



**Procurement Policies
and Procedures Manual
for use with
Federal Transit Administration (FTA) Funds**

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Introduction and Applicability

This policy and procurement manual applies specifically to purchases of goods and services for New River Transit Authority (NRT) that are funded by federal revenues.

NRT is responsible for the operation of a public transportation system, including the planning, designing, and programming of transportation projects.

NRT receives funding from the federal government, as well as, local municipalities and adopts procurement policies and procedures that are consistent with the federal and state regulations. These procedures apply to all procurements irrespective of the source of the funds. Some, not all, of the specific requirements for procurements funded by the Federal Transit Administration (FTA) are identified in this manual.

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

These procurement policies and procedures are designed to:

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

The methods by which the foregoing is implemented are described in detail in the remainder of this document and the attachments hereto.

NRT adopts and is in compliance with the policies set forth by the Federal Transit Administration (FTA). NRT currently receives funding from federal and local sources and is required to follow FTA procurement requirements.

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.

1. Written Standards of Conduct

NRT agrees to the following:

1.1 Personal Conflicts of Interest

No employee, officer, or Board Member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.

1.2 Gifts

No employee, officer, or Board Member may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts.

1.3 Violations

Failure to comply with the procedure set forth within this policy shall result in disciplinary action.

2. Procurement Thresholds

Purchases \$1,000 and less: Competitive bids are not required, but are encouraged for transactions \$1,000 and less. Employees should choose the vendor offering the best price and value.

Purchases between \$1,001 and \$5,000: A minimum of three verbal quotes is required. The three quotes must be documented on the Verbal Quote Form.

No Quote: A no quote occurs when a bid is requested from a vendor and the vendor does not carry the product or service requested and cannot or refuses to submit a bid. A no quote is **NOT** considered a quote. Verbal quotes must be obtained from three vendors who provide the good or service desired.

Purchases between \$5,001 and \$10,000: Require written quotes from vendors. The written bids may be in the form of a formal quote, fax, or e-mail. However, it must be originated from the vendor.

Purchases greater than \$10,000: Require a formal procurement process (West Virginia Code §8-27-23) or purchase from an existing contract. The formal procurement process must be initiated by the Director or his designee.

Exceptions to the bid process may be granted in certain circumstances such as vehicle maintenance if acquiring three bids will result in additional expense to NRT.

3. Contract Administration System

NRT maintains a contract administration file system designed to ensure conformance by all parties.

4. Written Protest Procedures

New River Transit maintains written protest procedures. Bid protests must be filed with FTA no later than five (5) days after the exhaustion of administrative remedies with NRT is known or should have been known, whichever is earlier.

5. Prequalification System

New River Transit does not currently prequalify vendors on federally funded projects. If it should institute this procedure in the future it will follow the guidelines of FTA Circular 4220.1F.

6. Procedures for Ensuring Most Efficient and Economic Purchase

NRT updates its budget annually in preparation and planning for any purchases or procurements that are needed for NRT to run smoothly and efficiently.

7. Procurement Policies and Procedures

NRT adopts and is in compliance with the policies set forth by the FTA. NRT currently receives funding from federal and local sources and is required to follow FTA procurement guidelines when any federal funds are expended.

8. Independent Cost Estimate

The independent cost estimate (ICE) is the first step in determining cost/price reasonableness of the procurement. NRT member will be responsible for obtaining an independent cost estimate of the project, based on the scope and specifications as written. The ICE must be maintained in the official solicitation file.

An ICE shall be performed on all FTA-funded procurements exceeding the federal simplified acquisition threshold (currently \$250,000) prior to receiving bids or proposals. The extent of the cost estimate will depend on the type of procurement being pursued. For example, a cost estimate for a micro purchase may only involve phone calls to obtain price quotes; while a cost estimate for the procurement of a commuter bus would require a more involved process to assess the market and to develop a reasonably accurate estimate. The cost required to research and prepare the estimate should not outweigh the potential benefits of the estimate. An independent estimate can be obtained from different sources including the following:

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

9. Geographic Preference

Procurement transactions 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 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.

10. Full and Open Competition

All procurement 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:

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business.
- (2) 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 City's interests.
- (3) Noncompetitive pricing practices between firms or between affiliated companies.
- (4) Noncompetitive award to any person or firm on retainer contract.
- (5) 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.
- (6) 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.
- (7) The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.
- (8) Any arbitrary action in the procurement process.

To ensure full and open competition, NRT is expected to follow the purchasing procedures and be objective in reviewing the specifications for each purchase to ensure that none of the above situations occur.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description will be used as a means to define the performance; however, when this method is used, the specification will set forth the salient characteristics that the product must meet, and vendors will be allowed to offer "equal" products to meet the salient characteristics.

Full and open competition is required for all procurement transactions. The use of unreasonable requirements and arbitrary actions are prohibited and it is NRT's responsibility to ensure that such requirements are not part of the specifications. The use of "brand name" requires that the staff member ensure that such use includes the salient and "or equal" characteristics or other descriptive information to allow bidders to identify and propose equivalent products. NRT member will work to ensure that the bid process is followed as prescribed to maintain integrity and public confidence.

11. Organizational Conflict of Interest

Each entity that enters into a contract with NRT is required, prior to entering into such contract, to inform NRT of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on

future activities result in an unfair competitive advantage to the Contractor, or may impact the Contractor's objectivity in performing the contract work.

NRT will analyze each planned procurement in order to identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

12. Contract Period of Performance Limitation

NRT may enter into a multi-year contract to buy transit vehicles (also referred to as rolling stock), with an option not to exceed five (5) years to buy additional rolling stock or replacement, 49 U.S.C. Section 5325(e)(1). The option(s) must be exercised no later than five (5) years after the date of the original contract.

FTA interprets this five-year period as covering NRT's "material requirements" for rolling stock and replacement needs from the first day when the contract becomes effective to its "material requirements" at the end of the fifth year. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that NRT's "material requirements" for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement of NRT's material requirements for a five-year period. The five-year rule does not mean NRT must obtain delivery, acceptance, or even fabrication in five years. Instead it means only that FTA limits a contract to purchasing no more than NRT's material requirements for rolling stock or replacement for five years based on the effective date of the contract.

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 NRT, and the relative benefit to NRT for a longer or shorter contract term.

NRT will comply with the requirements of FTA C 4220.1F, Chapter 4, Section 2.e., Rolling Stock – Special Requirements when procuring rolling stock. Special requirements include compliance with the following:

- a. Pre-award Review and Post Delivery Review, to ensure compliance with Buy America Act requirements
- b. Transit Vehicle Manufacturer Compliance with DBE requirements
- c. Purchaser's requirements certifications
- d. Federal Motor Vehicle Safety Standards (FMVSS) certifications

13. Buy America

FTA's "Buy America" law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in the FTA assisted project.

For the procurement of rolling stock, special pre-award and post-delivery reviews to ensure compliance with the Buy America Act are required to be performed and fully documented as part of the official solicitation file.

A bidder must submit to NRT the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

The bidder shall complete and submit a declaration certifying either compliance or noncompliance with Buy America for rolling stock. If the Bidder certifies compliance with Buy America, it shall submit documentation which lists: 1) component and subcomponent of the rolling stock to be purchased identified by manufacturer, their country of origin, and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point, and the cost of final assembly.

Under the FTA final policy guidance, the Buy America domestic content requirements for transit rolling stock procurements for railcars and buses will be based on the scheduled delivery date of the first production vehicle. The domestic content minimum 70 percent.

Compliance with Buy America must be determined prior to issuing an order, and a waiver sought from FTA if the product is non-compliant.

14. Formal Procurements

Invitations for bids (IFBs) will be used for construction, goods, and services.

Requests for proposals (RFP) will be used for the procurement of professional services. All RFP respondents will be evaluated pursuant to technical specifications and scope of work defined within the bid document. The bid document will set forth the evaluation factors and level of importance. The top ranked firms will be negotiated with.

Requests for qualifications (RFQ) "Brooks Act" will be used for NRT A/E purchases pursuant to technical specifications and scope of work required qualifications defined within the bid document. The bid document will provide relevant evaluation factors and level of importance. Process to be in compliance with FTA Circular 4220.1F whereby the top ranked firm based on evaluated qualifications will be negotiated with first, then the second and so forth.

15. Solicitation Prequalification Criteria

NRT does not use a prequalification process.

16. Award to Responsible Contractors

Awards are made to the most responsive and responsible bidder whose bid or proposal is, according to the criteria designated in the solicitation, most economical for the intended purpose and in the best interest of NRT.

A contractor's responsibility involves an evaluation of its ability to perform the specified work, in all respects. This evaluation considers the following:

- Technical Capacity: Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them in order to perform the project successfully within the allocated time. This evaluation looks at the contractor's staffing,

management systems, equipment, and ability to accurately track costs and submit proper invoices. Possession of any required licenses should also be verified.

- **Financial Resources:** Have the necessary capital to finance the contract performance. This evaluation looks at the contractor's financial statements, banking relationships and financial and credit history. Prior financial difficulties or even bankruptcies do not necessarily render a Contractor non-responsible, but to require a deeper look at its current financial situation.
- **Past Performance:** A record of satisfactory performance on prior contracts of a similar size and nature. References should be checked, and owners on contracts not listed as references contacted if available. Any prior default or other failure to complete a contract should be investigated.
- **Integrity and Ethics:** Compliance with applicable laws and regulations, including affirmative action and DBE requirements, and other public policies. Any debarment or suspension at the federal or state level should be investigated; NRT will not award a contract to a firm currently debarred or suspended by the federal government. The file for every procurement above the small purchase limit shall include documentation that all vendors submitting bids are not listed on the U.S.'s System for Award Management (SAM) Excluded Parties List System.

The responsibility determination is left up to NRT's Director. Responsibility must be determined affirmatively; if there is a reasonable doubt, the Contractor should be found non-responsible. Because responsibility involves subjective judgment and the evaluation of past events, the Contractor should be afforded an opportunity to refute any potential non-responsibility issues or to explain corrective actions it has taken.

The amount and complexity of the procurement determines the level of effort for the responsibility determination.

17. 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, delivery schedule, 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 shall not incorporate options, except to the extent that options for additional or alternative goods or services are incorporated in the contract award, and clauses stating the City's right to exercise options for additional terms, including any pricing or other definitions of each such option.

Contracts shall be prepared incorporating NRT's standard terms and conditions applicable to the type of contract and any other terms specified in a bid package or negotiated as part of an RFP/RFQ process. NRT shall not accept vendor contract forms, except under unusual conditions.

18. Termination for Cause/Default

Termination for cause and for convenience shall be included in all contracts in excess of \$10,001, including the manner by which termination will be effected and the basis on which a settlement will be accomplished.

19. Breaches and Dispute Resolution

Contracts exceeding the federal simplified acquisition threshold (currently \$250,000) and other contracts as determined by NRT will include contractual provisions that allow for administrative or legal remedies in instances where contractors violate or breach contract terms.

20. Micro-purchases

Micro-purchases are those purchases up to but not exceeding \$10,000. See A. See A. Procurement Thresholds for the procedures to follow.

21. Small Purchases

Per West Virginia Code §8-27-23, the threshold for a formal procurement is \$10,000.

22. Clear, Accurate, and Complete Specification

Specifications shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Specifications shall also seek to promote overall economy for the purposes intended, and encourage competition in satisfying NRT needs. Descriptions shall not contain features that unduly restrict competition. The description shall include a statement of the qualitative nature of the material, product, or service to be procured. When necessary, the description shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

23. Adequate Competition – Two or More Competitors

Proposals should be solicited from an adequate number of potentially qualified proposers in order to obtain maximum open and free competition or where appropriate, adequate competition.

24. Competitive Sealed Bidding

Bids in excess of NRT's bid threshold of \$10,000 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 conforming to all the material terms and conditions of the bid.

Competitive sealed bidding is utilized when there is a complete, adequate, precise and realistic description of the solicited items and award may be made on the basis of price and price-related factors alone, without discussions or negotiations with responsive bidder, other than clarifications regarding issues of responsibility or matters not affecting price, schedule, or quality.

Discussions with bidders are expected to be unnecessary. A pre-bid meeting may or may not be held before the bid opening. Public notice of the IFB shall be posted to NRT's website at least ten days prior to the date set for bid opening. All bids will be publicly opened at the time and place prescribed in the IFB.

Options or alternatives will be evaluated at the time of the initial award.

In the event that a single responsive bid is received from a responsible bidder, NRT inquires of those who did not bid the reason for lack of response and then determines whether to accept or reject the bid.

25. Advertised/Publicized (Sealed Bid) (RFP)

All procurement transactions are to be conducted in a manner intended to maximize full and open competition. Each competitive procurement, whether sealed bid or RFP, shall be posted on NRT's website for downloading. NRT will provide the solicitation number and title, the date of any pre-bid or pre-proposal conference, the date and time for receipt of responses to the solicitation, and all solicitation documents. Additionally, if applicable, some procurements may be advertised in local, and/or, as appropriate, regional, national and trade publications. For procurements below the \$10,000 bid threshold, formal advertising is not required, but may be used if appropriate.

Depending upon the anticipated bid amount and/or product/service an ad may also be placed in a local newspaper of general circulation or in a national publication. NRT will mark whether an advertisement is required or not on an internal bid information form that is attached to the technical specifications. Additionally, NRT will include the name of the publication(s) and will handle placing the ad and completing the internal documentation for billing.

26. Adequate Number of Sources Solicited (Sealed Bid) (RFP)

Bids/proposals are solicited from an adequate number of suppliers.

27. Sufficient Bid Time [Sealed Bid]

Bidders are allowed sufficient time to prepare bids before the date of bid opening.

28. Bid Opening [Sealed Bid]

Bids are publicly opened and any attendees are provided a copy of the Bid Record which lists the name of the submitter and the bid price, if applicable. After the receipt and opening of bids, NRT's Director shall examine all bids timely received to determine if they are responsive. A responsive bid is one that is timely received and which complies with all requirements of the solicitation; it must represent a clear and unequivocal offer to provide the good or services specified at a stated price or prices. Exceptions to the specification or contractual terms, or ambiguous or conditional pricing usually render a bid non-responsive. However, if the terms of the solicitation permit, the Director may waive minor informalities, defined as matters not affecting the price, schedule, or quality of the bid.

29. Responsiveness [Sealed Bid]

These criteria address the scope of the bidder's response and conformance to specifications.

- Evaluate the responsiveness, which relates to compliance with the specifications and provisions of the solicitation.
 - Determine bounds of commonality; absolute conformity is not required, just material compliance.
 - Check for bid guarantee requirements; lack of security, where required, is a material nonconformity.

30. Lowest Price [Sealed Bid]

The lowest price or lowest total cost or the highest revenue (in the case of revenue contracts), is properly the deciding factor in most source selections.

A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.

31. Rejecting Bids [Sealed Bid]

Any or all bids may be rejected if it is determined to be in the best interest of NRT but should be avoided whenever possible. Final decision is determined by NRT's Director.

- Bids may be rejected if situations including, but not and limited to, the following occur:
 - Proposed supplies/services no longer needed at this time
 - Errors in specifications or incomplete specifications
 - Invitation did not provide for consideration of all factors of cost
 - Bids are unmeasurable
 - Collusion
 - Lack of competitiveness
 - Inadequate evaluation criteria
 - Lack of available funds
 - Changes in intended project
 - All bids exceed budgeted amount for project
- Notify all bidders, in writing, of rejection.
- Determine appropriate further action.
 - Rebid the item/project with appropriate revisions
 - Cancel the bid
 - Delay to some future date

32. Evaluation [RFP]

NRT will include in all bid documents relevant evaluation factors and level of importance. Evaluations will be conducted pursuant to each bidder's response to each factor and respective level of importance.

33. Price and Other Factors [RFP]

NRT uses the RFP method of procurement when price and other evaluation factors are used to determine the best value to NRT. NRT's Director will review and score the technical and written factors, as well as, determine the score for the price element based upon the Director's pre-selected value for price. This method is not used on sealed bids where only price and price related factors are evaluated.

34. Sole Source if Other Award is Infeasible

A sole source procurement is a purchase accomplished through solicitation from only one source. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. Sole source documentation must be placed in the procurement file.

The following areas must be considered in sole source determinations:

- a) A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement.
- b) Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - (1) The item is available only from a single source;
 - (2) The public exigency or emergency (i.e., a threat to public health, welfare, safety, property, or other substantial loss to NRT, or a situation requiring immediate action by NRT, as determined by NRT) for the requirement will not permit a delay resulting from competitive solicitation.
 - (3) After solicitation of a number of sources, competition is determined inadequate.
 - (4) 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.

An independent cost estimate (ICE) and a cost analysis are required.

35. Evaluation of Options

An option means a unilateral right in a contract by which, for a specified time, NRT may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If NRT chooses to use options, the option quantities of periods contained in the contractor's/consultant's bid or offer must be evaluated in order to determine contract award. In addition, NRT must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

The determination shall be made on the basis of one of the following:

- a. A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option
- b. An analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer
- c. The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer.

The determination shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.

The determination should also take into account NRT's need for continuity of operations and potential costs of disrupting operations and is in accordance with the terms of the options in the contract.

36. Cost or Price Analysis

A cost or price analysis must be performed for procurements exceeding the federal simplified acquisition threshold (currently \$250,000) and must be performed for all contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

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

Cost Analysis

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.

A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements (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 forth by law or regulation.

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.

Profit is to be negotiated as a separate element of the price. 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.

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. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Price Analysis:

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. 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.

37. Exercise of Options

An option is a unilateral right in a contract by which, for a specified time, NRT 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 NRT 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 NRT's anticipated requirements, in accordance with FTA regulations and guidance.

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.

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.

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.

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

38. Out of Scope Changes

A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons.” A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a “tag-on” or cardinal change.

FTA funded purchases do not allow for “tag-ons.” If such a purchase were to occur, NRT must use a funding source other than FTA.

39. Advance Payments

NRT does not allow for advance payments.

40. Progress Payments

NRT allows for progress payments in some purchases. Requests for progress payment are reviewed to determine if it is permissible under FTA. If the request is for a construction contract, then the percentage of completion method would be used. For services, if a schedule has been created outlining phases of work with deliverables then payments can be made after each deliverable milestone has occurred. NRT’s Director will authorize payments if progress payments have been approved as part of the contract.

41. Time and Materials Contracts

A time and materials contract or change order is one in which a clear scope cannot be defined, due to unknown conditions or circumstances affecting the work. Typically, this will involve an emergency situation. Since such contracts provide no incentive for the contractor to work efficiently or in a cost-effective manner, their use is restricted to situations in which no other type of contract is suitable. Before entering into such a contract, NRT must prepare a written justification / documented determination that no other type of contract is feasible. Such contracts will specify a not-to-exceed ceiling price (a limitation of funding) that the contractor shall not exceed except at its own risk, to control cost liability. NRT must also verify that the contractor’s accounting system is adequate to properly segregate and bill costs. NRT is required to provide thorough oversight to verify the amount of work performed and materials used. The official contract file must also include documented price negotiations, which is to formalize the negotiated price, by change order to the time and material award. Every effort should be made to limit the scope of a time and materials contract or change order until another type of contract or change order can be established.

42. Cost Plus Percentage of Cost

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. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

43. Liquidated Damages Provisions

The sum which a party to a contract agrees to pay if he breaks some promise and, which having been arrived at by good faith effort to estimate actual damage that will probably ensue from breach, is recoverable as agreed damages if breach occurs. These damages for breach may be liquidated in the contract at an amount which is reasonable in light of the anticipated or actual harm by such breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Liquidated Damages value will be calculated and placed in the bid document and final contract and contractually bound upon signed contract. For FTA funded projects where the liquidated damages clause is used, NRT will complete either the *Liquidated Damages Calculator* form or *Liquidated Damages Checklist* form (depending upon whether for construction or non-construction purchase) to determine a reasonable amount for NRT's costs. The calculation form will be maintained in the bid file. Any liquidated damages recovered on an FTA funded project would be credited to the project account involved unless FTA permits otherwise.

44. Piggybacking

The term "piggybacking" is often used to describe one public agency's use of another public agency's existing contract when the awarding agency's contract did not originally envision its use by the piggybacking agency. A number of FTA requirements must be met before such a contract may be used. FTA requires that the existing contract contain an assignability clause and all required FTA contract clauses and certifications. All quantities acquired by assigned contract rights must be within the original contract quantities (including options) and acquired within the term of the existing contract. NRT must determine that the agency with the contract complied with all FTA requirements relating to competition and performance of a cost or price analysis. NRT must also perform its own cost or price analysis to determine that the prices it will pay are fair and reasonable if the purchase exceed the federal simplified acquisition threshold (currently \$250,000). NRT will obtain all appropriate documentation from the original awarding agency and retain it in the procurement file for that acquisition.

Piggybacking should not be confused with a joint acquisition, where NRT is a named party in the original solicitation.

NRT may exercise options in contracts of other public agencies ("piggybacking") in accordance with FTA regulations and guidance. This process requires the following to be maintained in the official contract file:

A documented determination that the contract prices remain fair and reasonable at the time the piggybacking takes place.

A documented verification that the contract containing the option was procured in accordance with all FTA requirements, including obtaining copies of the relevant documents from the procuring agency.

A separate contract or purchase order should be entered into between the vendor and NRT.

Where purchases are made from state or local purchasing schedules or contracts which do not include all FTA requirements, the necessary contract terms, representations and certifications may be added by agreement of the parties. Likewise, any contract terms may be modified to reflect West Virginia state law or NRT's requirements. However, the contract may not be modified to substantively change the product or services being acquired.

45. A&E and Other Services

A qualifications-based (Brooks Act) request for qualifications (RFQ) process will be used for the procurement of A/E services and related services such as program management, construction management, feasibility study, preliminary engineering, design, surveying, mapping, or other services that lead to construction.

Following this method, qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Under this method, NRT may not consider price as an evaluation factor in determining the most qualified. Negotiation is conducted with only the most qualified. If negotiations fail with the most qualified, then NRT would move on to negotiate with the next most qualified, and so on.

This method of procurement cannot be used to obtain other types of services, even through a firm that provides the above types of services is also a potential source to perform other services

46. Bonding [Construction]

FTA requires, for all construction contracts in excess of the federal simplified acquisition threshold (currently \$250,000), that the contractor provide a bid bond equal to 5 percent of the bid amount; a performance bond for 100 percent of the contract price; and a payment bond equal to 100 percent of the contract price. When a contract with bonds is modified or supplemented by a change affecting the contract price, the Contractor shall be required to furnish additional bonding to provide for the changes to the contract.

47. Clauses

The FTA clauses are all included in bid documents. NRT uses ProcurementPro to generate the applicable FTA clauses.

48. Revenue Contracts

Revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity, or to create business opportunities utilizing an FTA-funded asset must be procured competitively.

49. Disadvantaged Business Enterprise (DBE)

It is the policy of NRT 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. NRT shall take positive actions to ensure utilization of DBEs.

50. Written Record of Procurement History

NRT maintains written records detailing the history of each procurement, as follows:

- (a) Procurement Method. NRT must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any purchase that does not qualify as competitive.
- (b) Contract Type. NRT must state the reasons for selecting the contract type it used (fixed price, cost reimbursement, and so forth).
- (c) Contractor Selection. NRT must state its reasons for contractor selection or rejection. FTA expects NRT to include a justification for each noncompetitive award. NRT should include a written responsibility determination for the successful contractor.
- (d) Cost or Price. The basis for the contract price.

51. Design-Bid-Build

NRT does not use this method of procurement.