



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

November 20, 2020

AGENDA ITEM 3.10

TO: Regional Transportation Commission

FROM: Stephanie Haddock, CGFM
Director of Finance/CFO

Bill Thomas, AICP
Executive Director

SUBJECT: RTC Management Policy P-13 – Procurement, Contracting, and Contract Administration and Policy P-57 – Settlement Authority

RECOMMENDATION

Approve amendments to RTC Management Policy P-13 – Procurement, Contracting and Contract Administration and Policy P-57 – Settlement Authority.

SUMMARY

In an effort to reach the goal set by the Board and Executive Director to review and revise all Management Policies to ensure effective and efficient agency operations, the attached policy drafts have been developed. Staff recommends the amendments to RTC Management Policy P-13 and P-57 shown in the attached redline documents. Some changes are formatting only which will be applied to all policies for consistency, while other changes are intended to improve the efficiency and effectiveness of procurement activities by aligning the policy requirements more closely with current federal and state law and best-practices of other local governments. The following is a list of the substantive changes:

- P-13
 - The threshold limits for authority to approve a recommendation to award contracts have been increased for Department Directors and the Executive Director to provide substantial administrative efficiencies. Sec. IV.B.5.b. The original policy required that any contract award be approved by the Executive Director when the total contract amount was greater than \$5,000 and less than (or equal to) \$50,000 or approved by the Board when greater than \$50,000. Previously, Sec. 2.5. Executive Director will approve contracts greater than \$25,000 and less than (or equal to) \$100,000. The Board will approve contracts greater than \$100,000.

- The threshold limit for authority to execute contracts has been increased for Department Directors to mirror the limits for contract awards. Sec. IV.C.2.a. The original policy required that any contract execution be approved by the Executive Director when the total contract amount was greater than \$5,000. Previously, Sec. 3.2. Department Directors can approve contracts less than (or equal to) \$25,000.
 - The threshold limit for authority to authorize and approve the execution of options has been decreased for Department Directors to mirror the limits for contract awards. Sec. IV.D.2.a. The original policy allowed that any contract option be approved by the Department Director when the cumulative amount of options exercised was less than (or equal to) \$50,000. Previously, Sec. 4.2. Department Directors can authorize and approve less than (or equal to) \$25,000.
 - The threshold limit for authority to authorize and approve contract amendments has been increased for the Executive Director to mirror the limits for contract awards. Sec. IV.D.6.a. The original policy allowed that any contract amendment be approved by the Department Director when the cumulative contract amendment amount was 10% of the contract amount or \$50,000, whichever was less. Previously, Sec. 4.6. Executive Director will approve cumulative contract amendments less than (or equal to) \$100,000. The Board will approve cumulative contract amendments greater than \$100,000.
 - This policy now refers settlement of contract disputes to RTC Management Policy P-57. Sec. 4.3. The original policy identified threshold levels for authorizing and approving settlements that were identical to RTC Management Policy P-57. Previously, Sec. 4.7.
- P-57
 - This policy is now inclusive to contract-related claims. No changes have been made to the threshold limits for authority to approve settlements.

FISCAL IMPACT

There is no additional cost in connection with this agenda item.

PREVIOUS ACTIONS BY BOARD

09/20/2019	Approve amendments to RTC Management Policy P-13 - Procurement, Contracting and Contract Administration
06/15/2018	Adopt RTC Management Policies regarding Settlement Authority (Non-Contract Related Claims)

ADVISORY COMMITTEE(S) RECOMMENDATION

There are no advisory committee recommendations pertaining to this agenda item.

Attachments

RTC Management Policy P-13
Date Approved: 08/04/1986
Date Revised: 11/19/1999
11/19/2004
10/20/2006
02/10/2009
10/15/2010
06/15/2018
09/20/2019

MANAGEMENT POLICY

SUBJECT: PROCUREMENT, CONTRACTING, AND CONTRACT ADMINISTRATION

I. PURPOSE

It is the policy of the Regional Transportation Commission (RTC) to comply with applicable state and federal procurement requirements, including the Nevada Revised Statutes (NRS), the United States Code (U.S.C.), and procurement requirements of the Nevada Department of Transportation (NDOT), U.S. Department of Transportation, Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). As state and federal procurement requirements are amended, this policy will be amended to conform. In the event of a conflict between this policy and state or federal procurement requirements, RTC will comply with the state and federal procurement requirements.

The purpose of this Management Policy is to define authorities and responsibilities for the procurement, contracting, and contract administration activities of RTC. This Management Policy applies to public works and the purchase of materials, goods, and services. This Management Policy does not apply to:

- Purchases of real property;
- Purchases of fuel, utilities, and municipal services;
- Acquisition of right-of-way;
- Disposal of surplus property;
- Purchases of annual maintenance licenses for existing software;
- Letting of revenue contracts;
- Selection of public-private partnerships;
- Interlocal or cooperative agreements (which are addressed separately in RTC Interlocal Agreements Policy); OR
- Employment matters.

II. SCOPE

- Public
- X Board Members
- X RTC Officers
- X RTC Employees
- Other: _____

III. DEFINITIONS

- A. Cardinal Change – Any contract change that is not within the general scope of the original contract.
- B. Environmentally Preferred Product – An item produced with the highest recycled content achievable, recyclable, and sustainably and locally sourced.

IV. POLICY

A. General

- 1. Legal Framework: All RTC contracts must be procured in accordance with NRS 332, NRS 338, NRS 625, and any other applicable state laws and regulations. Contracts relating to projects that will be funded in whole, or in part, with federal funding administered by FTA must be procured in accordance with 2 C.F.R. 200, 49 U.S.C., 49 C.F.R., other FTA requirements, and any other applicable federal laws and regulations. Contracts relating to projects that will be funded in whole, or in part, with federal funding administered by NDOT on behalf of FHWA must be procured in accordance with 2 C.F.R. 200, 23 U.S.C., 23 C.F.R., other FHWA requirements, NDOT's Local Public Agency Program, and any other applicable federal laws and regulations.
- 2. Business Objectives
 - a. RTC will use best efforts to achieve the following business objectives:
 - 1) Minimize reasonably foreseeable risks, and eliminate unreasonable or unnecessary risks;
 - 2) Maximize the public value generated from the expenditure of public funds;
 - 3) Build strong and lasting relationships with contractors; AND
 - 4) Cultivate a competitive marketplace for goods and services.

3. Standards of Conduct: The Executive Director will develop and maintain standards of conduct governing full and open competition, conflicts of interest, prohibited uses of confidential information, and discipline for violations of those standards.
4. Disadvantaged Business Enterprise Program: RTC will actively encourage and assist Disadvantaged Business Enterprises (DBE) to participate competitively in procurement actions. Encouragement and assistance will be provided pursuant to RTC's DBE Program.
5. Sustainable Purchasing: RTC's goal is to purchase environmentally preferred products without sacrificing quality and performance. Staff will strive to purchase products that meet or exceed United States Environmental Protection Agency standards and other more stringent environmental standards and certifications.

B. Procurement

1. Procurement Methods

- a. State and federal procurement requirements may authorize one or more procurement methods depending on the source of funds to be used, the estimated amount of the contract (annual amount or total amount), the type of materials, goods/services being procured, or other factors.
- b. Staff is authorized to use the procurement methods identified in Appendix A. Staff will select the procurement method that is most appropriate for achieving the business objectives of RTC. The Executive Director is responsible for developing and implementing procedures for staff to select and use the most appropriate procurement method.

2. Contracts Not Adapted to Award by Competitive Bidding

- a. The Nevada Legislature has declared that certain contracts by their nature are not adapted to award by competitive bidding. See NRS 332.115. The Executive Director is authorized to determine if and when one of those contracts is not subject to the competitive bidding requirements in NRS Chapter 332.
- b. If only local/state funds will be used, the Executive Director may determine the appropriate level of competition and direct staff to use an appropriate procurement method in Appendix A. If any federal funds will be used, federal competition requirements will still apply unless a federally recognized exception exists.

3. **Emergency Purchases:** In the case of an emergency as defined in state and federal procurement requirements, staff may enter into contracts necessary to contend with the emergency without complying with the requirements of this policy if the Executive Director determines that an emergency exists. See NRS 332.112; 338.011. The Executive Director must report the action to the Board at its next regularly scheduled meeting. NRS 332.112(2); NRS 338.011(2).
4. **Procurement Authorization:** Procurements must be authorized by a department director prior to solicitation. Board authorization is also required prior to solicitation for procurements of professional services using either Competitive Proposal Procedures (RFP), Qualifications-Based Proposal Procedures (RFQ), or Qualified List Procedures. See Appendix A.
5. **Contract Award**
 - a. Contracts must be awarded prior to execution.
 - b. The following are the threshold levels for approving a recommendation to award a contract:

Contract Type/Amount	Authority
Contracts awarded by formal bidding procedures (IFB)	Executive Director
Contracts for Construction managers at risk	Board
Contracts for design-build teams	Board
Contracts Awarded by Other Procurement Methods:	
Contract amount \leq \$25,000	Department Director
\$50,000 < Contract amount \leq \$100,000	Executive Director
Contract amount > \$100,000	Executive Director and Board

- c. Staff will provide notice of the recommendation to award and intent to award at least seven business days prior to award when required by the protest procedures in Appendix B. When the Executive Director or a department director approves a recommendation to award a contract, staff will inform the Board of the award at its next regularly scheduled meeting. When Board action is required to approve a recommendation to award a contract, staff will present the material terms to the Board.

6. Protest Procedures: Staff will follow the protest procedures in Appendix B to ensure uniform, timely, and equitable consideration of protests to procurement actions. To the greatest extent permitted by law, the protest procedures in Appendix B are the exclusive means to protest RTC procurement actions.

C. Contracting

1. Contract Routing and Review: Contracts must be reviewed internally prior to execution to ensure that all contracts are sound and complete agreements.
2. Execution
 - a. Contracts must be executed to be binding and effective. The following are the threshold levels for executing contracts:

Contract Amount	Authority
Contract amount \leq \$25,000	Department Director
Contract amount $>$ \$25,000	Executive Director

- b. Contracts may be executed in paper or electronic format as appropriate.
3. Purchase Orders: Purchase orders must be issued before either party proceeds with contract performance. Purchase orders cannot be issued until staff has confirmed that there is a fully executed contract.

D. Contract Administration

1. Contract Administration System
 - a. The Executive Director is responsible for developing and implementing a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of contracts and purchase orders.
 - b. The threshold levels in this policy for authorizing and approving contract actions may be changed for individual contracts by official Board action.

2. Options

- a. When appropriate, contracts should include options to purchase specified materials, goods, and services at specified prices with procedures for exercising those options. The following are the threshold levels for authorizing and approving the exercise of options:

Cumulative Amount of Option(s)	Authority
Cumulative amount \leq \$25,000	Department Director
Cumulative amount $>$ \$25,000	Executive Director

- b. The cumulative amount is the amount of the option to be exercised combined with the total amount of all previously exercised options, if any.
- c. The threshold levels in this policy for authorizing and approving contract actions may be changed for individual contracts by official Board action.

3. Contingency: When appropriate, contracts may include line item contingency amounts. The department director must authorize and approve any use of contingency amounts.

4. Change Orders

- a. When appropriate, contracts should include a changes clause with procedures for preparing and processing contract changes that are within the general scope of the original contract, i.e., change orders. The following are the threshold levels for authorizing and approving change orders:

Contract Amount	Authority
Original contract amount \leq \$1,000,000	Executive Director may authorize and approve change orders up to a cumulative amount of 25% of the Original Contract Amount or \$100,000, whichever is less. Board must approve change orders in excess of that amount.
Original contract amount $>$ \$1,000,000	Executive Director may authorize and approve change orders up to a cumulative amount of 25% of the Original Contract Amount or \$500,000, whichever is less. Board must approve change orders in excess of that amount.

- b. The cumulative amount is the amount of the proposed change order combined with the total amount of all previous change orders, if any.
 - c. Cardinal changes are prohibited.
5. Modifications: Contract modifications that will not create additional financial or legal obligations for RTC, including but not limited to clarifying language and "no cost" extensions of the period for performance, can be authorized and approved by the Executive Director.

6. Amendments

- a. Contract amendments that will create additional financial or legal obligations for RTC must be authorized and approved prior to execution. The following are the threshold levels for authorizing and approving amendments:

Cumulative Amount of Amendment(s)	Authority
Cumulative amount \leq \$100,000	Executive Director
Cumulative amount $>$ \$100,000	Board

- b. The cumulative amount is the amount of the proposed amendment combined with the total amount of all previous amendments, if any.
 - c. Cardinal changes are prohibited.
7. Settlement of Disputes: Contract disputes may be resolved by settlement agreements. Any settlement process will be pursuant to RTC Settlement Authority Management Policy.
8. Routing and Review: Documents to effectuate contract actions must be reviewed internally prior to execution to ensure that all contracts documents are sound and complete agreements.

9. Execution:

- a. Documents to effectuate contract actions must be executed to be binding and effective. When the department director has authority to approve the contract action, the department director shall execute the appropriate documents. When the Executive Director is required to approve the contract action, the Executive Director shall execute the appropriate documents. When the Board is required to approve the contract action, the Executive Director shall execute the appropriate documents following Board approval.

- b. Documents may be executed in paper or electronic format, as appropriate.

- END -

SAMPLE

**Appendix A
Procurement Methods**

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SAMPLE

1. Emergency Purchase Procedures

Method: Staff attempts to solicit two or more proposals. If it is not possible to solicit two or more proposals, staff purchases from a single source without competition.

Authorization: Staff may only use emergency purchase procedures in the case of an emergency as defined in state and federal procurement requirements. In general, an emergency exists if the use of a competitive procurement method would result in a delay causing health, safety, or public welfare concerns. See N.R.S. 332.112; N.R.S. 338.011.

2. Petty Cash Procedures

Method: Staff uses the petty cash account to purchase non-inventory items without obtaining competitive quotes.

Authorization: Staff may purchase non-inventory items with petty cash when the cost is \leq \$50. Only local or state funds can be used as petty cash.

3. Procurement Card Procedures

Method: Staff uses a Procurement Card (P-Card) to purchase non-inventory items without obtaining competitive quotes.

Authorization: Staff may purchase with a P-Card pursuant to the RTC P-Card Program when the expenditure is for:

- Authorized training and travel expenditures;
- \leq \$1,000 for Facilities Maintenance expenditures; OR
- \leq \$500 for all other expenditures.

The total annual expenditures by the holder of the P-Card must be within the spending limits approved by the assigned department director. Only local or state funds can be used for the RTC P-Card Program.

4. Micro Purchase Procedures

Method: Staff purchases without obtaining competitive quotes.

Authorization: If only local/state funds will be used, staff may purchase from a single source without competition when total estimated contract amount is \leq \$50,000.

If any federal funds will be used, staff may purchase from a single source without competition when total estimated contract amount is \leq \$10,000.

5. Small Purchase Procedures

Method: Staff purchases after obtaining an appropriate number of proposals, but no less than two proposals.

Authorization: Staff may use small purchase procedures when both of the following conditions are satisfied:

- Estimated annual amount required to perform contract is \leq \$100,000; AND
- Total estimated contract amount is \leq \$250,000.

6. Formal Bidding Procedures (IFB)

Method: RTC advertises an invitation for bids and awards a contract to the lowest responsive and responsible bidder.

Authorization: Staff must use formal bidding procedures for public works construction projects for which the estimated cost is $>$ \$100,000 unless an alternative special procurement method is authorized. See N.R.S. 338.1385 and N.R.S. 338.143. Staff must also use formal bidding procedures if feasible when:

- Estimated annual amount required to perform contract is $>$ \$100,000; OR
- Total estimated contract amount is $>$ \$250,000.

Formal bidding procedures are feasible if all of the following conditions exist:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the businesses;
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; AND
- No discussion with bidders is needed to award a contract.

7. Competitive Proposal Procedures (RFP)

Method: RTC advertises a request for proposals and awards a contract to the proposer that submitted the best proposal based on:

- Price; OR
- Price and other factors (i.e., best value).

Authorization: If formal bidding procedures are infeasible, and no other procurement method is authorized, staff must use competitive proposal procedures when:

- Estimated annual amount required to perform contract is > \$100,000; OR
- Total estimated contract amount is > \$250,000

Formal bidding procedures may be infeasible if one or more of the following conditions exist:

- The contract award will be based on qualitative factors in addition to price, rather than primarily on the basis of price;
- A complete, adequate, and realistic specification or purchase description allowing for competition primarily on the basis of price may not be available;
- The contract award amount can only be determined on the basis of costs of the contractor derived from a negotiation process;
- Discussions or negotiations may be needed to address technical requirements as well as proposed cost or price aspects of the bidder's proposal; OR
- Other circumstances necessitate a more flexible procurement tool that allows for negotiation.

8. Qualifications-Based Procurement Procedures

Qualifications-based procurement procedures require that price be excluded as an evaluation factor. Qualifications-based procurement procedures (i.e., federal Brooks Act/state mini-Brooks Act compliant procedures) must be used to procure certain architectural, engineering, and land surveying services specified under federal and state law, regardless of the contract amount. See 40 U.S.C. Section 1101-1104; 49 U.S.C. Section 5325(b); N.R.S. 625.530 and 338.010(17). Qualification-based procurement procedures may not be used to procure any other professional services.

A. Qualifications-Based Proposal Procedures (RFQ)

Method: RTC advertises a request for proposals with price excluded as an evaluation factor. RTC awards a contract to the most qualified contractor with whom staff can negotiate a fair and reasonable price.

Authorization: If only local or state funds will be used, staff may use qualifications-based proposal procedures when the services are architectural and engineering services specified under state law. See N.R.S. 625.530.

If any federal funds will be used, staff may use qualifications-based proposal procedures when the services are architectural and engineering services specified under federal law. See 40 U.S.C. Section 1101-1104; 49 U.S.C. Section 5325(b).

B. Qualified List Procedures

Method: RTC advertises a request for statements of qualifications in certain categories of architectural, engineering, or land surveying services specified under state law with price excluded as an evaluation factor. A selection committee ranks the statements of qualifications and develops a list of qualified contractors by category. The Board approves the list. When RTC needs services in a category, staff identifies the most qualified contractor and attempts to negotiate a fair and reasonable price.

Authorization: If any federal funds will be used, staff cannot use qualified list procedures. If only local/state funds will be used, RTC may use qualified list procedures to procure a routine scope of services in certain categories such as:

- Engineering and design
- Engineering and construction management during construction
- Traffic engineering
- Land surveying

9. Sole Source Procedures

Method: RTC purchases from a single source without competition.

Authorization: If only local or state funds will be used, RTC may purchase goods and services from a single source without competition when:

- The Executive Director determines that:
 - The contract by its nature is not adapted to award by competitive solicitation and is not subject to the competitive solicitation requirements of N.R.S. Chapter 332 (including but not limited to contracts identified in N.R.S. 332.115(1)); AND
 - Sole source procedures are most appropriate due to unique factors and circumstances.
- The contract is otherwise not subject to the competition requirements of N.R.S. Chapter 332 pursuant to state law.

If any federal funds will be used, RTC cannot purchase from a single source without competition unless:

- Competitive procedure methods are infeasible; AND
- Pursuant to 2 C.F.R. 200.320(c)(2)(v)(f), one or more of the following circumstances apply:
 - The item is available only from a single source;
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - The federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from RTC (i.e., the non-federal entity); OR
 - After solicitation of a number of sources, competition is determined inadequate.

10. Special Procurement Methods

Method: State and federal law may authorize and/or require special procurement methods in some circumstances.

Authorization: State and federal law may authorize and/or require RTC to use special procurement methods in certain circumstances including, but not limited to, the following:

- Contracts Involving Construction Managers at Risk – N.R.S. 338.1685 et seq.
- Contracts Involving Design-Build Teams – N.R.S. 338.1711 et seq.
- Joinder or Mutual Use of Contracts by Governmental Entities – N.R.S. 332.195
- Purchases through the Purchasing Division of the Department of Administration – N.R.S. 332.135
- Other State Authorized Special Procurement Methods
- FTA Authorized Special Procurement Methods
- FHWA Authorized Special Procurement Methods
- Specifically Authorized Uses of GSA Federal Supply Schedules

**Appendix B
Protest Procedures**

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Staff shall post Management Policy P-13 on the RTC website and shall ensure that every solicitation that is required to be advertised/publicized includes the following provision:

Protest Procedures. RTC's policy and procedures for the administrative resolution of protests are set forth in RTC's Management Policy P-13, which is available on the RTC website. RTC will furnish a copy of Management Policy P-13 upon request.

A. Scope.

These protest procedures apply to solicitations that are advertised or publicized through Formal Bidding Procedures (IFB), Competitive Proposal Procedures (RFP), or Qualifications-Based Procurement Procedures. These protest procedures are the exclusive means to protest RTC procurement actions.

B. Standing.

To file a protest, the protester must be an actual or prospective supplier of the goods or services whose direct economic interest would be affected by the award of, or failure to award, a contract.

C. Grounds.

Protesters may only protest RTC procurement actions based on an allegation that:

1. RTC failed to comply with state or federal law;
2. RTC failed to comply with its procurement policies; OR
3. RTC failed to comply with the terms of its solicitation document.

D. Costs.

By filing a protest, the protester agrees that RTC will not be responsible for any costs associated with the protest, including any attorney fees, and that the protester shall not be entitled to reimbursement from RTC regardless of the outcome.

E. Filing.

Protests must be in writing and filed with RTC by physical delivery to 1105 Terminal Way, Suite 300, Reno, Nevada 89502. The envelope or package should be addressed to "Attn: Procurement Manager."

F. Contents.

Protests should be concise, logically arranged, clear, and legible and must contain the following:

1. Name, address, and telephone number of the protester and a contact person;
2. Date, title, and identification number of the solicitation;
3. A written statement setting forth with specificity the grounds for the protest and supporting evidence. If the protester later raises new grounds or provides new evidence that reasonably could have been raised or provided earlier, RTC will not consider such new grounds or evidence in the determination of the protest;

4. A written statement setting forth with specificity the reasons the protester believes the applicable provisions of law, if any, were violated;
5. The action or relief desired from RTC; AND
6. In the case of solicitations through an IFB or RFP, a protest bond issued by a good and solvent surety authorized to do business in Nevada, in an amount equal to the lesser of:
 - a. 25% of the total value of the bid or proposal submitted by the person filing the protest; OR
 - b. \$250,000.

G. Timing and Deadlines

1. Pre-bid/pre-proposal Protests.
 - a. Protests against RTC actions during the solicitation phase must be filed at least five business days prior to the bid opening or proposal due date.
 - b. The Procurement Manager shall make a determination on the merits of the protest prior to opening bids or evaluating proposals.
 - c. The Procurement Manager shall provide the determination to all bidders/proposers prior to opening bids or evaluating proposals.
2. Pre-award Protests.
 - a. Staff shall provide notice of its intent to recommend award of the contract to all bidders/proposers at least seven business days prior to award.
 - b. Protests against the intended award of a contract must be filed within five business days after RTC provides notice of its intent to recommend award.
 - c. A pre-award protest cannot be on grounds which were known, or with due diligence should have been known, by the protester at the pre-bid/proposal protest deadline.
 - d. RTC will not award the contract until the Procurement Manager makes a determination on the merits of the protest and presents that determination to the Board or the Executive Director, as applicable, prior to award; provided, however, that RTC reserves the right to proceed with an award to avoid undue delay or harm to RTC or if it is otherwise in the best interest of RTC as determined by the Executive Director.

- e. The Procurement Manager shall provide the final determination to all bidders/proposers at the time of, or prior to, the award if possible.
3. Post-award Protests.
 - a. Post-award protests must be filed within three business days after award of the contract.
 - b. A post-award protest cannot be on grounds which were known, or, with due diligence should have been known, by the protester at the pre-award protest deadline.
 - c. RTC reserves the right to proceed with the execution or performance of the contract to avoid undue delay or harm to RTC or if it is otherwise in the best interest of RTC as determined by the Executive Director.
 - d. The Procurement Manager shall make a determination on the merits of the protest and present that determination to the Executive Director.
 - e. The Procurement Manager shall provide a final determination to all bidders/proposers stating the action taken on the protest, and the reason for the action. The notice shall be provided within five business days of receipt of a post-award protest, if possible.

H. Review and Determination.

1. Upon receipt of a protest, staff will notify the protester that the protest is being reviewed. For FTA funded contracts, the Procurement Manager will notify FTA Region IX, and will keep FTA informed about the status of the protest. For FHWA funded contracts, the Procurement Manager will notify NDOT, and will keep NDOT informed about the status of the protest.
2. The Procurement Manager shall investigate the merits of the protest.
 - a. In its sole discretion, RTC may request additional information from the protester.
 - b. In its sole discretion, RTC may request additional information from other bidders/proposers, and may allow other bidders/proposers to submit comments regarding the merits of the protest.
 - c. In its sole discretion, RTC may schedule an informal conference with all bidders/proposers to discuss the merits of the protest.

- d. In its sole discretion, RTC may summarily dismiss all or any portion of a protest that raises legal or factual arguments or allegations that have been previously considered and resolved by RTC in a previous protest.
3. The Procurement Manager's determination on the merits of the protest must be in writing and contain four parts:
 - a. Summary – Describes the protester, the solicitation, the issues raised, and the determination.
 - b. Background – Describes in more detail the history of the solicitation, the events leading to the protest, the date the protest was received, and the evaluation process.
 - c. Discussion – Identifies the issues raised, the factors considered in reaching the determination, and the rationale for the determination.
 - d. Determination – States the determination and any remedy or subsequent action resulting from the determination, e.g., award, cancellation of the procurement, etc.

I. FTA Involvement.

For FTA funded contracts, the protester may raise matters that are primarily a Federal concern with the FTA. Matters involving the award of a contract must be raised with FTA within five business days of receipt of RTC's determination on the merits of the protest.

J. Confidentiality.

Materials submitted by a protester will not be withheld from any interested party outside of RTC or from any governmental entity which may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protester believes that a protest contains proprietary materials which should be withheld, a statement advising of this fact must be affixed to the front page of the protest and the alleged proprietary information must be so identified wherever it appears. If a protester requests that RTC withhold from disclosure information identified as confidential, and RTC complies with the protester's request, the protester assumes all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless RTC from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the protester information), and pay any and all costs and expenses related to the withholding of the protester's information. The protester shall not make a claim, sue, or maintain any legal action against RTC or its directors, officers, employees, or agents concerning the withholding from disclosure of protester's information.

K. Records.

1. Upon receipt of a protest, the Procurement Manager shall establish a separate file in which reasonable and adequate documentation of the protest and outcome shall be maintained.
2. The file should, at a minimum, include the following:
 - a. Notice of intent to award;
 - b. The protest;
 - c. Notices to FTA or NDOT, if required;
 - d. Record of timeliness of actions;
 - e. Record of internal or external review of the protest;
 - f. Record of legal review of the protest, if any;
 - g. The Procurement Manager's determination on the merits of the protest;
AND
 - h. Any notices or correspondence provided in connection with the protest.

RTC Management Policy P-13
Date Approved: 08/04/1986
Date Revised: 11/19/1999
11/19/2004
10/20/2006
02/10/2009
10/15/2010
06/15/2018
09/20/2019

MANAGEMENT POLICY

SUBJECT: PROCUREMENT, CONTRACTING, AND CONTRACT ADMINISTRATION

I. PURPOSE

It is the policy of the Regional Transportation Commission (RTC) to comply with applicable state and federal procurement requirements, including the Nevada Revised Statutes (NRS), the United States Code (U.S.C.), and procurement requirements of the Nevada Department of Transportation (NDOT), U.S. Department of Transportation-~~(USDOT)~~, Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). As state and federal procurement requirements are amended, this policy will be amended to conform. In the event of a conflict between this policy and state or federal procurement requirements, RTC will comply with the state and federal procurement requirements.

The purpose of this Management Policy is to define authorities and responsibilities for the procurement, contracting, and contract administration activities of RTC. This Management Policy applies to public works and the purchase of materials, goods, and services. This Management Policy does not apply to:

- Purchases of real property;
- Purchases of fuel, utilities, and municipal services;
- Acquisition of right-of-way;
- Disposal of surplus property;
- Purchases of annual maintenance licenses for existing software;
- Letting of revenue contracts;
- Selection of public-private partnerships;
- Interlocal or cooperative agreements (which are addressed separately in RTC Interlocal Agreements Policy); OR
- Employment matters.

II. SCOPE

- Public
- X Board Members
- X RTC Officers
- X RTC Employees
- Other: _____

III. DEFINITIONS

- A. Cardinal Change – Any contract change that is not within the general scope of the original contract.
- B. Environmentally Preferred Product – An item produced with the highest recycled content achievable, recyclable, and sustainably and locally sourced.

IV. POLICY

A. General

- 1. Legal Framework: All RTC contracts must be procured in accordance with NRS 332, NRS 338, NRS 625, and any other applicable state laws and regulations. Contracts relating to projects that will be funded in whole, or in part, with federal funding administered by FTA must be procured in accordance with 2 C.F.R. 200, 49 U.S.C., 49 C.F.R., other FTA requirements, and any other applicable federal laws and regulations. Contracts relating to projects that will be funded in whole, or in part, with federal funding administered by NDOT on behalf of FHWA must be procured in accordance with 2 C.F.R. 200, 23 U.S.C., 23 C.F.R., other FHWA requirements, NDOT's Local Public Agency Program, and any other applicable federal laws and regulations.
- 2. Business Objectives
 - a. RTC will use best efforts to achieve the following business objectives:
 - 1) Minimize reasonably foreseeable risks, and eliminate unreasonable or unnecessary risks;
 - 2) Maximize the public value generated from the expenditure of public funds;
 - 3) Build strong and lasting relationships with contractors; AND
 - 4) Cultivate a competitive marketplace for goods and services.

3. Standards of Conduct: The Executive Director will develop and maintain standards of conduct governing full and open competition, conflicts of interest, prohibited uses of confidential information, and discipline for violations of those standards.
4. Disadvantaged Business Enterprise Program: RTC will actively encourage and assist Disadvantaged Business Enterprises (~~each a~~ DBE) to participate competitively in procurement actions. Encouragement and assistance will be provided pursuant to RTC's DBE Program.
5. Sustainable Purchasing: RTC's goal is to purchase environmentally preferred products ~~(i.e., produced with the highest recycled content achievable, recyclable, and sustainably and locally sourced)~~ without sacrificing quality and performance. Staff will strive to purchase products that meet or exceed United States Environmental Protection Agency standards and other more stringent environmental standards and certifications.

B. Procurement

1. Procurement Methods

- a. State and federal procurement requirements may authorize one or more procurement methods depending on the source of funds to be used, the estimated amount of the contract (annual amount ~~and/or~~ total amount), the type of materials, goods ~~or~~ services being procured, ~~and/or~~ other factors.
- b. Staff is authorized to use the procurement methods identified in Appendix A. Staff will select the procurement method that is most appropriate for achieving the business objectives of ~~the~~ RTC. The Executive Director is responsible for developing and implementing procedures for staff to select and use the most appropriate procurement method.

2. Contracts Not Adapted to Award by Competitive Bidding

- a. The Nevada Legislature has declared that certain contracts by their nature are not adapted to award by competitive bidding. See NRS 332.115. The Executive Director is authorized to determine if and when one of those contracts is not subject to the competitive bidding requirements in NRS Chapter 332.

- b. If only local/state funds will be used, the Executive Director may determine the appropriate level of competition and direct staff to use an appropriate procurement method in Appendix A. If any federal funds will be used, federal competition requirements will still apply unless a federally recognized exception exists. ~~See Appendix A, Sec. 9.~~
3. **Emergency Purchases:** In the case of an emergency as defined in state and federal procurement requirements, staff may enter into contracts necessary to contend with the emergency without complying with the requirements of this policy if the Executive Director determines that an emergency exists. See NRS 332.112; 338.011. The Executive Director must report the action to the Board at its next regularly scheduled meeting. NRS 332.112(2); NRS 338.011(2).
4. **Procurement Authorization:** Procurements must be authorized by a department director prior to solicitation. Board authorization is also required prior to solicitation for procurements of professional services using either Competitive Proposal Procedures (RFP), Qualifications-Based Proposal Procedures (RFQ), or Qualified List Procedures. See Appendix A.
5. **Contract Award**
 - a. Contracts must be awarded prior to execution.

- b. The following are the threshold levels for approving a recommendation to award a contract:

<u>Contract Type/Amount</u>	<u>Authority</u>
Contracts Awarded by Formal Bidding Procedures (IFB)	Executive Director
Contracts for Construction Managers at Risk	Board
Contracts for Design-Build Teams	Board
Contracts Awarded by Other Procurement Methods	
Contract Amounts ≤ \$5,000	Department Director
\$5,000 < Contract Amounts ≤ \$50,000	Executive Director
Contract Amount > \$50,000	Board

<u>Contract Type/Amount</u>	<u>Authority</u>
<u>Contracts awarded by formal bidding procedures (IFB)</u>	<u>Executive Director</u>
<u>Contracts for Construction managers at risk</u>	<u>Board</u>
<u>Contracts for design-build teams</u>	<u>Board</u>
<u>Contracts Awarded by Other Procurement Methods:</u>	
<u>Contract amount ≤ \$25,000</u>	<u>Department Director</u>
<u>\$50,000 < Contract amount ≤ \$100,000</u>	<u>Executive Director</u>
<u>Contract amount > \$100,000</u>	<u>Executive Director and Board</u>

- c. Staff will provide notice of the recommendation to award and intent to award at least seven business days prior to award when required by the protest procedures in Appendix B. When the Executive Director or a department director approves a recommendation to award a contract, staff will inform the Board of the award at its next regularly scheduled meeting. When Board action is required to approve a recommendation to award a contract, staff will present the material terms to the Board.

6. Protest Procedures: Staff will follow the protest procedures in Appendix B to ensure uniform, timely, and equitable consideration of protests to procurement actions. To the greatest extent permitted by law, the protest procedures in Appendix B are the exclusive means to protest RTC procurement actions.

C. Contracting

1. Contract Routing and Review: Contracts must be reviewed internally prior to execution ~~in order~~ to ensure that all contracts are sound and complete agreements.

2. Execution

- a. Contracts must be executed ~~in order~~ to be binding and effective. The following are the threshold levels for executing contracts:

Contract Amount	Authority
Contract Amount ≤ \$5,000	Department Director
Contract Amount > \$5,000	Executive Director

<u>Contract Amount</u>	<u>Authority</u>
<u>Contract amount ≤ \$25,000</u>	<u>Department Director</u>
<u>Contract amount > \$25,000</u>	<u>Executive Director</u>

- b. Contracts may be executed in paper or electronic format as appropriate.

3. Purchase Orders: Purchase orders must be issued before either party proceeds with contract performance. Purchase orders cannot be issued until staff has confirmed that there is a fully executed contract.

D. Contract Administration

1. Contract Administration System

- a. The Executive Director is responsible for developing and implementing a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of contracts and purchase orders.
- b. The threshold levels in this ~~Part 4~~ policy for authorizing and approving contract actions may be changed for individual contracts by official Board action.

2. Options

- a. When appropriate, contracts should include options to purchase specified materials, goods, and services at specified prices with procedures for exercising those options. The following are the threshold levels for authorizing and approving the exercise of options:

Cumulative Amount of Option(s) Exercised	Authority
Cumulative Amount ≤ \$50,000	Department Director
Cumulative Amount > \$50,000	Executive Director

<u>Cumulative Amount of Option(s)</u>	<u>Authority</u>
<u>Cumulative amount ≤ \$25,000</u>	<u>Department Director</u>
<u>Cumulative amount > \$25,000</u>	<u>Executive Director</u>

- b. The cumulative amount is the amount of the option to be exercised combined with the total amount of all previously exercised options, if any.
- c. The threshold levels in this policy for authorizing and approving contract actions may be changed for individual contracts by official Board action.

- 3. Contingency: When appropriate, contracts may include line item contingency amounts. The department director must authorize and approve any use of contingency amounts.

4. Change Orders

- a. When appropriate, contracts should include a changes clause with procedures for preparing and processing contract changes that are within the general scope of the original contract, i.e., change orders. The following are the threshold levels for authorizing and approving change orders:

~~Contract Amount
Original Contract Amount \leq \$1,000,000 authorize~~

~~Executive Director may
and approve change orders up
to an aggregate/cumulative
amount of 25% of the Original
Contract Amount or
\$100,000, whichever is less.
Board must approve change
orders in excess of that
amount.~~

~~Original Contract Amount $>$ \$1,000,000 authorize~~

~~Executive Director may
and approve change orders up
to an aggregate/cumulative
amount of 10% of the Original
Contract Amount or
\$500,000, whichever is less.
Board must approve change
orders in excess of that
amount.~~

<u>Contract Amount</u>	<u>Authority</u>
<u>Original contract amount \leq \$1,000,000</u>	<u>Executive Director may authorize and approve change orders up to a cumulative amount of 25% of the Original Contract Amount or \$100,000, whichever is less. Board must approve change orders in excess of that amount.</u>
<u>Original contract amount $>$ \$1,000,000</u>	<u>Executive Director may authorize and approve change orders up to a cumulative amount of 25% of the Original Contract Amount or \$500,000, whichever is less. Board must approve change orders in excess of that amount.</u>

b. ~~The cumulative amount is the amount of the proposed change order combined with the total amount of all previous change orders, if any.~~

b.c. ~~Cardinal changes that are not within the general scope of the original contract are "cardinal changes" and are prohibited.~~

5. Modifications: Contract modifications that will not create additional financial or legal obligations for RTC, including but not limited to clarifying language and "no cost" extensions of the period for performance, can be authorized and approved by the Executive Director.

6. Amendments

a. Contract amendments that will create additional financial or legal obligations for RTC must be authorized and approved prior to execution. ~~The Executive Director may authorize and approve amendments up to an aggregate/cumulative amount of 10% of the original contract amount or \$50,000, whichever is less. The Board must approve amendments in excess of that amount. The following are the threshold levels for authorizing and approving amendments:~~

Cumulative Amount of Amendment(s)	Authority
Cumulative amount ≤ \$100,000	Executive Director
Cumulative amount > \$100,000	Board

b. The cumulative amount is the amount of the proposed amendment combined with the total amount of all previous amendments, if any.

c. ~~Contract changes that are not within the general scope of the original contract are "cardinal changes" and are prohibited.~~

~~7. Settlement of Disputes: Contract disputes may be resolved by settlement agreements. Settlements must be authorized and approved prior to execution. The following are the threshold levels for authorizing and approving settlements:~~

~~8. Settlement Amount Authority~~

~~9. Settlement Amount ≤ \$50,000 Executive Director~~

~~10. Settlement Amount > \$50,000 Board~~

~~11.7. Any settlement process will be pursuant to RTC Settlement Authority Management Policy~~

~~12.8.~~ Routing and Review: Documents to effectuate contract actions must be reviewed internally prior to execution ~~in order~~ to ensure that all contracts documents are sound and complete agreements.

13.9. Execution:

- a. ~~Contract documents (i.e., options, change orders, modifications, amendments, and settlements)~~ Documents to effectuate contract actions must be executed ~~in order~~ to be binding and effective. When the department director has authority to approve the contract action, the department director shall execute the appropriate documents. When the Executive Director is required to approve the contract action, the Executive Director shall execute the appropriate documents. When the Board is required to approve the contract action, the Executive Director shall execute the appropriate documents ~~after the~~ following Board ~~approval~~ approval.
- b. Documents may be executed in paper or electronic format, as appropriate.

- END -

**Appendix A
Procurement Methods**

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1. Emergency Purchase Procedures

Method: Staff attempts to solicit two or more proposals. If it is not possible to solicit two or more proposals, staff purchases from a single source without competition.

Authorization: Staff may only use emergency purchase procedures in the case of an emergency as defined in state and federal procurement requirements. In general, an emergency exists if the use of a competitive procurement method would result in a delay causing health, safety, or public welfare concerns. See N.R.S. 332.112; N.R.S. 338.011.

2. Petty Cash Procedures

Method: Staff uses the petty cash account to purchase non-inventory items without obtaining competitive quotes.

Authorization: Staff may purchase non-inventory items with petty cash when the cost is \leq \$50. Only local or state funds can be used as petty cash.

3. Procurement Card Procedures

Method: Staff uses a Procurement Card (P-Card) to purchase non-inventory items without obtaining competitive quotes.

Authorization: Staff may purchase with a P-Card pursuant to the RTC P-Card Program when the expenditure is for:

- Authorized training and travel expenditures;
- \leq \$1,000 for Facilities Maintenance expenditures; OR
- \leq \$500 for all other expenditures.

The total annual expenditures by the holder of the P-Card must be within the spending limits approved by the assigned department director. Only local or state funds can be used for the RTC P-Card Program.

4. Micro Purchase Procedures

Method: Staff purchases without obtaining competitive quotes.

Authorization: If only local/state funds will be used, staff may purchase from a single source without competition when total estimated contract amount is \leq \$50,000.

If any federal funds will be used, staff may purchase from a single source without competition when total estimated contract amount is \leq \$10,000.

5. Small Purchase Procedures

Method: Staff purchases after obtaining an appropriate number of proposals, but no less than two proposals.

Authorization: Staff may use small purchase procedures when both of the following conditions are satisfied:

- Estimated annual amount required to perform contract is \leq \$100,000; AND
- Total estimated contract amount is \leq \$250,000.

6. Formal Bidding Procedures (IFB)

Method: RTC advertises an invitation for bids and awards a contract to the lowest responsive and responsible bidder.

Authorization: Staff must use formal bidding procedures for public works construction projects for which the estimated cost is $>$ \$100,000 unless an alternative special procurement method is authorized. See N.R.S. 338.1385 and N.R.S. 338.143. Staff must also use formal bidding procedures if feasible when:

- Estimated annual amount required to perform contract is $>$ \$100,000; OR
- Total estimated contract amount is $>$ \$250,000.

Formal bidding procedures are feasible if all of the following conditions exist:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the businesses;
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; AND
- No discussion with bidders is needed to award a contract.

7. Competitive Proposal Procedures (RFP)

Method: RTC advertises a request for proposals and awards a contract to the proposer that submitted the best proposal based on:

- Price; OR
- Price and other factors (i.e., best value).

Authorization: If formal bidding procedures are infeasible, and no other procurement method is authorized, staff must use competitive proposal procedures when:

- Estimated annual amount required to perform contract is > \$100,000; OR
- Total estimated contract amount is > \$250,000

Formal bidding procedures may be infeasible if one or more of the following conditions exist:

- The contract award will be based on qualitative factors in addition to price, rather than primarily on the basis of price;
- A complete, adequate, and realistic specification or purchase description allowing for competition primarily on the basis of price may not be available;
- The contract award amount can only be determined on the basis of costs of the contractor derived from a negotiation process;
- Discussions or negotiations may be needed to address technical requirements as well as proposed cost or price aspects of the bidder's proposal; OR
- Other circumstances necessitate a more flexible procurement tool that allows for negotiation.

8. Qualifications-Based Procurement Procedures

Qualifications-based procurement procedures require that price be excluded as an evaluation factor. Qualifications-based procurement procedures (i.e., federal Brooks Act/state mini-Brooks Act compliant procedures) must be used to procure certain architectural, engineering, and land surveying services specified under federal and state law, regardless of the contract amount. See 40 U.S.C. Section 1101-1104; 49 U.S.C. Section 5325(b); N.R.S. 625.530 and 338.010(17). Qualification-based procurement procedures may not be used to procure any other professional services.

A. Qualifications-Based Proposal Procedures (RFQ)

Method: RTC advertises a request for proposals with price excluded as an evaluation factor. RTC awards a contract to the most qualified contractor with whom staff can negotiate a fair and reasonable price.

Authorization: If only local or state funds will be used, staff may use qualifications-based proposal procedures when the services are architectural and engineering services specified under state law. See N.R.S. 625.530.

If any federal funds will be used, staff may use qualifications-based proposal procedures when the services are architectural and engineering services specified under federal law. See 40 U.S.C. Section 1101-1104; 49 U.S.C. Section 5325(b).

B. Qualified List Procedures

Method: RTC advertises a request for statements of qualifications in certain categories of architectural, engineering, or land surveying services specified under state law with price excluded as an evaluation factor. A selection committee ranks the statements of qualifications and develops a list of qualified contractors by category. The Board approves the list. When RTC needs services in a category, staff identifies the most qualified contractor and attempts to negotiate a fair and reasonable price.

Authorization: If any federal funds will be used, staff cannot use qualified list procedures. If only local/state funds will be used, RTC may use qualified list procedures to procure a routine scope of services in certain categories such as:

- Engineering and design
- Engineering and construction management during construction
- Traffic engineering
- Land surveying

9. Sole Source Procedures

Method: RTC purchases from a single source without competition.

Authorization: If only local ~~or~~ state funds will be used, RTC may purchase goods and services from a single source without competition when:

- The Executive Director determines that:
 - The contract by its nature is not adapted to award by competitive solicitation and is not subject to the competitive solicitation requirements of N.R.S. Chapter 332 (including but not limited to contracts identified in N.R.S. 332.115(1)); AND
 - Sole source procedures are most appropriate due to unique factors and circumstances.
- The contract is otherwise not subject to the competition requirements of N.R.S. Chapter 332 pursuant to state law.

If any federal funds will be used, RTC cannot purchase from a single source without competition unless:

- Competitive procedure methods are infeasible; AND
- Pursuant to 2 C.F.R. 200.320(c)(2)(v)(f), one or more of the following circumstances apply:
 - The item is available only from a single source;
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - The federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from RTC (i.e., the non-federal entity); OR
 - After solicitation of a number of sources, competition is determined inadequate.

10. Special Procurement Methods

Method: State and federal law may authorize and/or require special procurement methods in some circumstances.

Authorization: State and federal law may authorize and/or require RTC to use special procurement methods in certain circumstances including, but not limited to, the following:

- Contracts Involving Construction Managers at Risk – N.R.S. 338.1685 et seq.
- Contracts Involving Design-Build Teams – N.R.S. 338.1711 et seq.
- Joinder or Mutual Use of Contracts by Governmental Entities – N.R.S. 332.195
- Purchases through the Purchasing Division of the Department of Administration – N.R.S. 332.135
- Other State Authorized Special Procurement Methods
- FTA Authorized Special Procurement Methods
- FHWA Authorized Special Procurement Methods
- Specifically Authorized Uses of GSA Federal Supply Schedules

**Appendix B
Protest Procedures**

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Staff shall post Management Policy P-13 on the RTC website and shall ensure that every solicitation that is required to be advertised/publicized includes the following provision:

Protest Procedures. RTC's policy and procedures for the administrative resolution of protests are set forth in RTC's Management Policy P-13, which is available on the RTC website. RTC will furnish a copy of Management Policy P-13 upon request.

A. Scope.

These protest procedures apply to solicitations that are advertised ~~and~~ or publicized through Formal Bidding Procedures (IFB), Competitive Proposal Procedures (RFP), or Qualifications-Based Procurement Procedures. These protest procedures are the exclusive means to protest RTC procurement actions.

B. Standing. ~~In order to~~

To file a protest, the protester must be an actual or prospective supplier of the goods or services whose direct economic interest would be affected by the award of, or failure to award, a contract.

C. Grounds.

Protesters may only protest RTC procurement actions based on an allegation that:

1. RTC failed to comply with state or federal law;
2. RTC failed to comply with its procurement policies; OR
3. RTC failed to comply with the terms of its solicitation document.

D. Costs.

By filing a protest, the protester agrees that RTC will not be responsible for any costs associated with the protest, including any attorney fees, and that the protester shall not be entitled to reimbursement from RTC regardless of the outcome.

E. Filing.

Protests must be in writing and filed with RTC by physical delivery to 1105 Terminal Way, Suite 300, Reno, Nevada 89502. The envelope or package should be addressed to "Attn: Procurement Manager."

F. Contents.

Protests should be concise, logically arranged, clear, and legible and must contain the following:

1. Name, address, and telephone number of the protester and a contact person;
2. Date, title, and identification number of the solicitation;
3. A written statement setting forth with specificity the grounds for the protest and supporting evidence. If the protester later raises new grounds or provides new evidence that reasonably could have been raised or provided earlier, RTC will not consider such new grounds or evidence in the determination of the protest;

4. A written statement setting forth with specificity the reasons the protester believes the applicable provisions of law, if any, were violated;
5. The action or relief desired from RTC; AND
6. In the case of solicitations through an IFB or RFP, a protest bond issued by a good and solvent surety authorized to do business in Nevada, in an amount equal to the lesser of:
 - a. 25% of the total value of the bid or proposal submitted by the person filing the protest; OR
 - b. \$250,000.

G. Timing and Deadlines

1. Pre-bid/pre-proposal Protests.
 - a. Protests against RTC actions during the solicitation phase must be filed at least five business days prior to the bid opening or proposal due date.
 - b. The Procurement Manager shall make a determination on the merits of the protest prior to opening bids or evaluating proposals.
 - c. The Procurement Manager shall provide the determination to all bidders/proposers prior to opening bids or evaluating proposals.
2. Pre-award Protests.
 - a. Staff shall provide notice of its intent to recommend award of the contract to all bidders/proposers at least seven business days prior to award.
 - b. Protests against the intended award of a contract must be filed within five business days after RTC provides notice of its intent to recommend award.
 - c. A pre-award protest cannot be on grounds which were known, or with due diligence should have been known, by the protester at the pre-bid/proposal protest deadline.
 - d. RTC will not award the contract until the Procurement Manager makes a determination on the merits of the protest and presents that determination to the Board or the Executive Director, as applicable, prior to award; provided, however, that RTC reserves the right to proceed with an award to avoid undue delay or harm to RTC or if it is otherwise in the best interest of RTC as determined by the Executive Director.

- e. The Procurement Manager shall provide the final determination to all bidders/proposers at the time of, or prior to, the award if possible.
3. Post-award Protests.
 - a. Post-award protests must be filed within three business days after award of the contract.
 - b. A post-award protest cannot be on grounds which were known, or, with due diligence should have been known, by the protester at the pre-award protest deadline.
 - c. RTC reserves the right to proceed with the execution or performance of the contract to avoid undue delay or harm to RTC or if it is otherwise in the best interest of RTC as determined by the Executive Director.
 - d. The Procurement Manager shall make a determination on the merits of the protest and present that determination to the Executive Director.
 - e. The Procurement Manager shall provide a final determination to all bidders/proposers stating the action~~(s)~~ taken on the protest, and the reason for the action~~(s)~~. The notice shall be provided within five business days of receipt of a post-award protest, if possible.

H. Review and Determination.

1. Upon receipt of a protest, staff will notify the protester that the protest is being reviewed. For FTA funded contracts, the Procurement Manager will notify FTA Region IX, and will keep FTA informed about the status of the protest. For FHWA funded contracts, the Procurement Manager will notify NDOT, and will keep NDOT informed about the status of the protest.
2. The Procurement Manager shall investigate the merits of the protest.
 - a. In its sole discretion, RTC may request additional information from the protester.
 - b. In its sole discretion, RTC may request additional information from other bidders/proposers, and may allow other bidders/proposers to submit comments regarding the merits of the protest.
 - c. In its sole discretion, RTC may schedule an informal conference with all bidders/proposers to discuss the merits of the protest.

- d. In its sole discretion, RTC may summarily dismiss all or any portion of a protest that raises legal or factual arguments or allegations that have been previously considered and resolved by RTC in a previous protest.
3. The Procurement Manager's determination on the merits of the protest must be in writing and contain four parts:
 - a. Summary – Describes the protester, the solicitation, the issues raised, and the determination.
 - b. Background – Describes in more detail the history of the solicitation, the events leading to the protest, the date the protest was received, and the evaluation process.
 - c. Discussion – Identifies the issues raised, the factors considered in reaching the determination, and the rationale for the determination.
 - d. Determination – States the determination and any remedy or subsequent action resulting from the determination, e.g., award, cancellation of the procurement, etc.

I. FTA Involvement.

For FTA funded contracts, the protester may raise matters that are primarily a Federal concern with the FTA. Matters involving the award of a contract must be raised with FTA within five business days of receipt of RTC's determination on the merits of the protest.

J. Confidentiality.

Materials submitted by a protester will not be withheld from any interested party outside of RTC or from any governmental entity which may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protester believes that a protest contains proprietary materials which should be withheld, a statement advising of this fact must be affixed to the front page of the protest and the alleged proprietary information must be so identified wherever it appears. If a protester requests that RTC withhold from disclosure information identified as confidential, and RTC complies with the protester's request, the protester assumes all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless RTC from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the protester information), and pay any and all costs and expenses related to the withholding of the protester's information. The protester shall not make a claim, sue, or maintain any legal action against RTC or its directors, officers, employees, or agents concerning the withholding from disclosure of protester's information.

K. Records.

1. Upon receipt of a protest, the Procurement Manager shall establish a separate file in which reasonable and adequate documentation of the protest and outcome shall be maintained.
2. The file should, at a minimum, include the following:
 - a. Notice of intent to award;
 - b. The protest;
 - c. Notices to FTA or NDOT, if required;
 - d. Record of timeliness of actions;
 - e. Record of internal or external review of the protest;
 - f. Record of legal review of the protest, if any;
 - g. The Procurement Manager's determination on the merits of the protest;
AND
 - h. Any notices or correspondence provided in connection with the protest.

MANAGEMENT POLICY

SUBJECT: SETTLEMENT AUTHORITY

I. PURPOSE

It is the policy of the Regional Transportation Commission (RTC) to define authorities and responsibilities for the settlement of claims involving the Agency. All claims will be handled on a case by case basis in consultation with legal counsel.

II. SCOPE

- Public
- X Board Members
- X RTC Officers
- X RTC Employees

Other: _____

III. DEFINITIONS

None.

IV. POLICY

A. Approval

1. Settlements must be approved prior to execution. The following are the threshold levels for approving settlements in consultation with legal counsel:

Settlement Amount	Authority
Settlement Amount ≤ \$50,000	Executive Director
Settlement Amount > \$50,000	Board

- B. Routing and Review: Settlement agreements must be reviewed internally prior to execution in order to ensure that they are sound and complete agreements. The Legal Service Director, Finance Director, and Executive Director must review and sign-off on settlement agreements prior to execution.

- C. Execution: Settlement agreements must be executed to be binding and effective. The Executive Director will execute settlement agreements.

- END -

SAMPLE

MANAGEMENT POLICY

SUBJECT: SETTLEMENT AUTHORITY ~~(NON-CONTRACT RELATED CLAIMS)~~

I. PURPOSE

~~The purpose of this Management Policy is~~

~~It is the policy of the Regional Transportation Commission (RTC) to define authorities and responsibilities for the settlement of non-contract related claims involving the Regional Transportation Commission (RTC). Authorities and responsibilities for settlement of contract disputes are defined in Management Policy P-13.~~

Agency. All claims will be handled on a case by case basis in consultation with legal counsel.

II. SCOPE

Public

- X Board Members
 - X RTC Officers
 - X RTC Employees
- Other: _____

III. DEFINITIONS

None.

IV. POLICY

A. Approval

1. Settlements must be approved prior to execution. The following are the threshold levels for approving settlements in consultation with legal counsel:

Settlement Amount	Authority
Settlement Amount ≤ \$50,000	Executive Director
Settlement Amount > \$50,000	Board

- B. Routing and Review: Settlement agreements must be reviewed internally prior to execution in order to ensure that they are sound and complete agreements. The ~~Chief Counsel,~~ Legal Service Director ~~of~~, Finance Director, and Executive Director must review and sign-off on settlement agreements prior to execution.
- C. Execution: Settlement agreements must be executed ~~in order~~ to be binding and effective. The Executive Director will execute settlement agreements.

- END -