

## Chapter 9 - Procurement

Procurement is the process of purchasing goods or services. Transit systems and subcontractors must follow procedures in this chapter when purchasing supplies, equipment and services funded with FTA Section 5307 (statewide), 5310, 5311, and 5339 (statewide) funds. Subcontractors that were selected through a competitive solicitation process are not required to follow these procurement guidelines. Contact the Public Transit Bureau (PTB) for further information when working on a construction project.

PTB is responsible for seeing that all federal requirements pertaining to procurement are followed by transit systems when using funds administered by PTB. Transit systems may conduct their own procurement, with oversight from PTB, to allow greater flexibility to meet local needs, but PTB will verify that all federal certifications being used in the solicitation are current and accurate. These procurement guidelines and requirements apply to all purchases made with FTA dollars, from vehicles to fuel to office supplies.

FTA Section 5307 and direct Section 5339 (i.e. non-Iowa DOT administered) funded purchases are covered by the same policies, but the Federal Transit Administration (FTA) has oversight responsibility. Transit systems using funds under direct FTA grants (Section 5307 or 5339) should follow the guidelines in this chapter; however, concurrence by PTB is not required.

This chapter provides guidelines for conducting fair and equitable procurements, mainly using federal funds. Additional resources that will provide assistance are listed below. FTA's *Best Practices Procurement Manual (BPPM)* is an excellent resource containing requirements and guidance for procurements.

- [FTA's Best Practices Procurement Manual \(BPPM\)](#)
- [Third Party Contracting Guidance, FTA Circular 4220.1F](#)
- [FTA Master Agreement](#)
- [APTA's Standard Bus Procurement Guidelines](#)
- [National RTAP's ProcurementPRO](#)

### Standard of Conduct

Each transit agency must have a written standard of conduct to govern the activities of employees, board members, officers, or agents, or his or her immediate family member, involved in procurements financed with FTA funds. The conflict of interest may be real or apparent. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.

The transit agency's officers, employees, agents, or board members may neither solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts. [The transit agency may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.]

The standard should detail penalties, sanctions, or disciplinary actions that shall be taken for violations and be explicit with regard to how potential personal conflicts are to be reported (by whom/to whom) and how the situation will be resolved.

### State-funded Procurements

The requirements for capital projects funded solely with State Transit Assistance (STA) or Public Transit Infrastructure Grant (PTIG) funds are similar to the procedures in this chapter. The review and concurrence by the PTB is the same as presented in this chapter; however, some federal requirements such as Buy America are not requirements of procurements without federal funds. Guidance for conducting procurements funded solely with state monies can be found at: <https://iowadot.gov/transit/Transit-Procurement>. [Transit Programs Administrators](#) (TPAs) can answer questions about differences in the procurement procedures when no federal funds are used.

Bid specifications for projects over \$50,000 must be submitted to the Iowa DOT for approval.

Any property purchased and/or any land on which facilities are to be constructed upon with State funds shall be free of all legal encumbrance and a legal description of the designated tract of land shall be on file with the transit agency.

The transit system agrees that any property purchased, or any facility constructed with State funds shall be used for the provision of public passenger transportation service within the area described in the application for the useful life of the property/facility as determined by the Iowa DOT.

If the property is not continuously used for public passenger transportation in a manner similar to that intended by the application, the transit system shall immediately notify the Iowa DOT.

### **Emergency Procurements**

It is sometimes necessary to make an emergency purchase of an item or service. Instances where emergency procurements are required are rare, such as needing a sump pump in a flood or tree removal service following a violent storm, but a transit system's procurement policy should address such situations so there is no doubt about having authority to make an emergency purchase. In these circumstances, the transit system will not have time to conduct a formal bid or solicit quotes. Therefore, transit system staff should be empowered to make quick decisions. In creating the emergency procurement policy, emphasize the rare, short-lived nature of such a situation. Emergency procurements should not be used often and should not be utilized just to get around the traditional, required procurement process.

### **Advanced Authority to Incur Costs**

Before you begin the procurement process for federally funded capital purchases you must have:

1. a current TIP that includes justification for project(s) and
2. the item is included in an FTA grant application requesting funds for the project(s).

Agreements for federal capital funds will be executed after FTA approves the Iowa DOT's statewide grant. Although the procurement process may be initiated before the transit system has a signed agreement, an acknowledgement of financial responsibility under FTA's guidelines for "[Advance Authority to Incur Costs](#)" must be submitted, and PTB and the transit board must approve any payment before the grant is approved. The agreement will list the project(s) and the federal ceiling amount for the project(s). When requesting technical assistance on a procurement, please refer to the agreement number.

### **Independent Cost Estimates (ICE):**

The FTA requires an independent cost estimate must be obtained for every procurement valued over \$250,000. The transit manager or purchasing personnel should obtain the independent cost estimate prior to publishing the procurement or soliciting vendors. Examples of places to obtain an ICE are from a like-kind vendor, another public agency that recently purchased a like-kind item, a city or county engineer (if applicable), or a catalog showing product and sale price. All ICEs must document date of the estimate, name of person who developed it, and a requirement that the estimate be retained in the procurement file. Your TPA will verify documentation prior to granting concurrence to proceed with procurement.

Please note that an ICE received from any vendor will eliminate that vendor from bidding or contracting with transit agency for that procurement. Also, an ICE or cost analysis must be performed on any contract modifications (change orders).

### **Excluded Parties (Vendors):**

Transit agencies are required to search the System for Award Management (SAM), <https://sam.gov/SAM/>, to verify vendors have not been excluded from entering into contracts funded

with federal monies. This must be documented and placed in the procurement file. Your TPA will verify this documentation prior to granting concurrence to proceed.

### **Competition**

The primary purpose of any procurement is to obtain optimal quality and service at minimum cost through free and open competition. A secondary purpose is to guard against favoritism and profiteering at public expense, and to provide equal opportunities to participate by every potential vendor. Your procurements should be designed to ensure that all qualified vendors have a fair opportunity to benefit from spending public funds.

Competition in procurement is the process in which two or more vendors attempt to secure business by the most favorable price, quality, and service. Procurement practices should only rule out vendors for sound business reasons. Exclusionary practices that PTB regards as limiting competition for reasons other than business or bona fide policy goals will not be allowed. Two sources/vendors are not considered adequate when there are additional sources/vendors in the area that are fully qualified to compete. FTA will not fund procurements that restrict competition by using exclusionary or discriminatory specifications such as:

- placing unreasonable requirements on firms in order for them to qualify to do business;
- requiring unnecessary experience and bonding;
- allowing noncompetitive practices between firms (collusion, price fixing);
- noncompetitive awards to any person or firm on retainer contracts;
- conflicts of interest within the agency;
- specification of a name brand product without listing its salient characteristics and not allowing an alternative product to be offered;
- using any arbitrary action in the procurement process; and,
- geographic preference.

Geographic preference for local or state firms is prohibited, except in cases where federal statutes expressly mandate or encourage geographic preferences. Geographic location may be a selection criterion in the purchase of architectural and engineering services provided that an appropriate number of qualified firms compete for the contract.

### **The Brooks Act (Public Law 92-582)**

Also known as Qualifications Based Selection (QBS), which was enacted on October 18, 1972, establishes the procurement process by which architects and engineers (A/Es) are selected for design contracts with federal design and construction agencies. The Brooks Act establishes a qualifications-based selection process, in which contracts for A/Es are negotiated on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price. Under QBS procurement procedures, price quotations are not a consideration in the selection process.

### **Procurement Methods**

A transit system may conduct its own procurement, join with other systems in a consortium procurement led by one of the participants, use a state-administered procurement conducted on behalf of one or more transit systems, or use an existing state contract if the procurement process satisfies FTA requirements.

**Consortium** - A consortium is a competitive procurement involving more than one transit system. Each transit system must agree on the specifications and work together with one lead person to develop common specifications.

**Piggybacking** – The post award practice of allowing someone who was not included in the original procurement to purchase the same supplies or equipment through the original contract is allowed under specific situations:

1. the original solicitation must include an assignability clause that provides for the assignment of all or part of the deliverables as originally advertised and competed;
2. the original solicitation and contract must contain both a minimum and maximum quantity;
3. no additional quantities can be added; and,
4. units must be as originally specified with no "cardinal changes."

Refer to FTA's [Best Practices Procurement Manual](#).

**State Bids** – Each year the State of Iowa establishes contracts for purchases of vehicle, tires, radios, fuel and other items. To the extent that these state bids meet FTA procurement requirements, transit systems may purchase equipment from the existing state bids. Your TPA can provide you with information on whether equipment is available to purchase by this method.

**State administered procurements** – PTB, in conjunction with other Iowa DOT offices, may consider conducting a procurement if one or more transit systems request assistance in this area.

### **Procurement Procedures**

Procedures used for purchasing materials or services include: micro purchase, small purchase, invitation to bid, request for proposal, and request for qualifications. The procedure to use is determined by the cost estimate of the procurement and/or by the nature of the service or product needed. Local policy boards may set lower limits for small purchase procedures. The transit manager should verify what the local restrictions are before deciding on which procurement procedure to use.

All purchases made with federal funds must comply with Buy America regulations. The transit system should state the Buy America regulation on the purchase order or require that Buy America certification be submitted when purchasing items using a Small Purchase procedure. FTA has issued a "blanket waiver" for contract awards less than \$150,000. (See [Buy America Certification for Non-Rolling Stock](#) or [Buy America Certification for Rolling Stock](#))

Although advance concurrences may not be required, documentation of proper procurement procedures and principles of free and open procurement must be followed. Documentation of the procedures may be required at the time payment is requested, or subsequently as part of a **compliance** review. If proper procedures and principles have not been followed, the procurement will be ineligible for federal or state financial participation. In order to assist the transit systems through the procurement process, the PTB developed a [checklist](#) to ensure the proper procurement steps are completed.

Systems may request PTB concurrence at any stage during a procurement.

### **Davis-Bacon (Federally Funded Projects Only)**

For all construction, alteration, or repair (including painting and decorating) of public buildings or public works projects over \$2,000, the 1931 Davis-Bacon Act requires payment of prevailing wage rates to all laborers and mechanics on Federal or Federally-assisted contracts. The prevailing wage rate, referred to as the "Davis-Bacon wage rate," is determined by the U.S. Secretary of Labor and should be included in the contract between the transit system and the contractor.

Two types of wage determinations exist: (1) General Wage Determinations and (2) Project Wage Determinations.

General wage determinations contain prevailing wage rates for the types of construction designated in the determination, and they are used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or cancelled by a notice in the Federal Register by the Department of Labor. The General wage determinations should be used whenever possible.

Project wage determinations are used at the specific request of the grantee. They are used only when no General wage determination applied and they effective for 180 days from the date of the determination.

The most current Davis Bacon wage determination rates for all of the counties in Iowa can be found [here](#). The transit system is responsible for ensuring a copy of the most current wage determination of the Department of Labor is included in the solicitation and ensuing contract.

**Procurement Documentation** – For each procurement, please record the following for the file:

- Rationale for method of procurement
- Selection of contract type
- Reason for vendor selection
- Basis for contract price

**Types of Procurements**

	<b>Micro Purchase</b>	<b>Small Purchase (Informal Bid)</b>	<b>Invitation for Bid (IFB, Formal Bid)</b>	<b>Request for Proposal (RFP)</b>	<b>Request for Qualifications (RFQ)</b>
Amount of Purchase	Total under \$10,000	Total under \$250,000	Total \$250,000 or more	Purchases \$250,000 or more	See "Brooks Act"
Nature of Product or service	Standardized Product/service	Standardized Product/service	Standardized Product/service	Services cannot be precisely defined and/or price is only one factor for evaluation	Architectural and Engineering
Competitive	No	Yes	Yes	Yes	Yes
PTB Concurrency	No	Yes	Yes	Yes	Yes

**Micro Purchase** – Micro Purchases are procurements under \$10,000 and can be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable. These purchases should be equitably distributed among qualified suppliers in the local area. No purchases can be split to be under the dollar threshold to avoid competition. Even though a micro purchase, the Davis-Bacon Act applies to construction contracts greater than \$2,000. Documentation must include how the determination was made that the price is fair and reasonable. Davis Bacon Act requirements are explained in FTA's [Best Practices Procurement Manual](#).

**Small Purchase Procedure** – The informal small purchase procedure may be used for purchases costing less than \$250,000. It is the value of the total contract that determines the procedure to use. If the individual item is under \$250,000, but the approved total project cost is \$250,000 or more, PTB requires the formal bid procedure even if the items are purchased individually.

To use the small purchase procedure, obtain a limited competition from an adequate number of qualified sources (at least two, but three is preferred).

**Invitation for Bid (IFB)** – The IFB procurement process is used when complete specifications or purchase descriptions are available and the cost of the total project exceeds \$250,000. An IFB is most

commonly used to obtain prices for specific goods and services. The IFB process must involve two or more bidders and the award is given to the lowest responsible bidder. Design specifications of goods and services to be procured under an IFB are not subject to negotiation. Bids that deviate from the specifications are rejected as nonresponsive.

**Request for Proposal (RFP)** – The RFP procurement process is used when a general, rather than specific description of goods and services is used. The RFP method is used typically for planning, purchases of transit services, ITS equipment and software, and other projects that entail complex purchase factors. This method allows for the procurement of goods and services without detailed design specifications. The primary consideration in awarding bids need not be price. Vendors typically submit a "statement of work" and a "cost proposal." Contractors have flexibility in how the goods or services are produced and the award is based on an evaluation of price and a number of criteria. Communication with vendors is used to negotiate an optimal contractual agreement, in which both price and evaluation criteria are used in selecting a bidder. Awards are based on an evaluation of price and quality. Final price may be negotiated with the vendors deemed to be in the "competitive range" of proposals submitted.

**Request for Qualifications (RFQ) – Procurement of Architectural and Engineering (A & E) Services** – A competitive procedure based on the Brooks Act is used when contracting for A & E services. Other types of services considered A & E include program management, construction management, preliminary engineering, design, surveying, mapping and services that require performance of a registered or licensed architect. The Brooks Act requires that:

1. A vendor's qualifications be evaluated
2. Price be excluded as an evaluation factor
3. Negotiations be conducted with only the most qualified vendor,
4. If unable to make an agreement on price, negotiations with the next most qualified vendor should be conducted until a contract award can be made
5. Negotiations cannot be reopened with a party once the next vendor has been contacted

Geographic preference may be used in A & E procurements as long as a reasonable number of contractors are available. For more information on the Brooks Act, see FTA's [Best Practices Procurement Manual](#).

**Noncompetitive Process – (Sole Source Purchases)** Sole source procurements are allowed 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 conditions apply:

1. The item is only available from one source
2. Public emergency will not permit the delay resulting from competitive solicitation
3. FTA authorizes noncompliance negotiations
4. After solicitation of a number of sources, the competition is determined inadequate
5. The item is an associated capital maintenance item

A cost analysis verifying the proposed cost data, projections of the data, and the evaluation of the specific elements of costs and profit is required. PTB requires advanced notification with a [Certification of Like Customer Price for Sole Source](#). Direct FTA recipients are not required to have prior FTA approval, but must fully document procedures and justification. A more detailed discussion is included in [section 4.6](#) of FTA's Best Practices Procurement Manual.

### **Competitive Bid Process**

The basic steps in a formal bid using an IFB or RFP method are very similar.

1. Pre-Bid Activities
  - a. Determine scope of procurement
  - b. Decide on IFB or RFP

- c. Develop solicitation package
  - i. General Instruction to bidders, including uniform terms and conditions, required clauses, evaluation process, and protest procedures.
  - ii. Develop specifications
  - iii. Documents and attachments
2. Obtain PTB review and written approval of solicitation package
3. Solicitation Activities
  - a. Finalize solicitation package
  - b. Advertise procurement in at least one general circulation newspaper and by mail, fax, or e-mail to all vendors shown on PTB vendor lists
  - c. Send solicitation package to all vendors requesting package
  - d. Conduct pre-bid conference if deemed necessary
  - e. Respond to vendors' requesting clarifications, approved equals or exceptions to bid package
  - f. Vendors submit sealed proposals by the designated deadline
  - g. Public opening of proposals at time and location specified in solicitation package
4. Bid review and award
  - a. Convene review committee
  - b. Analyze bid for responsiveness to requirements, vendor responsibility, and tabulate bid pricing
  - c. Obtain PTB concurrence in determination of lowest responsive and responsible bidder and anticipated award
  - d. Notify vendors of record of intent to award and bid tabulation
  - e. All bids may be rejected if in the public interest
  - f. For vehicle purchases, perform pre-award audits and prepare certifications
  - g. Handle protests
5. Post-delivery
  - a. Inspections if required
  - b. Audit - FTA
  - c. Notice to vendor of defects
  - d. Payment to vendor

### Competitive Bid Process

	<b>IFB</b>	<b>RFP</b>	<b>RFQ</b>
<b>Pre-Bid Activities</b>			
Specifications	Determine detailed design specifications or descriptions.	Determine goals and objects, and/or performance specification of equipment.	Determine goals and objectives, and/or performance specifications of project.
Required Clauses	Determine all local, state, and federal requirements.	Determine all local, state, and federal requirements.	Determine all local, state, and federal requirements including Brooks Act requirements.
Evaluation criteria/committee	Criteria based on price and bidder being responsive and responsible.	Criteria can involve price, quality of scope of work, qualifications and others to assure consideration of essential performance/product.	Qualifications of vendor, scope of work to assure essential performance. Price cannot be considered.

Prepare document	Prepare IFB	Prepare RFP	Prepare RFQ
	PTB Review	PTB Review	
Finalize Bid Package	Finalize Bid Package	Finalize Bid Package	Finalize Bid Package
<b>Solicitation Activities</b>			
Advertise for qualified contractors	Advertise for qualified contractors and send notice to all known vendors.	Advertise for qualified contractors and send notice to all known vendors.	Advertise for qualified contractors and send notice to all known vendors.
Send solicitation to vendors who requested package.	Solicitation package sent to all prospective vendors who request package.	Solicitation package sent to all prospective vendors who request package.	Solicitation package sent to all prospective vendors who request package.
Bid Submittal	Sealed Bid submitted by due date. Submitted in original form plus specified number of copies. Bids opened publicly.	Vendors submit both price and technical proposal. Proposals are opened at specified time and acknowledged publicly.	Vendors submit technical proposal. Proposals are opened at specified time and acknowledged publicly.
<b>Evaluation and Award</b>			
Evaluation Criteria	Award based on lowest total bid that meets requirements and instructions provided to vendor is responsive and responsible.	Award based on qualifications, compliance with proposal requirements, financial responsibility, experience with similar projects, capability to honor terms of proposal in terms of resources.	Award based on vendor qualification, scope of work.
		Negotiate with vendors in competitive range.	Negotiate with most qualified vendor.
Pre-award Audit	PTB Concurrence	PTB Concurrence	PTB Concurrence
Notify selected and vendors of record	Notify selected and vendors of record	Notify selected and vendors of record	Notify selected and vendors of record
Protests	Follow internal procedures established in	Follow internal procedures established in	Follow internal procedures established in proposal and in compliance with Circular 4220.1F

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**Developing the Solicitation Package**

Before beginning the procurement process, the scope and goals of the procurement should be established. Clearly stated goals will lead to more effective decisions regarding the methods and procedures needed to make the purchase. Once the goals of a procurement are clear, detailed specifications can be developed. Provided that the process is competitive, the transit manager may design the IFB or RFP in any manner that serves the system's particular procurement needs. The following outline, consisting of three principal parts, suggests a general design for a solicitation package:

- Part I – General Instructions to bidders
- Part II – Specifications or scope of work
- Part III – Documents and Attachments

All elements addressed under the three parts must be addressed in the procurement process. Additional guidelines that will provide easier reference to solicitation packages include:

- Number each page of the document, identifying the total number of pages in the solicitation package (ie. 1 of 20 pages)
- Assign the solicitation an identifying reference number or name that can be used as an abbreviated reference. (For example, a light duty bus solicitation for Western Iowa Transit System may be referenced: WITS-IFB-LDB-10/01.)

**Part I - General Instructions to Bidders**

**Cover Sheet** – The cover sheet may contain a brief synopsis of the requirement(s) or any other brief facts that will be restated in greater detail in later parts of the bid package. This sheet should show the procurement schedule.

**Procurement Schedule** – The schedule should include the following dates (timeframes are suggestions only. Confer with TPA to develop appropriate dates.):

1. Date of Public Notice—6-8 weeks prior to bid opening
2. Date the notice is to be mailed, faxed, or e-mailed to prospective vendors
3. Date of Pre-bid conference if one will be held (RFP)
4. Deadline for receipt of requests for "approved equals"; "exceptions" and "clarifications"; must be received
5. Date of response to "approved equals" and "exceptions and clarifications"
6. Date sealed bids are due – Bid receipt dates and times should be set so they will allow for local delivery by express couriers. Holidays and weekends should also be taken into consideration when setting receipt of bids and bid openings
7. Date and time of bid opening – may be same day as bids are due
8. Date of anticipated contract award – Date needs to allow time for bid analysis, PTB concurrence, board action if required and announcement of intent to award

**Instructions, Conditions and Notices to Bidders** – This section provides special information to prospective bidders, such as:

1. The availability of a pre-bid conference
2. Directions for obtaining copies of documents (plans, drawings)
3. Procedures for requesting approved equals, exceptions from the specifications, or clarification of the specifications

4. The requirement for a certification of compliance with specifications. The transit system assumes the responsibility for verifying a bid's compliance. The certificate of compliance may suffice, but requirements for submission of descriptive literature and/or bid samples are customary. Supplemental information necessary to confirm responsiveness of product may be required after bids are opened
5. The name, address and phone number of designated contact person should be identified
6. Contract provisions required by law and regulation (See [Required and Suggested Clauses](#))
7. Evaluation factors for award
8. Remedies such as bid or performance bond requirements, liquidated damages, etc.

**Approved Equals, Exceptions and Clarifications** – The instructions to bidders should explain the approved equals, exceptions and clarifications procedure. The deadline for receipt of these requests must be specified. Vendors must be given the opportunity to request changes or clarifications in the bid package. By allowing vendors this opportunity, you will enhance competition and improve the likelihood that your needs will be met. The transit system must also state when they will respond to the requests. Click here for a model [Approved Equals, Exceptions and Clarifications Request](#) form.

**Certification of Compliance with Bid Specifications** – PTB suggests that the responsibility for verifying compliance with the specifications at the time of bid be left with the vendor rather than assumed by the transit system. The use of a compliance certification avoids the chance of implied acceptance of an item varying from the final specifications (as modified by approved equals or exceptions). The vendor can be challenged if an apparent conflict is evident, however the certification insures the vendors liability to perform as described in the specifications. The instructions to bidders must make clear that the vendor will be held to the specifications no matter what other information is presented with the bid. Transit systems are encouraged to use the sample [Certificate of Compliance with Bid Specifications and Provisions](#) model.

**Evaluation Factors for Award** - This section should contain a statement of the exact basis upon which bids will be evaluated and the award made. In an IFB procurement, awards shall normally be made on the basis of lowest bid price for a unit which fully complies with the specifications. An RFP must establish in advance the specific factors that will be involved in the award decision. The exact nature of each factor, and the relative weighting, must be presented. No factors other than those listed may be used once bids are received. Consideration should be given to the advantages or disadvantages to the purchaser that might result from:

- awarding various portions of project to different vendors, e.g., rehabilitation project award engine and body work to different vendors; or
- considering "life-cycle" cost, e.g., factoring in elements of the cost of operating equipment along with the total bid cost.

**Terms of Payment** - This section should state when payment will take place. This should include how resolution will be made regarding any negotiation of delivery or possible noncompliant equipment issues. Payment should normally be made at the time of acceptance. It should be stated if board approval is necessary before payment is made to vendor.

**Inspection and Acceptance** – This section should state the place of inspection, place of acceptance, and other related requirements deemed necessary by the purchaser.

**Protest Process** – The procuring agency must make every effort to award a contract in a fair manner following bid review, evaluation and award procedures. In the event that a bidder feels that a contract award has been made unfairly or improperly, the procuring agency must have in place a policy to handle protests by contractors. The policy should include internal protest procedures and time frames, and also address confidentiality and award withholding. The contractor has the right to protest the award and must follow the administrative procedures you establish as the procuring agency. If the contractor disagrees with your decision, it may appeal your decision and file a protest in compliance with Circular

4220.1F, and local and state regulations. Transit systems are encouraged to use the model [Protest Procedure](#).

**Remedies** – All contracts other than those following small purchase procedures should include provisions or conditions that stipulate remedies the transit system can use if the vendor violates or breaches the terms of the contract. The bid instructions need to state explicitly what remedies shall be invoked (e.g. whether all or part of the bid bond will be forfeited, should a vendor not accept the terms of a contract if offered). Consideration should be given to the amount of any bonds or penalties since the vendor will likely factor this into his costs and it may also reduce competition.

Liquidated damages may specify a certain amount to be paid if the equipment is not delivered by the specified time. This must be based on the estimated cost to the system if they do not receive the equipment on or before the delivery date required in the IFB/RFP. Liquidated damages must be enforced, if they are stipulated.

A bid bond may be required to be submitted at the time the vendor submits a bid. The bid bond is a guarantee that the vendor awarded the contract will accept the award or else the bid bond is forfeited.

A performance bond is posted by the successful bidder to guarantee fulfillment of the contract. Although this may be a way to determine if the bidder can fulfill your contract, it is expensive for the vendor. Some vendors cannot afford one, so you may be eliminating vendors who are capable of providing the item you want. Be sure that a performance bond will truly be a benefit to you before you decide to include it.

A payment bond is only necessary on construction projects. The payment bond is posted by the successful bidder and guarantees that the contractor will pay suppliers and any sub-contractors so as to avoid liens against the property.

For construction contracts less than \$100,000, the grantee is to follow its own requirements relating to bid guarantees, performance bonds and payment bonds. For contracts more than \$100,000, however, FTA has established certain minimum bonding requirements. FTA may accept the bonding policy of the grantee as long as these minimum requirements are met:

- a bid guarantee from each bidder equal to 5 percent of the bid price;
- a performance bond for 100 percent of the contract price; and
- a payment bond on the part of the contractor for 100 percent of the contract price.

## **Part II – Specifications or Scope of Work**

**Supplies/Services, and Quantities** – This section should contain your specifications, a detailed description of the items or services being procured, and the quantities required, if applicable. An IFB will have straightforward specifications of products and request quantities. An RFP will describe a scope of work and a description of intended product and tasks to complete the scope of work.

**Delivery or Performance** – This section should state the required time of delivery or performance, delivery destination, and method of delivery. The transit system should have goods shipped F.O.B. the transit system as the receiving location. If goods are shipped F.O.B. the supplier's location, the goods become the property of the buyer as soon as they are delivered to the carrier. This means that insurance, freight, and other problems become the responsibility of the buyer.

**Special Provisions** – This section should contain provisions pertaining to optional features, quantity options, and other special provisions, which support the requirements.

**Schedule of Prices** – The model [Schedule of Prices](#) may be appropriate to include with your IFB solicitation package, but may not be appropriate for use with an RFP.

**Descriptive Literature** – The term "descriptive literature" means information, such as illustrations, floor plans, drawings and brochures showing the characteristics or construction of a product or explaining its operation. Descriptive literature is furnished by a bidder as a part of the bid to describe the products offered in the bid. It may be appropriate to require descriptive literature in the procurement of highly technical or specialized equipment, or where considerations such as design or style are important in determining acceptability of the product. However, any decisions to do so must receive concurrence from PTB.

If descriptive literature is not required, but such literature is furnished with a bid, it should not be considered to qualify the bid. If the vendor has certified compliance with the bid specifications, but the literature appears inconsistent with the bid specifications, the vendor should be challenged to reconfirm their certification of compliance. It is important to note that submission of descriptive material showing nonconformance with specifications does not establish an exception, even if the transit system fails to challenge the vendor.

**Bid Sample** – A "bid sample" is a sample unit of the items being procured and may be required to be furnished by a bidder. Such samples should be used only for the purpose of determining the responsiveness of the bid. The bid should not be considered on the issue of a bidder's ability to produce the required item or sample. If bid samples are not required by the solicitation, but samples are furnished with bids, they should not be considered as qualifying the bid.

In a few cases, a bid sample may be required, particularly when the product has characteristics that cannot be described adequately in the specifications. However, use of such a requirement will require concurrence from PTB.

It may be appropriate to require bid samples; for example, where the procurement is for products that must be suitable from the standpoint of balance, ease of use, general "feel", color or pattern, or that have certain other characteristics that cannot be described adequately in the specifications. The bid package should list all of the characteristics of the sample that will be examined. Also, bids should be rejected as non-responsive if the sample fails to conform to any of the listed characteristics. The transit system must approve the sample(s) in writing to all bidders.

**Specifications** – A specification is defined by federal procurement regulations as a clear and accurate description of the technical requirements for a material, product or service, including any procedures by which it will be determined that the requirements have been met.

It is the transit manager's responsibility to prepare or secure specifications that best reflect the system's procurement needs. Contact your TPA for assistance. The transit manager must state exactly what the requirements are, and not leave specifications open to differing interpretations. Wording must always be clear and specific so the bidder knows what is needed by the transit system. Specifications should not be so narrow that bids are restricted to a sole provider.

Use the following guidelines when writing valid specifications:

- Reflect the actual minimum functional requirements of the transit system, not what may be desired
- Describe requirements in plain, precise language
- Allow the preparation and evaluation of bids on a common basis
- Deal with measurable/verifiable features, not intangibles
- List all salient features of a required item in generic terms -- use of brand names shall generally be limited to illustrative examples. (If a brand name is given, the specifications must also state "or equal" and a listing of salient features which will allow something to be considered equal must be made available upon request.)

There are two basic types of specifications that can be described in your bid package: design specifications and performance specifications.

**Design specifications** contain the data necessary to produce an item (this normally would include details, size, dimensions, etc.). Any specific design details must have a functional justification.

**Performance specifications** express requirements in the form of output, function or operation of an item and equipment, and leave the details of design, fabrication, formulation or internal workings to the producer's option.

Most specifications have both design and performance characteristics. When a specification is referred to as a performance specification, it indicates that the requirements in the specification are predominately performance.

When purchasing a vehicle, the vendor must certify that the vehicle meets applicable Federal Motor Vehicle Safety Standards (FMVSS). A sample certification can be found [here](#).

Standards can be found in the Code of Federal Regulations [here](#).

**Amending Specifications** – Specifications and instructions may be amended prior to the bid opening, as long as a reasonable amount of time is provided for vendors to respond to the change(s) and PTB approves the changes. The responses to requests for approved equals, exceptions and clarifications will typically include some minor amendments to the specifications.

An amendment to either the solicitation specifications or bidder instructions becomes a permanent part of the bid packet. An amendment should be sent to each vendor of record. Each amendment must:

1. Identify the bid with description, date and/or number and specify amendment date
2. Clearly state the changes made to the bid package and whether there is to be an extension of the opening date. If no extension of time set for opening is involved, the amendment should state accordingly; and,
3. Include instructions to prospective bidders for acknowledging receipt of the amendment. The effect of failure to acknowledge and return the signed amendment should be made clear for the prospective bidders.

An amendment which causes a major change in the scope of the procurement, requires a notice, new schedule, etc. be sent to vendors of record.

**Options** – Options are features that may be added or subtracted from the base unit (which fully comply with the minimum specifications). A transit system may elect to purchase additional equipment, supplies or services above the minimum needs specified in the bid packet. In the case of a consortium, options may be used to reflect differing preferences. However, differing requirements should be bid as different units. For example, if some vehicles are required to be diesel powered and others gasoline, they should be bid as different units with the engine type being part of the base bid.

The bid proposal sheet should clearly identify all options and the additional cost or reduction amount to the base bid for each option. If the bidder is low bid, without added options, and is deemed responsible and responsive, the bidder should be awarded the contract. Vendors are not required to provide any options; therefore, a bid cannot be rejected if a vendor does not bid an option. If a feature is necessary to the transit system, it should be included in the specifications. The bid analysis must be determined using the base price. Options are not considered when determining the low bid.

### Part III - Documents and Attachments

The following table identifies all of the required forms and certifications.

Requirement	Required for:	Requirement
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	<a href="#">Bus Testing Certificate</a>
TVM certifications (DBE)	All vehicle procurements	<a href="#">DBE Certification for Non-Rollingstock or the DBE Certification for Rollingstock</a>
Buy America certification	Procurements for steel, iron or manufactured projects exceeding \$150,000	<a href="#">Buy America Certification – Rolling Stock</a> <a href="#">Buy America Certification – Non-Rolling Stock</a>
Pre-Award Audit	Vehicle procurements exceeding \$100,000	<a href="#">Pre-Award Audit Certification</a>
Pre-Award Buy America Certification	Vehicle procurements exceeding \$150,000	<a href="#">Pre-Award Audit Certification</a>
Pre-Award Purchaser's Requirement	Vehicle procurements exceeding \$100,000	<a href="#">Pre-Award Audit Certification</a>
Post-Delivery Audit	Vehicle procurements exceeding \$100,000	<a href="#">Post-Delivery Audit Certifications</a>
Post-Delivery Buy America Certification	procurements exceeding \$150,000	<a href="#">Post-Delivery Audit Certifications</a>
Post-Delivery Purchaser's Requirement	Vehicle procurements exceeding \$100,000	<a href="#">Post-Delivery Audit Certifications</a>
Federal Motor Vehicles Safety Standards (Pre-Award and Post-Delivery)	Motor vehicle Procurement (49 CFR 571)	<a href="#">Federal Motor Vehicles Safety Standards</a>
Lobbying Certification	Procurements exceeding \$100,000	<a href="#">Certification of Restrictions on Lobbying</a>

Standard Form LLL and quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities	<a href="http://nij.ncjrs.org/guidelines/form4.asp">http://nij.ncjrs.org/guidelines/form4.asp</a>
Non-Collusion Bidding Certification (Iowa Requirement)	All Procurements	<a href="#">Non-Collusion Bidding Certification</a>
Debarment and Suspension Certifications	Procurements exceeding \$25,000	<a href="#">Iowa Transit Vendor/Service Provider Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusions</a>
Documentation of search of the System for Award Management (SAM)	Procurements exceeding \$25,000	<a href="#">System for Award Management</a>
Approved Equals, Exceptions and Clarifications Request (Iowa Requirement)	All Procurements exceeding \$25,000	<a href="#">Iowa Transit Vendor/Service Provider Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusions</a>
DBE Certification for Rollingstock		<a href="#">DBE Certification for Non-Rollingstock or the DBE Certification for Rollingstock</a>

## Solicitation Activities

**Identify and Notify Potential Bidders** – A list of prospective bidders must be developed. Local newspapers as well as national trade publications such as *Passenger Transport*, *Urban Transportation Monitor*, etc. should be identified as potential places to advertise the procurement package to prospective contractors. Advertising for a bid gives information to prospective bidders about the purchase you want to make. Bids must be publicly advertised and solicited from an adequate number of known suppliers. A bid notice should include:

1. general description of item/service to be procured;
2. date, time and location of bid opening;
3. name of agency administering procurement;
4. contact person, phone number and address;
5. how to obtain the bid packet;
6. statement of federal and/or state financial participation, including the percentage of total cost of the project financed with FTA funds and the dollar value of FTA projects; and
7. a solicitation identifier.

Newspaper advertising is required for formal bids. A regional transit system should advertise in a newspaper(s) that covers that system's area. For a small procurement, it may be sufficient to limit announcements to a local newspaper or publication. Larger procurements may require a broader announcement. [Mass Transit Magazine](#) and [Metro Magazine](#) each provide a database of potential vendors transit systems may use to solicit bids from. These lists should not be considered all inclusive. Other

vendors should be contacted as deemed necessary by each transit agency. The PTB does not endorse any particular manufacturer, vendor, or product. For further guidance [contact your TPA](#).

**The Pre-bid Conference** – A pre-bid conference may be used to brief prospective bidders and explain complicated specifications and requirements as early as possible after the bid package has been advertised, and before the bids are to be submitted. The pre-bid conference should never be used as a substitute for amending a defective or ambiguous IFB or RFP. Attendance at the pre-bid conference cannot be mandatory. Any clarifications, exceptions, or approved equals provided at a pre-bid conference must be put in writing and sent to all potential bidders. It should be clear that oral statements do not take precedence over written specifications or instructions.

**Bid Openings** – Proposals should be date and time stamped as they are received, and a log kept to provide documentation of their receipt. Bids received in response to an IFB are opened publicly and recorded at the time and place specified in your bid package. There are no negotiations, and no changes in bids allowed. Vendors have the right to attend the bid opening and view the certifications and other elements of any proposal, including prices. If requested, an PTB staff member may be present at bid openings.

Proposals received in response to an RFP are acknowledged publicly at the time and place specified, but pricing and other details are not released publicly until a contract award decision is made.

**Two-Step Openings** – A transit manager may request each bidder to submit two sealed envelopes, one containing the technical information about the item bid and the other containing the price. The technical information is evaluated, and responsiveness is determined, before any prices are opened. This process can help avoid conflict over an award to other than low bid.

**Handling Late Bids and Withdrawals** – It is the transit system's responsibility to ensure the policies and procedures relating to receipt of bids conforms to and supports the principle of integrity. If documentation from a shipper shows that delivery was attempted, but the transit system was not available to receive the package, the proposal should be considered timely. In your bid package you should inform prospective bidders of your policies concerning the receipt and withdrawal of bids, and the handling of late bids. You might, for example, state in the bid package that:

- any bid received at the location designated in the solicitation after the specified time for receipt will be returned unopened to bidder; and
- a bid may be withdrawn in person by a bidder or by the authorized representative, provided their identity is made known and they sign a receipt for the bid. The withdrawal may only be made prior to the exact date or time set for receipt of bids.

### **Bid Analysis and Recommendations for Award**

Once bids have been opened, it is the responsibility of the individual administering the procurement to analyze the bids in terms of responsiveness, responsibility and price.

**Evaluating Responsiveness** – "Responsiveness" refers to a potential contractor's conformance to the requirements of the solicitation. In a formally advertised procurement, any bid that fails to conform to the essential requirements (specifications, terms and conditions) shall be deemed non-responsive and rejected. The vendor cannot tie his bid to another bid or make reservations such as, "price may increase due to chassis price increase". Examples of some instances that make a bid non-responsive are:

- Bidder states a price but qualifies such price as being subject to price in effect at time of delivery;
- Bidder takes exception to the terms and conditions by limiting the transit system's rights under any clause or extending the delivery period;
- Bidder has not completed, signed or submitted the required certifications with bid package;
- Bidder's proposal does not meet specifications; or

- when using a procurement style in which the bidders certify the product bid is in full compliance with the specifications, responsiveness is assumed unless the bidder withdraws that certification. If the transit manager has reason to believe that the certification may be based on a misunderstanding, the manager is encouraged to challenge the bidder on specific points during the bid analysis. If it is clear that there has been a misunderstanding, a bidder should be allowed to withdraw a bid.

If a bid bond is required in an IFB or RFP, or a bid sample or descriptive literature is required for evaluation purposes, the failure to furnish the requested item requires the bid be rejected. A bid bond is a financially binding obligation or guarantee to insure fulfillment of a bid. The bid package should clearly state that failure to submit required documents will cause the bid to be rejected.

Failure to submit a Buy America Certification with a bid offer, when required, results in a non-responsive bid.

Minor informalities or irregularities may be waived if it does not prejudice or affect the relative standing of bidders. PTB must approve any waiver.

**Waiving Minor Formalities or Irregularities** – Transit systems may waive minor deviations such as:

- failure of bidder to return number of copies of signed bids required by the bid package; or
- failure of bidder to sign bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as the submission of a bid guarantee or a letter signed by the bidder with the bid, referring to and clearly identifying the bid itself.

**Evaluating Responsibility** – Responsibility refers to the potential bidder's potential ability to perform successfully under the terms of the proposed contract. Such responsibility encompasses both technical (plant or facility) and financial capacities. Responsibility can be determined up to the time of bid award. The following are minimum standards that a potential bidder should meet as a responsible contractor:

- Has adequate financial resources or the ability to obtain such resources as required during performance of the contract;
- Must be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;
- Has a satisfactory record of performance (for contractors who are or have been deficient in current or recent contract performance, consideration should be given to the number of contracts, and the extent of, the reason for, and the deficiency of each);
- Has a satisfactory record of integrity and business ethics;
- Must be otherwise qualified and eligible to receive an award under applicable laws and regulations;
- Must document the search of the System for Award Management (<https://sam.gov/SAM/>) to verify excluded parties are not participating in the covered transaction;
- Must not appear on any list of debarred, suspended or ineligible concerns or individuals which is mandatory to the purchaser;
- Must have evidence of fiscal capacity based on apparent successful bidder financial data, such as balance sheet, profit and loss statements, financial histories of the contract and affiliated concerns, current and past production records, personnel records, list of tools, equipment, and facilities, written statements of commitments concerning financial assistance and subcontracting arrangements, and analysis of operational control procedures;
- Must provide evidence of production capacity and quality documents in publications, including credit rating, trade and financial journals, and business directories and registers; and,
- Must have a reputation for meeting debt obligations based on references from other sources, such as bank and financial institutions.

**Evaluating Price** – To evaluate price, the transit manager compares bid prices. The lowest bid is the bid with the lowest dollar value when using the criteria stated in the bid package, i.e., low base bid or low life-cycle cost. FTA prohibits the use of any state or local preference in the evaluation of bids. Quantity discounts for the purchase of more units than listed in the bid package or discounts for early payments do not count. The bid analysis must be based on the bid price as listed in the bid submittal. The model [Schedule of Prices](#) is available for evaluating costs.

**Dealing with Ties** – Should you receive two or more equally low, responsive bids from responsible bidders, the award should be in accordance with pre-established procedures consistent with requirements of state and local law which reflect the order of award priorities. It should be stated in your bid package how this will occur, e.g., coin toss. It must be based on chance and not allow any type of preference.

**Dealing with Mistakes** – Any clerical mistake apparent in the face of a bid may be corrected by the transit system prior to award, if the transit system first obtains from the bidder written verification of the bid actually intended. Examples of apparent mistakes are:

- obvious errors in placing decimal point;
- obvious discount error;
- obvious reversal of the price Free On Board (FOB) destination and the FOB factory; and
- obvious error in designation of unit.

Correct the bid by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correct the face of the bid and make sure the correction is reflected in the award document.

For other mistakes in bids before award, consideration should be given to permitting the bidder to withdraw the bid where the bidder requests permission to do so, and clear convincing evidence establishes the existence of a mistake. However, if the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and if the bid both as uncorrected and corrected is the lowest received, a determination may be made to correct the bid and not permit its withdrawal.

When a mistake in a contractor's bid is not discovered until after the award, the mistake may be corrected by contract modification if correcting the mistake would make the contract more favorable to the transit system without changing the essential requirements of the contract.

Contact your TPA before allowing a bidder to withdraw or change information.

**Evaluating the Single Bid** – If only one responsive and responsible bid is received, the transit manager must decide whether to accept the bid or rebid to try to obtain more competition. A single bid may suggest that the specifications may be too restrictive to allow adequate competition. Every effort should be made to have more than one bid. If a transit manager is aware that only one bid is likely to be received, your TPA should be notified.

When analyzing a single bid, documentation showing that the process used was open and competitive must be included. The responsiveness and responsibility of the single bid must be analyzed. The price analysis on a single bid must look outside the procurement for proof that the price bid is reasonable. One way to do a price analysis is by comparing the bid received to the low bids received in recent procurements around the state for similar units (adjustments must be made for any variations in the specifications and for the time differential). If no comparable units have been procured recently, a more detailed analysis examining the actual costs of producing the unit(s) in order to determine the degree of profit included in the bid must be done.

The transit manager or person administrating the procurement is responsible for analyzing single bids. Technical Assistance in this process may be requested from PTB, but responsibility remains with the transit manager.

**Dealing with Non-responsive and Non-responsible Bidders** – An award to a bidder other than apparent low bidder can occur when the apparent low bidder is deemed either non-responsive or non-responsible. In either case, the transit system shall document its determination by outlining the rationale that serves as the basis for such determination.

**Rejecting All Bids** – Bid packages should only be cancelled or rejected for valid reasons that are documented. Consult your TPA before canceling or rejecting a bid package. If it is shown that you issued a bid package with no intention of making an award, the bidders may recover the preparation costs for their bids. Single bid situations may justify rejecting all bids if it is felt that greater competition can be obtained through re-bidding. It is important to recognize, however, that the single bidder has expended effort in responding to the initial procurement and will be placed at a disadvantage in a re-bidding since their pricing has been made public.

**Writing the Analysis and Requesting Authorization to Award** – After a bid analysis is completed and the transit agency is ready to award a contract, a letter should be sent to your TPA containing the following information:

1. names of all bidders;
2. Compliance of each bidder with specifications;
3. prices bid;
4. identification of low responsive bid;
5. request to award to vendor with low bid;
6. Solicitation Identifier;
7. funding agreements in which the items have been programmed; and
8. copy of notice.
9. Vehicles also require:
  - a. Pre-award audit
  - b. FMVSS Certification
  - c. Copy of other Certifications.

PTB will review the analysis and concur if all requirements have been met. No purchase order or award may be given prior to PTB approval. In some instances, the transit manager may need to obtain approval more quickly by phoning PTB, submitting the analysis via fax or e-mail, and receiving a verbal concurrence. A letter must follow to receive written concurrence from PTB, provided that the written analysis is consistent with prior communications.

In order for the TPA to concur with a single bid award, the transit manager must also provide the following information:

- copy of the published notice of bid;
- Certification that all vendors on PTB list were individually notified (if applicable);
- justification that any restrictive requirements serve a functional need; and
- price analysis.

If the single bid is not approved, it may be necessary to rewrite the specifications and/or advertise to a larger audience. PTB will provide guidance and assistance if rewriting a specification is necessary.

**Notifying Vendors of Intent to Award and Awarding Bid** – Once PTB has concurred in the award decision, the transit manager should communicate the decision in writing to all parties submitting bids

(including any late submitters). Notices of intent to award should be sent "return receipt requested", faxed or e-mailed.

The transit manager shall then allow a 10-day-waiting period to determine whether there will be any protest of the award decision. At the end of that period, if no protest has been received the transit manager may issue a purchase order or contract. The system's purchase order should refer to units being in full compliance with specifications, terms and conditions of the procurement. The 10-day-waiting period may be waived for minor procurements (under \$25,000 and not involving vehicles) at the discretion of the transit system. In waiving this, however, the system accepts full responsibility for any liability resulting from orders issued if a protest is lodged and later upheld.

A sample [Transit Equipment Purchase Contract](#) has been developed by PTB. This format is suggested unless a transit system has developed its own format in consultation with legal counsel and PTB concurrence.

**Pre-Award Audit** – A transit system purchasing revenue service rolling stock with FTA funds must ensure that a [Pre-Award Audit Certification](#) is completed before entering into a formal contract for the purchase. One copy of the Certification is retained by the transit system and one copy is sent to PTB with the request for concurrence in the contract award.

The Pre-Award Audit Certification contains Certifications for three requirements:

1. Buy America – No purchase order can be issued until the successful bidder supplies a list of the component and subcomponent parts of the rolling stock. The listing needs to include the manufacturer of the parts, their country of origin and the cost or percentage of the vehicle cost. The location of the final assembly point must also be stated. Under the FAST Act, increased domestic content percentages were phased in. In FY2020 and beyond, the item must contain at least 70% American-made components.
2. Recipient Certification that the vendor has certified that it will meet all of the specifications in the solicitation.
3. Recipient Certification that the vendor has certified that it will meet applicable FMVSS standards.

**Change Orders and Purchase of Options Not Included in Bid** – Except in the case of construction projects, the cost of changes or non-bid options shall not be eligible for reimbursement. Any change order/non-bid option requires concurrence by PTB. If significant in nature, changes and non-bid options may invalidate the total procurement and result in the total procurement being ineligible for reimbursement.

**Protests** – Protests (and appeals) represent a process by which vendors can make known their dissatisfaction with the procedures used in a procurement or the decisions made in the course of a procurement. A protest is directed to the party conducting the procurement and normally asks that a particular procedural or material decision be reversed. The protest should also include the vendor's justification for making the protest.

It is the responsibility of the agency administering the procurement to respond to the protest after getting concurrence from PTB. If the vendor is not satisfied by the local response to the protest, the vendor may appeal to PTB, as the FTA grantee.

Vendors may protest at various stages during a procurement. The following are reasons a vendor might protest in advance of a bid opening:

- an improper solicitation method is being used;
- a specification is unduly restrictive without a functional basis;
- selection criteria includes an illegal local preference; or

- the denial of an approved equal response was not justified based on a functional need.

If a protest has been filed before the opening of bids, the transit system should not open bids prior to the resolution of the protest, unless PTB has given approval to open the bids on the basis of an emergency situation.

PTB should be contacted immediately if a transit system has been made aware of a possible protest. Each protest situation is unique and will need to be discussed with your TPA as to how the situation may be resolved. Protests after an award decision might allege the following:

- evaluation criteria set forth in the solicitation document was not adhered to;
- criteria was changed during evaluation of proposals;
- an improper procedure was followed in issuing the award;
- award was made to a vendor that was not the low responsive and responsible bidder; or
- award was made when there was a single bid.

When a protest has been filed before an award the transit system should not make an award prior to the resolution of the protest.

Vendors have a right to protest if they feel an error was made in the solicitation process. It is important to carefully follow proper procedures to avoid providing reasons that a protest/appeal could be upheld. Some tips to help avoid getting protests include:

- If the transit system knows there is only one qualified bidder, make every attempt to find other bidders. Call potential vendors, advertise nationally, and be sure specifications are not written specifically toward one vendor.
- Give vendors the opportunity to share concerns regarding possible minor changes in specifications.

If a transit system can provide legitimate justifications for restrictive specifications, the use of a sole-source procurement method, or the award of a contract to a firm that did not submit the lowest price, the protest may be denied. In notifying the protest or of the denial, the transit system must inform the protest or of their right to appeal to PTB and ultimately to FTA.

Each transit system is required to follow the Iowa DOT protest procedure. The model [Transit Procurement Protest Procedure](#) should be part of the bid package.

## **Post Delivery Activities**

**Inspection, Acceptance and Payment** – Inspection is the final action taken by the transit system to determine if the product or service delivered meets the specifications or the statement of work. All specifications in the solicitation package should be met before accepting the product or service. Failure to enforce the terms of the procurement can result in legal liability and can interfere with other transit system's ability to enforce similar provisions.

Acceptance refers to the actions of the transit system that signify that the product or service is acceptable and the supplier has performed the required tasks. Such acceptance may be accomplished through issuance of a written statement or by use of the product without advance written notification to the vendor of any deficiencies.

At least partial payment must be made to vendor before any revenue use of the vehicle occurs. Full payment should not be made until deficiencies are corrected and the transit system is satisfied with the vehicle/purchase. If deficiencies are noted, a portion of the bid price up to 10 percent of the total cost or

the estimated cost of correction whichever is larger, may be withheld. The transit system should work with the vendor in good faith to resolve any delivery defects but should not let the vendor "off the hook."

**Post Delivery Audit** – A transit system purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit is completed before application is made for a title to the vehicle or the vehicle is used by transit system. The transit manager certifies that the vehicle meets requirements and the post-delivery audit is completed by signing a [Post-Delivery Audit Certification](#). The certifications are retained by the transit system for three years after the project close out, and sent to PTB with the application for transit bus plates and/or vehicle title. FTA has developed a handbook on [Conducting Pre-Award and Post-Delivery Audits for Bus Procurements](#).

The post-delivery audit requires the purchaser to make three certifications similar to the pre-audit certifications, but now based on the buses that have been delivered:

1. Buy America certification;
2. the purchaser's requirements certification that now includes a complete visual inspection and road tests to demonstrate that the buses meet the contract specifications; and
3. the FMVSS Certification.

**Procurement Records** – Bid specifications and all related correspondence, including correspondence with potential bidders, should be kept for a minimum of three years after the joint participation agreement has been closed. The transit manager is encouraged to notify PTB when capital purchases are completed to allow an expedient closeout of the agreement.

**Make Ready Costs** – Vehicle make-ready costs are an eligible capital expense under a capital project for a vehicle purchase. The following items may be specified in the procurement as part of the capital cost of the vehicle, or be done after delivery of the vehicle and be eligible as make-ready expenses:

- painting to the system's color scheme;
- adding system's identification;
- installing safety equipment (first aid kit, florescent reflectors, fire extinguishers);
- installing running boards, extra mirrors, and/or lights;
- transferring, purchasing, or installing radios, fare boxes, surveillance cameras, mobile data terminals, etc. to the new vehicle; or,
- purchasing extended warranties.

The TPA can answer questions about whether other items are eligible make-ready costs. Competitive procurement principles and procedures must be used.

One category of make-ready expenses is the cost of installing accessories transferred from an existing vehicle into a replacement vehicle. Items such as two-way radios, mobile phones, fare boxes and destination signs are considered to have longer useful life than light-duty transit vehicles and must often be transferred to the replacement vehicle. The cost of removing and installing these transferred items is eligible as part of the vehicle purchase. Wheelchair lifts that meet ADA requirements may also be transferred to the new vehicle as a make-ready cost.

The purchase of used vehicles follows the same procedure for transferring accessories. The cost of adding features normally part of a transit vehicle (and not considered distinct capital items), are legitimate make-ready expenses. Transferring existing larger accessories are also legitimate make-ready expenses.

## Notes on Prohibited Features

**School Buses** – FTA funds may not be used for the purchase of yellow school buses or non-yellow buses with other features such as stop arms, school flashers or permanent signs indicating school usage. FTA does not allow exclusive school transportation on any FTA-funded vehicles. Therefore, FTA does not allow any features on the vehicle that make it appear to be providing exclusive school service.

In Iowa, a flashing white strobe light is reserved for school buses; therefore, Iowa law prohibits non-school vehicles from having this equipment.

**Steel Frame** – PTB has no evidence that adding a steel frame to a body-on-van-chassis vehicles improve performance or safety; therefore, steel frames cannot be required in the bid specification. Specifications can require the vehicles to meet FMVSS for rollover, fuel system integrity and joint strength tests. Steel framing can be requested as an option in a body on van chassis, but this factor may not be used in determination of low bid. (The anchorage requirements for ADA securement systems may indirectly require a certain amount of metal framing in fiberglass-bodied vehicles.)