

Agency Name

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# ​Introduction

(Agency name) receives funding from the Federal Government and the State, as well as other agencies. Local government contributors include city and county governments, (additions if needed). Therefore, (agency name) adopts procurement policies and procedures that are consistent with Federal regulations and the laws of South Dakota. These procedures apply to all procurements irrespective of the source of the funds. Specific requirements for procurements funded by the Federal Transit Administration (FTA) may also be identified.

The purpose of these policies is to set forth the procurement methods and establish standards for obtaining goods and services, equipment, including construction, professional, and Architectural/Engineering (“A/E”) services necessary for the operation of (agency name). This policy includes 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. For more detailed information refer to the reference section of this document and SDDOT Provider Manual, Procurement Chapter.

The procurement procedures are designed to:

1. Instill public confidence in the procurement process of (agency name).
2. Ensure fair and equitable treatment for all vendors who seek to deal with (agency name). 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.

The procurement process is ongoing throughout the fiscal year. During budget, the needs are identified for all goods that will be procured. during the upcoming fiscal year (dates of fiscal year).

# Delegations

 Except as otherwise provided in these procedures, all rights, powers, duties, and authorities relating to the procurement of supplies, equipment. services, and construction are vested in the (Agency or Department Head) or a designee.

1. The (Agency or Department Head) is specifically authorized to delegate approval authority to a designee.
2. The (governing body, individual, or agency) is specifically authorized to execute approval authorized at any level.
3. The (Agency or Department Head) is specifically authorized to execute approvals delegated to a designee.

# Policies and Procedures

 Responsibilities

The (Agency or Department Head) has authority to authorize contract actions. **Whenever the term “**(Agency or Department Head)**” shall appear in this document, the term shall also include authorized designee(s).** (The authority of the designees varies significantly depending on the value and type of procurement action.)

The (Agency or Department Head) is responsible for updating these procurement procedures on an as-needed basis.

The (Agency or Department Head) shall be authorized to enter into, administer, and terminate contracts. However, the (Agency or Department Head) may bind (agency) only to the extent of the contracting authority delegated to the (Agency or Department Head).

The (Agency or Department Head) shall ensure that a clear and accurate specification/scope of work is developed for all procurement.

The (Agency or Department Head) shall not enter into a contract unless all applicable requirements of Federal law, Federal regulations and circulars, South Dakota law, and all other applicable (agency) procedures (including approvals**)** have been met.

The (Agency or Department Head) shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the policies specified per State and Federal mandate.

The (Agency or Department Head) or his/her designee shall be the primary (agency) employee to determine that contract prices are fair and reasonable prior to signing the contract or any changes thereto.

The (Agency or Department Head) shall not make any purchase or enter into any contract for an amount which exceeds his or her specifically delegated contracting authority.

The (Agency or Department Head) and/or his/her designee is responsible for submitting the simplified acquisition procurement packet and Independent Cost Analysis to SDDOT Transit staff for review prior to soliciting procurement.

SDDOT requires the following from subrecipients for simplified acquisition procurements.

Prior to solicitation, the subrecipient is required to submit to SDDOT Transit staff for review and approval the following:

* + Preliminary specifications
	+ Independent Cost Estimate (Also required when using off SDDOT Retainer List)
	+ Simplified acquisition procurement packet. (Also required when using off SDDOT Retainer List)
	+ Simplified Acquisition Advertisement
	+ RFP Evaluation Checklist
	+ Award documentation

Prior to award, the subrecipient is required to submit to SDDOT Transit staff for review and approval the following (Also required when using off SDDOT Retainer List)

* Completed procurement checklist documenting process up to the award.
* Summary of bids\proposals.
* Signed certifications and clauses.
* Recommendation of award.
* Documentation of responsiveness and responsibility.
* Price reasonableness analysis.
* Price Analysis is used if it is determined that competition was adequate, and price was within the expected range established by the ICE.
* Cost Analysis is used if it is determined that competition is inadequate, or price is inconsistent with the expected range established by ICE.DBE forms – the only documentation there would be is if a DBE vendor has been identified for the project.

The (Agency or Department Head) and/or his/her designee is responsible for soliciting bids and proposals; for serving as the chairperson of pre-bid & pre-proposal conferences, qualification hearings and proposal evaluation meetings; for conducting contract negotiation sessions; for managing the non-technical aspects of post-award contract administration including negotiation of modifications, claims, and supplemental agreements.

The (Agency or Department Head) and/or his/her designee is also responsible for such tasks as writing, preparing**,** and assembling contract documents; obtaining necessary pre-solicitation approvals; advertising RFP's and IFB's, issuing amendments, obtaining post-bid opening approvals for award, conducting investigations of the proposed contractor's past performance, conducting consultant selection meetings for negotiated contracts and conducting negotiations, monitor the contractor's performance, and managing termination for default or convenience procedures whenever the need arises.

Normally, the (Agency or Department Head) approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the contractor for payment.

The (Agency or Department Head) shall ensure that sufficient unencumbered funds are available for each contract.

The (Agency or Department Head) is also the person to whom reports of warranted equipment malfunctions, failures, or any problems with the contractor's performance are submitted, pursuant to the specific authority granted by the user department manager. The Executive Director becomes involved when and if the lapse constitutes a serious, i.e., repetitive, or unresolved, breach of contractor's civil or contractual responsibility.

Should the contractor fail to respond in a timely or adequate manner to rectify any problem, the (Agency or Department Head) takes any steps necessary and available to enforce (agency) rights under the contract. This may include withholding payment, imposing liquidated damages, negotiation and recommending a settlement, terminating the contractor for default, or referring the matter for legal action.

Standards of Conduct and Conflict of Interest Policies

There will be uniform and equitable application of the Standards of Conduct of (agency) involving all activities associated with the procurement of goods and services. This section defines responsibility to identify and prevent a real or apparent conflict of interest.

## Conflict of Interest

The following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they, or persons related to them, have a financial interest:

1. The employee, officer, agent, or board member;
2. Any member of his/her immediate family;
3. His or her partner; or
4. An organization that employs, or is about to employ, any of the above.
5. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unableor potentially unable, to render impartial assistance or advice to (agency); a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractorhas an unfair competitive advantage;

Members of the groups listed under conflict of interest section shall be subject to the conflict of interest laws of South Dakota. Anyone who violates the standards of the law shall be subject to the penalties, sanctions, or other disciplinary actions provided for therein.

## Gratuities, Kickbacks, and Contingent Fees

No member of the groups listed under conflict of interest section shall solicit, demand or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities, favors, etc.; except when the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by (agency), including possible dismissal.

## Confidential Information

No member of the groups listed under conflict of interest section shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by (agency), including possible dismissal.

## Organizational Conflict of Interest

Each entity that enters into a contract with (agency) is required, prior to entering such contract, to inform (agency) 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.

# Purchasing Policies

## Equal Employment Opportunity/Affirmative Action

All procurement documents issued by (agency) require all interested vendors to certify:

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

## Disadvantaged Business Enterprise

(agency) has determined that disadvantaged business enterprises, as defined in 49 C.F.R. Part 26, shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, all (agency) procurements funded with Federal funds may include, as appropriate, the use of DBE participation for the procurement of all classes of goods and services, as set forth in the (agency) Disadvantaged Business Enterprise (DBE) program.

## Open Competition Required

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

1. Unreasonable requirements placed on firms in order for them to qualify to do business;
2. Unnecessary experience and excessive bonding requirements;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive award to any person or firm on retainer contracts;
5. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered;
6. Exclusionary or discriminatory specifications; and
7. Any arbitrary action in the procurement process.
8. Limited Geographic Preference

## Federal Clauses and Certifications

Keep in mind that all procurement methods could require some or all the Federal clauses and certifications.  Check the most current Federal clauses and certifications required each time you conduct procurement.

The Federal clauses and certifications are updated every year in October and can be found on the “Existing Grantees” page of the FTA website.  National RTAP has a web app ProcurementPRO that uses the project information to determine and list the required Federal clauses and certifications that must be included in the procurement documentation.

## Buy America requirements

FTA required that all rolling stock, facility, or equipment purchased more than $150,000 of Federal funds must contain a required 70% domestic components minimum by cost and final assembly is in the United States.  FTA requires that all iron, steel, and manufactured products used in FTA-funded projects must be made in the United States.  It is possible under the law to apply for and receive waivers for this requirement; it is rare that they will be granted.

(Agency name) will ensure that all the materials the contractor or bidder/proposer uses are in compliance with this requirement by including the Buy America Federal Clause in the specifications to be signed by the bidders/proposers.  Refer to the South Dakota Department of Transportation (SDDOT) for guidance on procurement for Rolling Stock and Architectural and Engineering Services.

## Davis Bacon

 Prevailing Wages – Under 49 U.S.C. § 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, and repair projects. Third party contracts for construction, alteration, or repair at any contract tier exceeding $2,000 must include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and implementing DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction,” 29 C.F.R. part 5.

 The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis Bacon Act also requires contractors to pay wages not less than once a week. The recipient must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination.

Refer to The Department of Labor (DOL) below web page, for workers and small businesses regarding employment/labor laws, and assistance.

<http://www.dol.gov/elaws>

The DOL Davis Bacon web page, which also offers a guidance and a fact sheet, is available at: <https://www.dol.gov/agencies/whd/government-contracts/construction>

Davis Bacon Job Site Labor poster: <https://www.dol.gov/agencies/whd/posters/dbra>

# Disposal of Expended Equipment

Before federal assets can be transferred or disposed of; Vehicles, equipment and facilities which have an initial purchase price that is greater than $4,999.99 must have approval from South Dakota Department of Transportation-Transit’s (SDDOT-Transit) office prior to the disposal. If the item is less than $4,999.99 it can be disposed of without approval from SDDOT – Transit.

All computers, tablets, and anything with sensitive information per HIPPAA guidance should be cleaned of all said data before being disposed of.

# Evaluate project

Determine the project’s preliminary specifications, review to determine if product or service is essential, quantities needed and estimated total cost. Determine available funding or if the funds need to be raised and if the procurement will be formal or informal. If the project is formal complete an Independent Cost Estimate (ICE). If the project qualifies for a micro purchase or small purchase complete quote process.

# Select procurement method

The procurement method option depends on the dollar value of the project.  Conduct market research and determine method of procurement. For procurement type, staff should refer to the policies described herein. Any questions regarding the procurement process should be immediately discussed with the (position in charge of procurement policy decisions) to ensure that the policies are being followed.

The (position in charge of procurement policy decisions) is responsible for the administration of the procurement, which includes obtaining the required approval, if necessary, before initiating the procurement process.

Upon completion of the procurement process, a document requesting the vendor to supply the good or service, such as a purchase order and/or contract agreement must be issued by (position in charge of procurement policy decisions) prior to the execution of any contract, notice-to-proceed, or initiation of work.

Public Improvement $100,000 or more and Simplified Acquisition SDCL 5-18A-14

## Goods and Services

**Definition**: Procurement of services, supplies, or other property, with the A/E services or labor and/or materials.

## Price Comparison purchases less than $4,000

* Three (3) oral or written prices are suggested to ensure you are purchasing at fair and reasonable price. Conduct a simple price or cost analysis to determine the best value according to internal purchasing thresholds and practices. Document criteria used to determine that your quotes were fair and reasonable. Use FTA Master Agreement or ProcurementPro to select necessary Federal clauses or certifications. Verify all bidders are active on the System for Award Management (SAM) website <https://sam.gov/content/home> and South Dakota Secretary of State website <https://sdsos.gov/> to verify the bidders in good standing with the State of South Dakota. **Documentation of this verification should be retained in the procurement file.**

  Micro Purchases between $4,000 and $49,999

* Three (3) written prices on vendor‘s letterhead or estimate forms are required to ensure you are purchasing at fair and reasonable price. If three quotes cannot be obtained, the SDDOT may approve the purchase if in the best interest of the state, require additional quotes to be obtained, or require the purchase be advertised for bids Conduct a simple price or cost analysis to determine the best value. Document criteria used to determine that your quotes were fair and reasonable. Use FTA Master Agreement or ProcurementPro to select necessary Federal clauses or certifications. SDCL 5-18A.11 Verify all bidders are active on the System for Award Management (SAM) website <https://sam.gov/content/home> and South Dakota Secretary of State website <https://sdsos.gov/> to verify the bidders in good standing with the State of South Dakota. **Documentation of this verification should be retained in the procurement file.**

## Simplified Acquisition purchases that exceed $50,000

Preferred procurement methods are either Invitation for Bid (IFB) or Request for Proposal (RFP). Other procurement methods such as Joint and Piggyback procurements are not recommended and shall only be used in extreme cases after consulting with the SDDOT Office of Air, Rail, and Transit. SDCL 5-18D-17.A request for proposal is required if exceeding $50,000 for Professional services. SDCL 5-18D-18.A

* *Simplified Acquisition:* Purchases that exceed $50,000,
* *Invitation for Bid or Request for Proposal*
* Contracts or purchases for construction, supplies or services $50,000 or more must be advertised for bids or proposals. Additionally, procurement actions exceeding $50,000 applicants must perform a cost analysis.  The cost analysis method can be different depending on the type of work, but a good starting point is to make an estimate of what the work may be before receiving bids from contractors. Applicants must also negotiate profit as a separate element when cost analysis’ is performed. For these types of projects applicants must also ensure the project is adequately protected through bonding.
* Public improvement contracts of $100,000 or more must be advertised for bids or proposals. (Public Improvement - the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any structure, building, or other improvements of any kind to real property, the cost of which is payable from taxes or other funds under the control of the purchasing agency, and includes any local improvement for which a special assessment is to be levied; (as per the $50,000 bid limit)) SDCL 5-18A-14
* Professional services are required to be procured if over $50,000. For Architect and Engineering Services there is no threshold, and all services must be procured using the RFP process.

The services of attorneys, physicians, architects, engineers, consultants, auditors, specialized printers, or other individuals or organizations possessing a high degree of professional, unique specialized technical skill or expertise, not adaptable to competitive bidding, or where the service involves a contract for special activities, negotiations for the acquisition of land, trash services, insurance bonds or any other service similar to the above, engaged for a particular project or series of projects.

* **Architectural Engineering (A/E) Services and Other Services**: Procurement of professional

consultants for engineering, architectural, land surveying or other support services, such as program management, construction management, feasibility studies, preliminary engineering and design which require performance by a registered or licensed architect or engineer.

A complete discussion of the Federal requirements can be found under 6.5 Architect - Engineer Services found here:

<https://www.transit.dot.gov/funding/procurement/bppm-procurement-object-types-special-considerations#BM6_5>

Qualifications-Based Procurements for Architectural and Engineering Services (A&E) – FTA’s enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the Brooks Act , 40 U.S.C. §§ 1101-1104, to acquire program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for an FTA-funded project. Refer to the resource section for reference to obtain more information.

## Construction Solicitation & Award Process

With architectural and engineering services procurements, recipients must use competitive proposal procedures based on the Brooks Act, which requires selection to be based on qualifications and specifically excludes price as an evaluation factor (provided the price is fair and reasonable).

Qualifications Exclude Price

Basic Requirement

(49 USC 5325 (b), 40 USC 1101-1104 (Brooks Act), 2 CFR 200.320(d)(5))

Qualifications-based competitive proposal procedures require that:

1. An offeror’s qualifications be evaluated for contract award
2. Price be executed as an evaluation factor

Serial Price Negotiations

**Basic Requirement**

(49 USC 5325 (b), 40 USC 1101-1104 (Brooks Act), 2 CFR 200.320(d)(5))

* + Negotiations are conducted with only the most qualified offeror
	+ Failing agreement on price, negotiations with the next most qualified offeror may be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the recipient.
	+ Show results of the negotiations

The resulting construction contract must include all applicable FTA-required contract clauses and certifications. The resulting construction contract must also comply with US Department of Transportation (USDOT) requirements set forth for the utilization of DBEs. Awards of contracts should be made to a responsible firm providing the lowest responsive bid. It should never be assumed by the agency that either the A&E firm or the construction manager are aware of FTA requirements in connection with the documents. It is normally the responsibility of the procurement manager to ensure required FTA clauses and certifications are contained in the bid documents. Refer to the agency’s adopted policy and RTAP Procurement Pro for guidance.

* Note: No purchases may be artificially divided to avoid the levels of purchase rules.

*Invitation for Bids (IFB)/Sealed Bids*

See manual for detailed steps and State Management Plan.

Request for Proposal (RFP)/Competitive Proposals-

See manual for detailed steps and State Management Plan.

Sole Source Procurement /Non- Competitive

**Definition**: Procurement accomplished through solicitation or acceptance of a proposal from only one available source or solicitation of several sources in which competition is determined inadequate.

|  |  |  |
| --- | --- | --- |
| **Price Threshold**  | **Method of Procurement**  | **Required Approval Level**   |
| Up to $100,000  | Sole Source  | Identified by individual agency   |
| Greater than $100,000  | Sole Source  | Identified by individual agency  |

Sole source procurements are accomplished through solicitation or acceptance of a proposal from only one source or after solicitation of several sources, competition is determined inadequate.  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 (agency name), or a situation requiring immediate action by (agency name), as determined by (agency name)) for the requirement will not permit a delay resulting from competitive solicitation.
3. After solicitation of several sources, competition is determined inadequate; or
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. The grantee must first certify in writing to FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is not higher than the price for such item by like customers.

Sole source procurements must be documented in writing and on file for review upon request explaining in detail, why this contract was issued under the Sole Source procurement method.

# Other than Full and Open Competition

Recipients may conduct procurements by noncompetitive methods only when 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 noncompetitive proposals in response to a written request from the non-Federal entity; or
	+ After solicitation of several sources, competition is determined inadequate. See 2 C.F.R § 200.320, Methods of procurement to be followed, and FTA Circular 4220.1F, Chapter VI, paragraph 3.i. – Other Than Full and Open Competition.

A recipient may use noncompetitive proposals only when the procurement action is inappropriate for small purchases procedures, sealed bids, or competitive proposals, and at least one of the following circumstances is present:

* Adequate Competition – After soliciting several sources, FTA expects the recipient to review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After the recipient determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the recipient may determine the competition adequate. A cost analysis must be performed in lieu of a price analysis when this situation occurs.
* Sole Source – When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified under one of the bases below.
* Unique Capability or Availability. The property or services are available from one source if one of the conditions described below is present:
* Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source.
* Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to the recipient only from one source and has not in the past been available to the recipient from another source. ∙
* Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition. ∙
* Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition. ∙
* Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient’s needs.
* Single Bid or Single Proposal – Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal. ∙
* Adequate Competition – FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient’s control. Many unrelated factors beyond the recipient’s control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA’s competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award. ∙
* Inadequate Competition – FTA acknowledges competition to be inadequate when, caused by conditions within the recipient’s control. For example, if the specifications used were within the recipient’s control and those specifications were unduly restrictive, competition will be inadequate.
* Unusual and Compelling Urgency – A recipient is permitted to limit the number of sources from which it solicits bids or proposals when the recipient has such an unusual and urgent need for the goods or services that the recipient would be seriously injured unless it were permitted to limit the solicitation. The recipient may also limit the solicitation when the public exigency or emergency will not permit a delay that would result from competitive solicitation for the property or services.
* Authorized by FTA – Recipients are permitted to use noncompetitive proposals under the following circumstances:
* Consortium, Joint Venture, Team, Partnership – With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a consortium, joint venture, team, or partnership, or provides assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects the recipient to use competition, as feasible, to select other participants in the project.

# Joint Procurement and Piggybacking

In some situations, more than one agency will simultaneously go through this process and produce a solicitation that addresses the needs of all the agencies involved.  These are joint procurements, and a great deal of advance planning is needed to do this type of procurement.  There are also situations that an agency unintentionally acquires more than needed through a contract.  In those cases, if the original contract includes an assignability clause, it is permissible for another agency to take on the contract rights for the additional goods or services after ensuring the price is fair and it can abide by the original contract’s rights to the purchase supplies, equipment, or services.    This method is not encouraged by FTA or SDDOT.

When circumstances warrant, (agency) may attempt to fill requirements through a cooperative purchasing agreement (without independent bids or quotations) with the SDDOT, or with other appropriate public agencies.

# SDDOT Retainer List

See SDDOT Provider Manual and State Management Plan.

# DEVELOPMENT OF THE BID DOCUMENTS

Refer to the SDDOT Provider Manual.

## Brand Name

Recipients are permitted to use brand names in specifications when it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property being acquired. Where brand names are included in the specifications, FTA requires that an “or equal” provision be included as well. In these instances, the specifications must also include the salient characteristics of each named brand that offerors must provide. See FTA Circular 4220.1F, Chapter VI, paragraph 2.a. (3) – Brand Name or Equal.

FTA recognizes that there are situations in which a recipient is locked into a specific named brand product, and, therefore, not able to accept “an equal” substitute. Not all these situations result in a non-competitive procurement. It is conceivable that multiple offerors can provide the same brand name product. Where competition exists, the recipient is permitted to proceed without processing the procurement as a sole source. In instances where the naming of brand products results in a restraint on competition, the recipient must process the procurement as a sole source (non-competitive) procurement action through the proper approving officials within the recipient’s organization prior to release of the solicitation.

# DBE

SDDOT aspires construction projects to have DBE participation through Race Neutral measures. This means there is no goal on the project. For the DBE contracted work to be counted towards the transit overall DBE goal the entity must be a SDDOT certified DBE.

Through Race Neutral measures  on a contract, entities are required to solicitate DBEs  and each bidder is encouraged to use DBE Contractors; however, no bidder will be required to furnish GFE documentation.

DBE forms links on SDDOT website: <https://dot.sd.gov/doing-business/contractors/dbe#listItemLink_1550>

* Form DOT-289R/N and that is used by the Prime when they utilize DBEs and this is at bid letting time. This form will determine at the time of the letting the overall DBE participation. **This form is required to be submitted to SDDOT Transit staff in the procurement packet review prior to award.**
* Form DOT-289B – this is used after the project has been let and it goes into detail on what bid items the DBE is working on and they DBE and Prime both sign. **This form is required to be submitted to SDDOT Transit staff in the procurement packet review prior to award.**
* Form DOT-289 Certification of DBE Payments – and this is used by the Prime to verify what the Prime actually paid the DBE during the project. **This form is required to be submitted to SDDOT Transit staff throughout the project. This information will be used in documenting DBE activity in the semiannual DBE report.**

DBE regulations 49 CFR Part 26

# Protest Procedures

According to Circular 4220.1F your agency must have written protest procedures for both the sealed bid and competitive proposals methods and a protester must go through these procedures before he\she can appeal your decision to FTA.  Information that should be included in the agency’s protest procedures is as follows:

* Difference in procedures for pre-bid, pre-award and post-award protests.
* Specific deadlines (in working days) for filing a protest, filing a request for reconsideration and for your agency’s response to a protest.
* Specific content of a protest (name of protester, solicitation\contract number or description, statement of ground for protest)
* Location where protests are to be filled.
* Statement that your agency will respond, in detail, to each substantive issue raised in the protest
* Identification of the responsible official who has the authority to make the final determination
* Statement that your agency’s determination will be final
* Statement that FTA will only entertain a protest that alleges your agency failed to follow your protest procedures and that such a protest must be filed in accordance with the FTA’s Third-Party Contracting Guidance Circular (4220.1F)
* Allowance for request reconsideration (if data becomes available that was not previously known, or there has been an error of law or regulation)

(Agency - remove the information above in this section and enter your protest procedures based on the information provided above.)

# Price Analysis versus Cost Analysis

* Price Analysis is used if it is determined that competition was adequate, and price was within the expected range established by the ICE.

* Cost Analysis is used if it is determined that competition is inadequate, or price is inconsistent with the expected range established by ICE.

|  |  |
| --- | --- |
| Procurement Type | Analysis Type |
| Small Purchase | Price and/or Cost |
| IFB | Price and/or Cost |
| RFP | Price and/or Cost/Qualifications |
| Single Source | Cost |
| Sole Source | Cost |
| Contract Modifications | Cost |

# Contract Administration

Refer to FTA Best Practices Procurement and Procurement Manual for details based on the procurement and contract type. It is required to retain the below required documentation as applicable in the procurement file according to retention requirements.

Required Price Comparison procurement documents are listed below- all procurement documents must be retained for 3 years after the disposal of the asset.

* Specifications
* Davis Bacon (If applicable)
* Federal Clauses and Certifications (If Applicable)
* Price Estimate Documents
* Fair & Reasonable Price Form
* Unique Number (SAM.GOV)
* Invoice
* Delivery Receipt (capital items only)

Required Micro Purchase procurement documents are listed below. All procurement documents must be retained for 3 years after the disposal of the asset.

* Specifications
* Written Price Quotes from Vendors (letterhead or website)
* Quote Form with summary documentation
* Federal Clauses and Certifications (If applicable)
* Davis Bacon (If applicable)
* Fair & Reasonable Price Form
* Unique Number (SAM.GOV)
* Responsive and Responsible Vendor Determination
* Delivery Receipt (Capital Items only)
* Invoice

Required Simplified Acquisition procurement documents are listed below. All procurement documents must be retained for 3 years after the disposal of asset.

* Preliminary specifications
* Independent Cost Estimate-approved
* Approved solicitation packet with federal clauses and certifications
* Advertisement & Public Notice Proof
* Emails to potential proposers/bidders
* Bid opening documents
* Bid tabulation/selection of lowest bidder (IFB)
* Evaluation Rating sheets & summary (RFP)
* Recommended bidder/proposer
* Signed federal certifications
* Winning bid/proposer packet
* Delivery receipt
* Procurement overview and summary form
* Notice of protests & resolutions (If applicable)
* Notice of contract claims & resolutions (If applicable)
* Copies of bonds (construction)

#  Documentation of procurement history

(Agency name) will maintain a list of bidders

References

Refer to the below sources for sample forms and documents.

* Federal Transit Administration: [http://www.fta.dot.gov](http://www.fta.dot.gov/)
* Title 49 United States Code Chapter 53: <https://www.law.cornell.edu/uscode/text/49/subtitle-III/chapter-53>
* FTA Circular 4220.1F Third Party Contracting: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>
* FTA Master Agreement:  <https://www.transit.dot.gov/grantee-resources/sample-fta-agreements/fta-master-agreement-version-28-february-9-2021>
* Uniform Guidance (also referred to as the “Super Circular”, found at 2 C.F.R. part 200): <https://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>
* Best Practices Procurement Manual: <https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>
* Cost and Payment FAQs FTA 3/13/23: [Guidance in Response to Cost and Payment Questions | FTA (dot.gov)](https://www.transit.dot.gov/funding/procurement/guidance-response-cost-and-payment-questions)
* Third Party Contracting Guidance: [Third Party Contracting Guidance | FTA (dot.gov)](https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance)
* Brooks Act: <https://www.law.cornell.edu/uscode/text/40/subtitle-I/chapter-11> <https://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle1/chapter11&edition=prelim>
* FTA Pricing Guide: <https://transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-grantees>
* South Dakota Codified Laws: <http://sdlegislature.gov/statutes/Codified_Laws/>
* National RTAP Transit Manager’s Toolkit: <http://nationalrtap.org/>
* National RTAP ProcurementPRO web application: <http://www.nationalrtap.org/Web-Apps/ProcurementPRO>
* Federal Transit Administration Procurement Website: <https://www.transit.dot.gov/funding/procurement/procurement>
* System for Award Management (SAM): <https://sam.gov/content/home>
* SD Secretary of State: [https://sdsos.gov](https://sdsos.gov/)
* Disadvantaged Business Enterprise Program (DBE) 49 C.F.R. Part 26: <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/49-cfr-part-26-sample-disadvantaged-business>
* SDDOT Construction guidance on SDDOT Transit webpage
* SDDOT Planning guidance on SDDOT Transit webpage
* SDDOT Provider Manual

# Procurement Glossary

A&E Services

Projects, which require Architectural or Engineering consultation, are required to use competitive proposal procedures based on the Brooks Act.

Acceptance

Agreement to the terms of an offer. In most jurisdictions “award” by a public agency can constitute acceptance and may create an enforceable contract.

Brooks Act

Federal law that all architecture/engineering services being paid for with Federal funds to be obtained through Request for Proposal.

Buy America Act

Federal legislation that requires all rolling stock, facility, or equipment purchases in excess of $150,000.00 of Federal funds must contain 70% domestic components minimum by cost and final assembly is in the United States.

Construction

Is any building, remodeling, expansion, or alternations to a facility, included is painting, roofing, or replacing facility equipment, such as water heaters, phone systems etc.

Davis-Bacon Act

Federal law, which needs to be followed for any hired expenses in excess of $2,000.00 when incurred in any federally funded construction, remodeling, and/or repair work.

Disadvantaged Business Enterprises (DBE)

For-profit small business concerns where socially and economically disadvantaged individuals own at least 51% interests and control management and daily business operations.

Federal Certifications

Specific documents referencing Federal Laws, Acts or Provisions, which parties participating in the procurement must agree to and sign.

Federal Clauses

Federal Laws, Acts and Provisions which must be included in all procurement documents and required of all parties participating in the procurement of goods, services, or products

FMVSS

Federal legislation entitled Federal Motor Vehicle Safety Standard 49 CFR Part 571.

Grant Funding Agreements

Legal document between grantor and grantee/subrecipients, which defines the type and amount of grant award and all requirements, which the grantee/subrecipients must comply with to qualify for the grant award.

Invitation for Bids (IFB)

Competitive procurement procedure used to procure products or goods based on price and ability to meet the bid specifications. This method is also referred to as a Sealed Bid.

Independent Cost Estimate (ICE)

Determining cost of goods or services by means of obtaining cost of each part comprising the goods or services plus labor, overhead, production cost etc.

Joint Procurement

Procurement method of contracting in which two or more grantees agree from the outset to use a single solicitation document.

Master Agreement

Federal Transportation Administration (FTA) document, which states all the requirements, and regulations, which apply to FTA, grants awards

Offer

A promise to provide goods or services according to specified terms and conditions in exchange for material compensation.

Piggybacking

The assignment of another recipient’s contract rights as a substitute for a stand-alone procurement. Not encouraged by FTA or SDDOT.

Pre-award Audit

Verification and completing Federal certificates before awarding vehicle awards to ensure vehicles meet FTA Rolling Stock requirements.

Price Comparison

Price comparison is a method of procuring goods and services with a total value less than $4,000. Requires price or cost analysis to determine the best value.

Price Estimate

Determining reasonable price of goods or services by collecting competing offers, catalog prices, internet prices, or local competitor’s prices.

Post-Award Audit

Verification and completing Federal certificates after awarding vehicle awards to ensure vehicles meet FTA Rolling Stock requirements.

ProcurementPro

An on-line procurement tool that assists parties in developing procurement packages.

Procurement File

Each procurement project is required to have a permanent file, which contains all the documents and correspondence pertaining to the procurement

Page Break

Purchasing Levels

Several different methods of procurement are available based on the total dollar value of the procurement. Splitting large purchases into smaller purchases to avoid the competitive proposal process shall not be permitted per Transit agency policy.

Micro Purchases

A micro purchase is a method of procuring services, goods, or real property with a total value between $4,000 and $24,999\*. Require three (3) written quotes on vendor’s letterhead or bid form. \* per South Dakota Codified Law

Real Property

 Real property consists of land and any existing buildings and/or structures on the parcel of land.

Request for Proposals (RFP)

A competitive procurement method used when the nature of the procurement does not lend itself to sealed bidding and the recipient expects more than one source is willing and able to submit an offer or proposal.  This method is often used when the award is based on pre-determined technical criteria instead of price. This method is also referred to as a Competitive Proposal.

Simplified Acquisition Purchases

A simplified acquisition is a method of procuring services, goods, or real property with a value exceeding $25,000.00. Requires invitation of bids, request for proposal or sole source.

Sole Justification

If only one bidder is received per IFB or available due to limited local businesses. A letter of explanation must be written explaining the reasons for awarding the bid and placed in the procurement file.

Solicitation

A purchasing entity’s request for offers, including a telephone request for price quotations, an invitation for bids, or a request for proposals.

System for Award Management (SAM)

Federal website to check for debarment and suspension from Federal projects

Useful Life

Standards established for the expected amount of time that a properly maintained piece of equipment or facility could be used before needing to be replaced.