will be kept for five years.

15.3 Contract Administration File Contents¹⁴

For all contracts above the micro-purchase level, the Contracting Officer will ensure that the contract administration file includes the following:

- The executed contract and notice of award;
- Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- Contract-required insurance documentation;
- Post-award (pre-performance) correspondence from or to the contractor or other Governmental agencies;
- Notice to proceed;
- Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- Modifications/changes to the contract including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
- Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., FTA, board of directors, executive director) of the settlement amount;
- Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- Documentation relating to contract close-out.

¹⁴ This post award contract administration documentation is in addition to the basic procurement pre-award documentation required by Section 3.6 – Records.

- For micro-purchases, the buyer will ensure that the file contains a receiving report with a signature of the person inspecting and accepting the items delivered. The signature will certify that the items ordered meet the purchase order requirements with respect to quantities ordered/delivered and are of satisfactory quality.

15.4 Contract Administration Functions

Every type of contract will have different contract administration actions and the documentation required to support that administration will differ as well. Supply contracts have different specific administrative actions than construction contracts do, just as fixed price contracts are administered differently than cost-reimbursement contracts.

The Contracting Officer (CO) will normally delegate certain contract administration functions to the Technical Officer (TO). The delegation must be in writing and must inform the TO what his/her duties are for that specific contract. Following are the typical contract administration functions and the normal responsibility of the CO or TO for each function.

15.4.1 The Contracting Officer shall perform the following functions:

- (1) Negotiate and execute change orders and supplemental agreements resulting from change orders issued under the Changes clause.
- (2) Negotiate prices for un-priced orders issued under basic ordering agreements.
- (3) Negotiate and execute supplemental agreements changing contract delivery schedules.
- (4) Negotiate and execute supplemental agreements providing for the de-obligation of unexpended dollar

balances considered excess to known contract requirements.

- (5) Issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from these instructions.
- (6) Negotiate changes to interim overhead billing rates and prices.
- (7) Negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause.
- (8) Issue change orders and negotiate and execute resulting supplemental agreements under all contracts.
- (9) Review the contractor's insurance plans.
- (10) Conduct post-award orientation conferences.
- (11) Negotiate provisional overhead billing rate agreements for cost-type contracts.
- (12) Negotiate advance agreements applicable to treatment of costs under cost-type contracts.
- (13) Issue Notices of Intent to Disallow or not Recognize Costs.
- (14) Establish final indirect cost rates and billing rates on cost reimbursement contracts.
- (15) Attempt to resolve issues in controversy; prepare findings of fact and issue decisions under the Disputes clause on matters in which the agency and contractor fail to agree.
- (16) Request advisory audits or audit information from a qualified independent auditor prior to award of cost reimbursement contracts to ensure (1) adequacy of

contractor's accounting system, and (2) reasonableness of cost proposal estimates (labor, overhead, G&A, etc.), when negotiating contracts of \$100,000 or more.

- (17) Issue tax exemption forms.
- (18) Issue task orders under task order/work order contracts.
- (19) Negotiate prices and execute supplemental agreements for spare parts and other items.
- (20) Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience.
- (21) Process and execute novation and change of name agreements.
- (22) Perform property administration.
- (23) Consent to the placement of subcontracts.
- (24) Review, evaluate, and approve MBE, WBE and DBE subcontracting plans.
- (25) By periodic surveillance, ensure the contractor's compliance with MBE, WBE and DBE subcontracting plans.
- (26) Issue administrative changes, correcting errors or omissions in typing, contractor address, facility or activity code, remittance address, computations that do not require additional contract funds, and other such changes.
- (27) Negotiate and/or execute supplemental agreements, as required, making changes in packaging or contract shipping points.
- (28) Cancel unilateral purchase orders when notified of non-acceptance by the contractor.

- (29) Administer commercial financing provisions and monitor contractor security to ensure its continued adequacy to cover outstanding progress payments.
- (30) Accomplish administrative closeout procedures and ensure file are safely stored.

15.4.2 The Technical Officer shall perform the following functions:

- (1) Review and evaluate contractors' proposals and, when negotiation will be accomplished by the Contracting Officer, furnish comments and recommendations to the CO.
- (2) Review invoices for fixed price purchase orders and contracts. Determine that all items being billed were received and meet the specifications of the contract. Sign-off on the invoices for payment or notify the CO and Accounts Payable if exceptions are being taken to an invoice. Where some items in an invoice for multiple items are not approved for payment, payment will be nonetheless be approved for those items that have been received and found acceptable, and the contractor will be notified as to why certain items are not approved for payment. In no event will the entire invoice be rejected if only a part of the items are disapproved for payment.
- (3) Review and approve or disapprove the contractor's requests for payments under the progress payments or performance-based (construction contracts only) payments clauses.
- (4) Ensure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts.

- (5) Monitor the contractor's financial condition (cost performance) on cost type contracts and advise the Contracting Officer when it jeopardizes contract performance.
- (6) Perform necessary screening and disposal of contractor inventory.
- (7) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.
- (8) Perform pre-award surveys of the contractor's facilities.
- (9) Review and evaluate preservation, packaging, and packing.
- (10) Ensure contractor compliance with contractual quality assurance requirements.
- (11) Ensure contractor compliance with contractual safety requirements.
- (12) Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.
- (13) Evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems that relate to design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, and configuration management.
- (14) Report to the contracting office any inadequacies noted in specifications.

- (15) Perform engineering analyses of contractor cost proposals.
- (16) Review and analyze contractor-proposed change orders (design changes, etc.) and submit comments and recommendations to the Contracting Officer, as required.
- (17) Assist in evaluating and make recommendations for acceptance or rejection of contractor requested waivers and deviations.
- (18) Monitor the contractor's value engineering program.
- (19) Ensure timely submission of required progress and other technical reports.
- (20) Determine that the contractor has a drug-free workplace program and drug-free awareness program.
- (21) Monitor the contractor's environmental practices for adverse impact on contract performance or contract cost, and for compliance with environmental requirements specified in the contract. Responsibilities include—
 - (i) Requesting environmental technical assistance, if needed;
 - (ii) Monitoring contractor compliance with specifications or other contractual requirements requiring the delivery or use of environmentally preferable products, energy-efficient products, products containing recovered materials, and bio-based products, and
 - (iii) As required in the contract, ensuring that the contractor complies with the reporting

requirements relating to recovered material content utilized in contract performance.

- (22) Prepare evaluations of contractor performance. These evaluations will be kept by the Procurement Office for future reference as to the vendor's responsibility (past performance) when the vendor bids on future work.