



CHAPTER 5: CONTRACTING AND PROCUREMENT

POLICIES, PRACTICES AND PROCEDURES MANUAL

The Napa Valley Transportation Authority (NVRTA or the “Authority”) will maintain sound contracting and procurement practices in accordance with all federal, state and local laws and direct its financial resources towards meeting NVRTA’s long-term goals.

NVRTA will cultivate and further develop programs to ensure its long-term ability necessary to provide the level and quality of service required by the public.

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CHAPTER 1 PURPOSE AND INTRODUCTION

The Napa Valley Transportation Authority (NVTa) has major responsibilities, which include the operation of a public transportation system and the planning, design and programming of transportation projects. All contracts are awarded by NVTa's procurement officer, which is responsible for identifying the needs of NVTa and originating the procurement package for supplying those needs. NVTa receives transit funding from the federal government and the State of California, as well as other regional and local agencies and local contributions. NVTa will follow standard public agency contract law as set forth in California Government and Public Contract Codes for procurements that are funded with state or local revenues and do not have any federal funding. NVTa is further committed to meeting all requirements in [FTA Circular 4220.1\(F\)](#) and its successors for procurements that involve federal funds. These procurement policies and procedures are consistent with federal regulations and the laws of the State of California. These procedures also apply to any revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity, or to create business opportunities utilizing a Federal Transit Administration (FTA) funded asset or other federally funded assets.

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

The procurement procedures are designed to:

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

Methods to implement the foregoing are described in the remainder of this document and the attachments hereto.

CHAPTER 2 GENERAL PROCUREMENT POLICY STANDARDS

A. Step-by-Step Guide

Step 1: The Project Manager (PM) must determine the following:

1. Project scope;
2. Expected cost of the procurement;
3. Funding source(s) and whether the procurement is already budgeted; and
4. Whether the procurement will be informal or formal.

Step 2: For procurement type, PM should refer to the policies described herein. Any questions regarding the procurement process should be immediately discussed with the Executive Director (ED)/general counsel to ensure that the policies are being followed and adhered to.

Step 3: The Administrative Technician (AT) is responsible for the administration of the procurement, which includes attaching the proper boiler plate agreements and clauses and obtaining the required review and approval(s), before initiating the procurement process.

Step 4: Over a certain threshold, approval of the procurement by the Board.

Step 5: Upon completion of the procurement process, execution of the contract prior to a notice to proceed, or initiation of work.

B. Delegated Authority and Method of Procurement

The proper delegated authority for execution of binding contracts, grants, and memoranda of understanding with external entities is mandatory to minimize financial, legal, operational, compliance-related risks for the benefit of the Agency.

Given the extensive variety of contracts required in the course of Agency business, determination of appropriate signature authority and related requirements can be complex. All staff should be aware that the authority to execute binding contracts depends on the nature and complexity of the agreement, appropriate consultation with legal and management that might be affected by the agreement, and appropriate signature authority.

Only certain designated officers may sign agreements and other documents on behalf of NVTa. These individuals are:

- The Executive Director
- A Director (or equivalent)
- Senior Management (or equivalent)
- Project Manager's (in certain cases)

1. Goods and Services

Definition: Procurements of services, supplies, or other property, with the exception of professional and A/E services or labor and/or materials for public works/construction projects.

Contract Threshold	Method of Procurement	Required Approval Level	Notes
Less than \$10,000 (FTA)	Micro Purchase	Management / Project Managers	With authorization from supervisor
Up to \$66,141 for 2022, automatic annual increases based on CPI from the Department of Industrial Relations	Small Purchase / RFP / IFB	Executive Director/Senior Mgmt	With signed authorization form
Greater than \$66,141 or the current amount	Various	Board of Directors	
Less than or equal to \$66,141 or the current amount	Sole Source	Executive Director or designee	With signed authorization

CUPCCAA Informal Bid Limit Up to \$212,500 in 2022 with automatic annual increases determined by the State of CA	Construction	Executive Director or designee	Including UPCCAA*; single vendor
Greater than UPCCAA Informal Bid Statutory Limit	Construction	Board of Directors	
Change Order approval authority granted at the time of contract approval.	Change Orders	Executive Director or designee	

*California Uniform Public Construction Cost Accounting Act (UPCCAA).

Modifications to contracts or purchase orders which represent no change in the scope of the character of material or services provided in the original contract or purchase order may be approved by the ED or PM if the cumulative dollar value of the modification and the original contract amount are within the ED award authority.

NVTA may acquire products and/or services valued at \$10,000 or less without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding FTA thresholds, even though the recipient uses micro-purchase procurement procedures.

2. Professional and Architectural/Engineering Services (A/E)

Professional services means services such as, but not limited to, the services of attorneys, physicians, architects, engineers, and other consultants or individuals or organizations possessing a high degree of technical skill.

A/E means program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services. A/E services require the use of an A/E method of procurement.

CHAPTER 3 POLICIES AND PROCEDURES RESPONSIBILITIES

The Fiscal Officer or designee has primary responsibility for ensuring that the procurement process is in accordance with legal requirements and NVTA policy, as interpreted by Legal Counsel. The Executive Director or designee will be responsible, in accordance with the best administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, non-competitive/sole source evaluations, protests, disputes, and claims. All protests shall be processed in accordance with NVTA's protest procedures.

The Fiscal Officer is responsible for establishing material management policies and issuing instructions concerning the storage, distribution, and disposal of surplus property.

All staff are instructed to follow the Contracting and Procurement Policy, Procedures, and Practices Manual, as well as instructions issued by the Fiscal Officer regarding the storage, distribution, and issuance of material.

The Executive Director or designee shall execute contracts, purchase orders, modifications, and supplemental agreements in accordance with established thresholds.

Implementation

The Executive Director or designee shall implement the policies herein set forth. This manual serves to complement applicable higher authority (e.g., federal, state, and local government) procurement regulations and serves to provide staff with a primary frame of reference for all matters pertaining to NVTA's procurement and contracting activities. To the extent possible, this manual establishes NVTA's procurement processes, which cover the procurement of, accounting for, and disposal of surplus property (materials, equipment, buses, etc.). On items not covered herein or in the NVTA Procurement Policy and Procedures Manual, staff will consult with the Fiscal Officer and Administration for guidance. It also provides policy guidance on the procurement and contract administration of professional and other services.

This manual further provides general guidelines in the conduct of procurements that require compliance with federal and/or state contracting standards. Such procurements are those that are funded by federal or state funds.

C. Procurement Policies

The Board of Directors (Board) is responsible for governing the operation of the agency including all procurement policies that serve as a basis upon which procurement procedures can be developed.

1. Procurement Responsibility

a. Contracts Administrator (CA) or equivalent

The CA is responsible for maintaining all official contract files.

The CA will be responsible for managing procurements and coordinating with the PM to ensure procurement files meet local, state, and federal requirements.

The CA is responsible for updating these procurement procedures on an as-needed basis.

- i. The CA shall ensure that a clear and accurate specification / scope of work is developed for each procurement.
- ii. The CA shall not recommend that NVTa enter into a contract unless the CA has ensured that all applicable requirements of federal law, federal regulations and circulars, California law, and all other applicable procedures have been met.
- iii. The CA shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the policies specified in this manual.
- iv. The CA 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 proposed Contractor's past performance, conducting consultant selection meetings for negotiated contracts and conducting negotiations, consulting with Project Managers to monitor Contractor's performance, and managing termination for default or convenience procedures whenever the need arises.

b. Project Manager (PM) and Procurement

A Project Manager (PM) will be a duly appointed staff member directly responsible for the daily technical administration of a contract including monitoring the contractor in its performance of the contract and performing

those functions as specified. The PM should be a responsible individual assigned to and familiar with the procedures and requirements of NVTa, general project management principles and state and federal procurement requirements. As such, the PM is the ED's technical expert to assist in ensuring contractor compliance with technical requirements of the contract. Normally, the PM approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the contractor for payment.

- i. The PM or his/her designee shall be the primary agency employee to determine that contract prices are fair and reasonable.
- ii. The PM is responsible for soliciting bids and proposals directly or working with the CA on such solicitation; for serving as the chairperson of pre-bid and 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; and for maintaining procurement files.
- i. The PM shall ensure that sufficient unencumbered funds are available for obligation for each contract.
 - a. The PM shall develop a clear and accurate specification / scope of work for each procurement.
 - b. The PM is also the person to whom reports of warranted equipment malfunctions or failures, or any problems with the contractor's performance are submitted. The PM makes the initial request for contractor remedial action. The ED/counsel becomes involved when and if the lapse constitutes a serious, i.e., repetitive, or unresolved, breach of contractor's civil or contractual responsibility.
 - c. Should the contractor fail to respond in a timely or adequate manner to rectify any problem, the PM notifies the CA and ED/counsel that an apparent breach of the contract exists. After investigating the situation, the ED/counsel and PM take any steps necessary and available to enforce NVTa's 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.
 - d. The PM also has the following duties in relation to the contract:

- i. Attends pre-bid and pre-proposal conferences as the technical expert;
- ii. Conducts investigations of proposed contractor's technical past performance;
- iii. Questions prospective contractors during clarifications and discussions as to their technical capability to perform the contract;
- iv. Assists the ED with contract negotiations;
- v. Ascertains the availability of funds prior to asking the ED to initiate the negotiation and approval process for change orders;
- vi. Contract modifications and supplemental agreements; and
- vii. Issues directions to correct or replace defective items of work.
- viii. Coordinates and communicates with CA and includes CA in necessary meetings, conferences, and written communications.

2. Standards of Conduct and Conflict of Interest Policies

All NVTa personnel involved in procurements will comply with NVTa's procurement code of conduct as follows and any Code of Conduct or Conflict of Interest requirements set forth in applicable State or Federal law including but not limited to the requirements of 23 CFR 172.7 related to consultants acting in a management support role.

1. Award and Administration of Contracts: No Board Member, officer, employee or agent of NVTa shall participate in the selection, award or administration of a contract (including purchase orders) if a conflict of interest, real or apparent, would be involved. Such a conflict would arise if any prospective vendor or contractor (or any subcontractor) considered for an award is:

- a. Board Member, officer, employee or agent;
- b. Any member of his/her immediate family;
- c. His/her domestic or business partner;
- d. An organization that employs any of the above, or with which any of them has an arrangement concerning prospective employment.

No Board Member, officer, employee or agent of NVTa who participates in the procurement, management, or administration of contracts shall have, directly or

indirectly, a financial or other personal interest in any contract made or influenced by him/her in his/her official capacity.

No Board Member, officer, employee or agent of NVT A shall solicit or accept gratuities, favors, or anything of monetary value from consultants, vendors, contractors, or potential consultants, or parties to sub-agreements in excess of the applicable gift limit established by the Fair Political Practices Commission ("FPPC"). Gifts shall be reported consistent with FPPC requirements.

No person or entity performing services on behalf of NVT A shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by NVT A, in any contract or subcontract.

Violations of these standards may result in sanctions, or other forms of discipline up to and including termination.

2. **Disciplinary Action:** The purpose of this policy is to provide guidelines consistent with the NVT A Personnel Policies that will insure uniform application of progressive discipline for NVT A employees subject to disciplinary action "for cause." The capitalized term "Employee" as used in Personnel Policies Chapter 2 Employment Status includes "Any person who occupies a position in the Agency service and receives compensation for services performed for the Agency."

Disciplinary Action for Cause: Disciplinary action against a NVT A Employee shall be for cause, as it may affect work performance and effectiveness within the organization.

Procedures:

a. Oral Reprimand: The Employee shall be counseled concerning the unsatisfactory areas of conduct and shall be informed about methods of improvement, or the Executive Director may issue an oral reprimand. The seriousness of the Employee's conduct or offense will dictate whether oral or written reprimands or other corrective action is taken prior to initiating action to suspend or dismiss the Employee.

b. Written Reprimand: In cases where an oral reprimand has not been successful or where the infraction of rules and regulations or conduct has been of a more serious nature as determined by the Executive Director, the Executive Director may employ the written reprimand. The purpose of the written reprimand is to call the attention of the Employee to serious defects in his/her conduct. The written reprimand should include a detailed statement of the problem and a notation to the effect that the problem was discussed with the Employee. Only the Executive Director may issue a written reprimand.

- c. Suspension with Pay: For more severe violations or continued, uncorrected performance or misconduct problems, an employee may be suspended without pay. Where suspension without pay is recommended for a permanent employee, the employee will have the right to a Skelly meeting and a post-disciplinary appeal.
- d. Demotion: The Agency may impose a demotion to a position having a lower salary range for disciplinary purposes. A disciplinary demotion may be utilized for continued, uncorrected performance deficiencies. Where demotion is recommended for a permanent employee, the employee will have the right to a Skelly meeting and a post-disciplinary appeal.
- e. Discharge: Discharge will be considered for severe violations, failure to respond appropriately to prior performance improvement plans, and/or multiple disciplinary infractions in a short period of time. Where misconduct is severe and egregious, immediate discharge may be imposed. Where discharge has been recommended for a permanent employee, the employee will have the right to a Skelly meeting and a post-disciplinary appeal. The discharge will be documented in the personnel file.

Finally, NVTAs employees, officers, and agents who are not subject to disciplinary action “for cause,” are covered by written “at-will” employment agreements or other contracts which allow for termination by NVTAs for no reason or for any reason, including, but not limited to, violations of the standards set forth in this Section. This policy is in addition to any discipline statutorily available for those participating in the selection, award or administration of a contract if a conflict of interest exists. (Cal. Gov. Code, §§ 81000-91014.)

3. Maintenance & Oversight of Sub-Grantees

a. Responsibilities of Management and Oversight of Sub-Grantees

As the designated recipient, NVTAs staff are responsible for routinely monitoring procurements of the sub-grantees to ensure that each is aware of and complies with all applicable Federal statutory and regulatory requirements. This responsibility includes:

- Applying for and receiving FTA grants on behalf of its sub-grantees and performing on-going project management.
- Ensuring adherence to Federal program guidelines through contractual agreements with all sub-grantees.
- Receiving, verifying, and submitting for reimbursements from the FTA for all eligible project expenses.
- Passing through the reimbursements received from FTA for all eligible project expenses.
- Receiving financial and status reports from all sub-grantees.

- Completing financial and progress status reports in the FTA electronic grants management system (TrAMS).

Other such grant administrative actions as necessary to ensure project completion in accordance with all applicable federal rules, regulations, and guidance.

As the designated recipient of FTA Section 5307 funds, NVTa is responsible for ensuring that it and its sub-grantees or partners have established and maintain adequate internal controls over all functions which affect the implementation of a project utilizing such funds, including operating, accounting, financial, and administrative systems. To assure proper accountability for grant or cooperative agreement funds, internal controls used by sub-grantees shall be integrated with the management systems used by NVTa to regulate and guide its operations.

Resources shall be used in accordance with all applicable state, local, and federal laws, regulations, and policies, as well as the terms of the grant or cooperative agreement. Resources shall be safeguarded against waste, loss, and misuse. In addition, reliable data on resource use and safeguards must be accumulated, maintained, and fairly disclosed in reports to the designated recipient manager and FTA.

NVTa shall be responsible for monitoring sub-grantees no less than once per contract year and more often, should it be necessary. NVTa shall assist any of its sub-grantees in setting up the monitoring in order to ensure adherence to FTA guidelines.

NVTa's annual monitoring of its sub-grantees shall include a physical site visit to the location where the sub-grantee maintains its project records. The timing of the site visit shall occur six months from the beginning of any contract and occur at annual intervals while the contract is in force. Any deficiencies noted will result in more frequent inspections or the implementation of a corrective action plan until the deficiencies have been resolved.

NVTa shall utilize the following procedures for monitoring sub-grantees:

- Review of operation of project for scope of work accuracy and efficiency.
- Review of the filing system, the system maintenance, and presence of grant information.
- Review of the grant matching documentation.
- Review of the sub-grantee's Drug and Alcohol Policy.
- Review of the sub-grantee's Title VI Plan and access, if there are current complaints.
- Review of marketing efforts associated with the project.

4. Purchasing Policies

a. Equal Employment Opportunity/Affirmative Action

All procurement documents issued by NVTa require all interested vendors to certify:

- i. 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;
- ii. 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
- iii. That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

b. Disadvantaged Business Enterprise

NVTa has adopted a Disadvantaged Business Enterprise (DBE) Program as required by the Code of Federal Regulations (CFR) at 49 CFR Part 26. The DBE Program sets goals for DBE participation in federally-funded contracts, monitors these contracts to determine DBE participation, and reports DBE participation to FTA. NVTa informs its contractors of these goals and monitors DBE participation by subcontractors.

The Procurement Officer and Contracts Administrator will implement procedures to seek involvement by Small and Minority and Women's Business Enterprises, irrespective of whether they qualify as DBEs, in NVTa's procurement processes to the fullest extent practicable.

Examples of procedures that may achieve that involvement may include:

1. Including qualified small, women-owned, and minority businesses on solicitation lists;
2. Assuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
3. When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum small, women-owned, and minority business participation;
4. Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority businesses.
5. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) above.

Disadvantaged business enterprises (DBEs) 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 NVTAs procurements funded with Federal funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services, as set forth in NVTAs DBE program.

At the time the procurement takes place, the PM will coordinate with NVTAs DBE Liaison Officer for the effective tracking of DBE information as it relates to NVTAs DBE program, goals and reporting.

c. Buy America

Buy America regulations require that all steel, iron, and manufactured products used in the project are produced in the United States. Solicitations for steel, iron, and manufactured products must contain a Buy America certification, unless the procurement is subject to a general waiver or the small purchase waiver. Buy America requirements also apply to capital leases for rolling stock and related equipment. Buy America rules apply to utility work that is within the scope and budget of an FTA funded project. Buy America applies to the entire project, including contracts funded with non-Federal funds.

General waivers are listed in Appendix A to 49 CFR 661.7 and include microcomputer equipment and software. The FAST Act amended 49 USC 5323(j)(13) to include a specific general waiver for purchases of not more than \$150,000.

The small purchase waiver provides that the term "small purchase" means a purchase of not more than \$150,000. On September 16, 2016, the FTA Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver. Purchases made with FTA financial assistance, including capital, planning, or operating assistance, are subject to the waiver. The waiver applies both to purchases made directly by recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient or subrecipient.

This provision of the FAST Act (or subsequent federal authorizations) applies to all purchases made after October 1, 2015. The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, recipients are not permitted to break up procurements in order to stay under the \$150,000 threshold. Finally, if a solicitation may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary.

If a bidder or offeror certifies that it cannot comply with the Buy America requirements, then NVTAs must request, receive, and retain a waiver from the FTA Chief Counsels Office before it may award a contract to that bidder or offeror. Buy America waivers are available on one of the following grounds: applying Buy America requirements would be inconsistent with the public interest; the materials produced in the United States are not produced in a sufficient and reasonably available quantity or are not of a satisfactory

quality (i.e., non-availability waiver); or including domestic material will increase the cost of the overall project by more than 25 percent.

Buy America statute applies to:

- All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds
- Contractors and subcontractors if the contract or subcontract is more than \$150,000, including labor and options
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products
- Purchases of used items

For all procurements of more than \$150,000, NVTa shall include in its bid or request for proposal an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR §§ 661.6 or 661.12 of this part, as appropriate.

NVTa will not obtain signed Buy America certifications after contract award for its own contracts or contracts of other grantees to make the contracts eligible for Federal funding. NVTa may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for Federal funding. NVTa should consider the full GSA-type contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

d. Cooperative Procurement

When circumstances warrant, NVTa may attempt to fill requirements through a cooperative purchasing agreement (without independent bids or quotations) with the State of California, or with other appropriate public agencies. In such cases, NVTa will ensure all state and federal requirements are met.

e. 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:

- i. Unreasonable requirements placed on firms in order for them to qualify to do business;
- ii. Unnecessary experience and excessive bonding requirements (see 5);
- iii. Noncompetitive pricing practices between firms or between affiliated companies;

- iv. Noncompetitive award to any person or firm on retainer contracts;
 - v. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable or potentially unable, to render impartial assistance or advice to NVTA; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.
 - vi. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered;
 - vii. Exclusionary or discriminatory specifications; and
 - viii. Any arbitrary action in the procurement process.
5. Bonding Requirements for Construction Contracts Exceeding One Hundred Fifty Thousand (\$150,000)

Bid Bond Requirements (Construction).

1. Bid security - A Bid Bond must be issued by a fully qualified surety company acceptable to NVTA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.
2. Rights Reserved – In submitting the Bid, it is understood and agreed by bidder that the right is reserved by NVTA to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of NVTA. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of NVTA, shall refuse or be unable to enter into the contract, as NVTA provided above, or refuse or be unable to furnish adequate and acceptable Performance Bond and labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, bidder shall forfeit the bid security to the extent of NVTA's damages occasioned by such withdrawal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check shall prove inadequate to fully recompense NVTA for the damages occasioned by default, then such bidder agrees to indemnify NVTA and pay over to NVTA the difference between the bid security and NVTA's total damages, so as to make NVTA whole.

Performance and Payment Bonding Requirements (Construction).

The Contractor shall be required to obtain performance and payment bonds as follows:

1. Performance bonds

a. The penal amount of performance bonds shall be 100 percent of the original Contract price, unless NVTA determines that a lesser amount would be adequate for the protection of NVTA.

b. NVTA may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. NVTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

2. Payment bonds

a. The penal amount of the payment bonds shall equal:

i. Fifty percent of the contract price if the contract price is not more than \$1 million.

ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

iii. Two and half million if the contract price is more than \$5 million.

b. If the original contract price is \$5 million or less, NVTA may require additional protection as required by subparagraph 1 of the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. NVTA shall determine the amount of the advance payment bond necessary to protect NVTA.

Warranty of the Work

1. The Contractor warrants to NVTA, the Architect and/or Engineer that all materials and equipment furnished under the Contract will be of highest quality and new unless otherwise specified by NVTA, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by NVTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to NVTA.

6. Public Records Act

All bids and proposals received become the exclusive property of NVTa. At such time as a contract award is recommended to the NVTa Board of Directors, all bids and proposals become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" OR "PROPRIETARY." NVTa shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

D. Procedures

1. Independent Cost Estimate

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

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

The ICE will be included in the procurement records. All construction bids will require an engineering estimate as part of the plans, specifications and engineering phase of the project.

2. Excluded Parties List

Any procurement, contract or vendor contract exceeding \$25,000 is subject to the federal Excluded Parties List (EPLS/SAM).

After all qualified bids or quotes have been opened the EPLS/SAM database must be referenced, which contains all businesses that have been barred or suspended from receiving federal funds or participating in federal contracts. The CA will perform an SAM business name search on each of

the businesses for specific procurements. The CA will perform the EPLS/SAM search for procurements in which federal transit funding will be utilized.

- i. If a business reference returns a positive listing on the SAM, a printout of the web page will be included in the procurement file, while a second copy will be forwarded to the bidding business with a notice that they have been removed from consideration in the procurement.
- ii. If the SAM search returns no listing on a specific business, a copy of the web page, showing the negative return, will be made and included in the procurement file.

3. Business References

a. CA Secretary of State Business Entity Search

Prior to final award or completion of a draft contract (pre-counsel review), the CA will perform a Business Entity search on the California Secretary of State's website (<http://kepler.sos.ca.gov/> in 2013), to confirm the business is registered to do business in the State of California.

- i. If the business is not listed on the Secretary of State's website, a business representative will be notified of their status and be provided 30 calendar days to either correct the listing, or provide documentation that they have submitted an application to the Secretary of State and are pending approval.
- ii. If the business is registered in the State of California as a legal business, a copy of the web page listing will be included in the procurement file. If the procurement requires any kind of contract with NVTa, a second copy will be included with the contract documents prior to them being forwarded to NVTa Attorney for final review prior to award.

b. Business License Reference

Prior to final award or completion of a draft contract (counsel review), the CA will contact NVTa's Finance Department (FD) to confirm that the business has a valid business license.

- i. If the business has a valid license, a license number will be recorded in the procurement file and, if a contract, will be forwarded to counsel with the draft contract.

- ii. If the business does not have a valid business license, they will be referred to the FD to discuss their services and the process for obtaining a license.

4. Reasonableness of Price – Price Analysis or Cost Analysis

In all FTA, state, local, and general funded procurements, a price analysis or cost analysis shall be used to determine the reasonableness of the bid price. A price analysis will normally be used to evaluate reasonableness. However, if a valid price analysis cannot be completed, a cost analysis of a bid price may be conducted.

a. Price Analysis

“Price analysis” is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Normally, price analysis may be accomplished through one or more of the following activities:

- i. Comparison of prices received in a bidding situation;
- ii. The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.);
- iii. The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point out apparent gross inconsistencies which should be subjected to greater pricing inquiry;
- iv. The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, with discount or rebate arrangements;
- v. The comparison of proposed prices with estimates of cost independently developed by personnel within NVTA; or,
- vi. The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

b. Cost Analysis

“Cost analysis” is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs in order to form an opinion on the degree to which the

contractor's proposed costs represent the cost of performance of the contract, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the contractor's/offeror's proposal.

Normally, cost analysis may be accomplished through the following:

- i. Verify contractor's cost data.
- ii. Evaluate specific elements of costs and project these elements to determine the effect on prices of such factors as:
 - (i) The necessity for certain costs;
 - (ii) The reasonableness of amounts estimated for the necessary costs;
 - (iii) Allowances for contingencies; and
 - (iv) The basis used for allocations of particular overhead costs to the proposed contract.
- iii. When the necessary data is available, compare the contractor's estimated cost with:
 - (i) Actual costs previously incurred by the contractor;
 - (ii) The contractor's last prior cost estimate for the same or similar estimates;
 - (iii) Current cost estimates from other possible sources; and
 - (iv) Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- iv. Forecasting future trends in costs from historical experience:
 - (i) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
 - (ii) In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

- i. Is the cost allowable in accordance with guidelines in Section 31 of the Federal Acquisition Regulations (FAR)(2)?
- ii. Is the cost allocable to the particular project?
- iii. Is the cost reasonable?

If only one bid is received, the sole bidder must cooperate with NVTAs as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

5. Best Value

"Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the agency.

6. Tag-ons

"Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change. "In scope" changes are not tag-ons.

The use of tag-ons is prohibited and applies to the original buyer as well as to others.

7. Piggybacking

"Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an Indefinite Delivery Indefinite Quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum. Piggy-backing requires preapproval of an assignment by NVTAs and approval of the contractor or consultant.

8. Shared Services

Any Member Agency may utilize an NVTa contract for supplies or services subject to the following requirements.

- a. The Master Contract between NVTa and the contractor or consultant must be final and effective for the term required.
- b. The Master Contract must provide that Member Agencies may individually contract for the supplies or services covered by the agreement directly with the Contractor or Consultant.
- c. NVTa shall enter into an agreement with the Member Agency for shared services.
 1. Member Agencies utilizing shared services must agree to indemnify and defend NVTa for all liability resulting from the use of a Master Agreement or as a result of any supplies or services contracted for by the Member Agency. NVTa will not be a party to the Sub-Agreement.
- d. The Member Agency must complete the Member Agency Sub-Agreement with the Contractor or Consultant.
 1. Sub-Agreements may allow for Member Agencies to include additional insurance requirements or require a scope of work be attached to the Member Agency Sub-Agreement.
 2. The Sub-Agreement must be signed by the Member Agency authorized signatory and by the Contractor or Consultant. Member Agencies shall work directly with the Contractor or Consultant to negotiate and finalize scope, pricing, billing and terms of service.

9. Use of Brand Name

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient characteristics of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

10. Options

NVTa may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If NVTa chooses to use options, the requirements below apply:

- a. Evaluation of Options

The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement.

b. **Exercise of Options**

- i. NVTA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
- ii. An option may not be exercised unless NVTA has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.
- iii. Options must be evaluated at the time of the original bid, and the cost basis for exercising the option must be established at the time of the bid.
- iv. Option prices and/or conditions cannot be negotiated at the time of the exercise of an option.

11. **Advance Payments**

NVTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs except as allowed by FTA requirements. There is no prohibition on NVTA's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

12. **Progress Payments**

NVTA may use progress payments provided the following requirements are followed:

- a. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- b. NVTA must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect NVTA's interest in the progress payment.

13. **Procurement by Micro-Purchases**

Purchases below \$3,000 may be made without obtaining competitive quotations if it is determined by the PM that the price is fair and reasonable.

The PM will document how this determination was derived. The Davis-Bacon Act applies to public works/construction contracts exceeding \$2,000.

14. Small Purchases

For goods and other professional services procurements between \$3,000 and \$100,000, insofar as is practical, no less than three bids shall be solicited. Oral quotes will be accepted with written confirmation received in 24 hours. The responsibility for soliciting quotations rests with the PM. Appropriate documentation, including but not limited to a list of the vendors contacted, a fair and reasonable price determination and the quotes received, shall be filed with the project documentation.

15. Construction and Major Capital Purchases exceeding \$4,000

- a. Major FTA-funded capital projects must further follow FTA's Construction and Project Management Guidelines:

<https://www.transit.dot.gov/funding/procurement/fta-project-and-construction-management-guidelines-2016>

- b. Major FHWA/State-funded projects must further follow Caltrans' Local Assistance Guidelines:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>

- c. Additional references and procedures can also be found at:

Caltrans Construction Manual (July 2017)
<http://www.dot.ca.gov/hq/construc/constmanual/>

Construction Contract Standards
http://www.dot.ca.gov/hq/esc/oe/construction_standards.html

Caltrans Engineering Guidelines, Manuals and Training
<http://www.dot.ca.gov/hq/esc/oe/guidance.html>

E. Competitive Procurement Process

Ensuring Most Efficient and Economic Purchase

Proposed procurements must be reviewed by NVTa staff to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

When appropriate, an analysis will be made of lease vs. purchase alternatives to determine the most economical approach.

Additionally, to ensure sufficient procurement planning and forecasting, consideration should be given to establishing contractual relationships with suppliers and obtaining bids

on repetitive purchase items—for example, parts or shelter repairs—to ensure competitive pricing based upon economies of scale. Grouping and bidding these purchases will ensure favorable pricing based on economies of scale. Creating blanket agreements will lead to a decrease in prices and an increase in efficiency.

Restricted or Prohibited Contracting Methods – The following contract types are prohibited or restricted, as dictated by 2 CFR Part 200- Uniform Guidance:

- **Cost Plus a Percentage of Cost** – The use of Cost Plus a Percentage of Cost contracts is expressly prohibited as a method of contracting.
- **Time and Materials** – NVTa staff may exercise the use of a Time and Materials contract only after determining that no other contract type is suitable and if the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

Procurement by Sealed Bids/Invitation for Bid (IFB)

1. For sealed bidding to be feasible, the following conditions should be present:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business;
- c. 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
- d. No discussion with bidders is needed.

2. If this procurement method is used, the following requirements apply:

- a. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
- b. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
- c. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- d. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.
- e. Any or all bids may be rejected if there is a sound documented business reason.

This method of procurement may be utilized for the purchase of vehicles and equipment. The sealed bid method is the preferred method for procuring construction if the conditions in paragraph (1) above apply.

The procurement files will contain an explanation for the choice of the procurement process being used.

1. Invitation for Bids (IFB)

The CA will work through the ED/PM and counsel for the release of all

- a. RFPs for goods and service;
- b. release of professional service contracts; and
- c. capital projects.

NVTA procurement procedures and FTA guidance will be followed for IFB procurements.

2. Recording of Bids

To assist in having a complete record of the procurement history, for all IFBs records of the bid number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be kept in the official procurement file and be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record shall be completed as soon as practical after bids have been opened and read aloud. CA shall be responsible for maintaining files of these records and abstracts for goods and service, professional services, and capital projects.

3. Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the IFB. Award shall be made to the bidder submitting the lowest bid, unless NVTA determines that the bid is not responsive and/or the bidder is found to be not responsible.

4. Analysis of Limited Bid Response

If one (1) bid has been received, the PM or CA will contact vendors to determine reasons for the single bids. The purpose of this examination is to ascertain and document the reason for the single bid. If the determination is that the IFB restricted competition, the procurement may be rebid. A price or cost analysis shall be performed to establish the reasonableness of the bid price before an award is made.

5. Determination of Responsiveness

- a. Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
- b. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

6. Responsible Bidder Evaluation

Before awarding the contract, NVTa shall determine that a prospective contractor is responsible and that prices are reasonable. Bidders may be asked to provide any information required to determine the responsibility of the bidder. A responsible bidder is one who meets the standards set forth below:

- a. Have adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
- b. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- c. Has a satisfactory record of performance. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible bidders. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
- d. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- e. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
- f. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

- i. A list of debarred, suspended or ineligible firms or individuals.
- ii. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.

iii. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.

iv. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.

v. Documented past performance on contracts with NVT A.

The procurement files will document the determination of responsive and responsible bidders.

7. Rejection of Individual Bids

Any bid that fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

8. Consultant Selection

This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal shall be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation.

Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-

State or local preference shall not be used as factor in the evaluation, ranking, and selection phase. All non-technical evaluation criteria, including DBE participation, shall not exceed 10 percent (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B: Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

9. Develop Final Ranking and Notify Consultants of Results

The selection committee evaluates each proposal; interviews the three or more highest ranked consultants (short listed) if noted in solicitation; and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. The local agency may have an established procedure adopted for conducting debriefings but may also consider the following: The selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

10. Adoption of California Department of Transportation (Caltrans) Local Assistance Procedures Manual (LAPM) Chapter 10: Consultant Selection

Pursuant to 23 CFR 172.5, the NVTAs, as a sub-recipient of funding from Caltrans, shall adopt Chapter 10 of the LAPM. See Appendix E.

11. Award of the Contract

Unless all bids are rejected, award shall be by written or electronic notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.

When award is made to other than the lowest bidder, NVTAs will document in the procurement files the reason for not choosing the lowest bid.

12. Project Completion

All original documentation related to each procurement such as the IFB, bid, control record, board report, ICE, background data, evaluation criteria and scores, meeting reports/notes, as well as the logs documenting bid opening dates and bid receipt dates will be submitted to the CA for storage when the file becomes inactive. For audit purposes, complete procurement files will be maintained for a minimum of five (5) years after the project is closed out and completed unless a different time period is mandated by a funding entity.

13. Request for Qualifications (RFQ) / Request for Proposals (RFP)

The Request for Proposals (RFP)/Request for Qualifications (RFQ) competitive procurement process is used when conditions are not appropriate for the use of an IFB. The latter is generally the case in the purchase of services such as lease agreements, maintenance and service contracts, rental contracts, and professional service contracts. The RFQ/RFP process for goods and services is coordinated by the CA and managed by the PM. The RFQ/RFP process for professional services is managed by the PM and the PM shall consult the latest federal and state procedures for the procurement process.

The RFQ/RFP process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offeror.

a. **Pre-qualified Contractor Lists**

NVTA staff will ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring supplies, equipment, and services are current and include enough qualified sources to ensure maximum full and open competition. Also, NVTA staff will not preclude potential bidders from qualifying during the solicitation period—from the issuance of the solicitation to its closing date.

NVTA may issue a RFQ or RFP in order to create a pool of qualified consultants that will be placed on a "pre-qualified list" for future services or consulting contracts with NVTA. Pre-qualified consultant lists shall not be utilized for any contract subject to award to the lowest responsible bidder pursuant to State law. Pre-qualified consultants will remain eligible for consideration and contract negotiation on an as-needed basis for three years from the pre-qualification notification date. This date may be extended by NVTA in its sole and absolute discretion for an additional two years for a total of five years. Pre-qualified consultants are not guaranteed a contract. NVTA reserves the right, in its sole discretion, to utilize other authorized procurement methods for services or consulting contracts and to not use the pre-qualified list process.

NVTA may make lists of prequalified consultants available for use by its Member Agencies. Member Agencies should check with the NVTA Contract Manager to determine if pre-qualified lists are available. Each Member Agency must enter into an agreement with NVTA prior to utilizing a prequalified list that indemnifies NVTA for any liability resulting from the use of the prequalified list or as a result of any contract between a Member Agency and a pre-qualified consultant.

- b. Each Member Agency may issue a Request for Proposals to consultants on the pre-qualified list, reflecting the Member Agency's individual contracting requirements and Scope of Work. Member Agencies are responsible for ensuring that the competitive process and any resulting contract meets all applicable state, local and federal requirements. Member Agencies will be responsible for processing and negotiating their RFP and any resulting contract award. NVTA will not be a party to any contract between a Member Agency and a pre-qualified consultant.

Issuance of RFQP and RFP Packet

The RFQ/RFP packet will include the following:

- i. Instructions To Proposers - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.
- ii. Attachments - Required forms to be completed by the proposer and submitted with the proposal.
- iii. Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFQ/RFP.
- iv. Scope of Work - Each RFQ/RFP will contain a statement or scope of work prepared by the PM which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of NVTA, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:
 - (i) A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
 - (ii) A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;

- (iii) A proposed delivery schedule; and,
- (iv) A proposed contract period.
- v. Evaluation Criteria – Each RFQ/RFP will contain the criteria and method that will be used to select the successful proposer. If the selection is to be made by lowest price, that will be stated in the solicitation documentation. If the selection process will be a “best value” determination, the solicitation will state so and the relative significance of each criteria will also be included in the solicitation document.
 - (i) Evaluation criteria will be developed and fully modeled prior to the release of the RFP, along with the development of any scoring methodology/forms to be used by the evaluation panel. Any consideration of price in the criteria will include separate evaluation for operations and maintenance (O&M) costs, and capital/procurement costs, placing emphasis on the impact of O&M costs to NVTA.

c. Control Record

A control record will be maintained by the CA in the procurement file as RFP packets are distributed to prospective bidders. The control record profiles the following information:

- i. Date and time RFQ/RFP packets are distributed.
- ii. Names and addresses of vendors receiving the RFQ/RFP and if applicable vendors attending a pre-proposal conference.

The control record serves as a mailing list for the issuance of addenda and provides a record for verification in cases of vendor protests and other issues.

d. Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFQ/RFP has been issued and before the proposals are received. Any information distributed at the pre-proposal conference will be made available to all other prospective proposers in a reasonable time prior to the closing of the bid period, and a copy will be maintained in the procurement file. A roster of attendees at the pre-proposal conference will also be maintained in the procurement file as part of the control record. NVTA will never require vendor attendance at a pre-proposal conference as eligibility for submitting a qualified proposal.

e. Evaluation and Selection Process

Proposals submitted in response to the RFQ/RFP will be evaluated by an Evaluation Committee established by NVTa, in accordance with the criteria set forth in the RFQ/RFP. The Evaluation Committee shall score the proposals and make a recommendation for award of the contract. Original scoring forms, or summary records of the Evaluation Committee scoring, will be maintained in the procurement file.

14. Architectural / Engineering Services Request for Qualifications

The Architectural/Engineering RFQ/RFP process or the RFQ qualifications-based process will be used for the procurement of architectural and engineering (A/E) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services.

Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. Under this method, NVTa may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is conducted with only the most qualified offeror. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified offeror, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even through a firm that provides the above types of services are also potential sources to perform other services.

a. Issuance of an "A/E" RFQ

A notice of an RFQ will be prepared by the CA and will be advertised as a public notice in a newspaper of general circulation and/or in an electronic format on a website that is accessible by the public and vendor community. Additional sources for posting the A/E RFP may include national and state print or online transit community publications.

b. Pre-proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFQ has been issued and before the proposals are received. Any information distributed at the pre-proposal conference will be made available to all other prospective proposers in a reasonable time prior to the closing of the bid period, and a copy will be maintained in the procurement file. A roster of attendees at the pre-proposal conference will also be maintained in the procurement file. NVTa will require vendor attendance

at a pre-proposal conference.

c. Evaluation and Contract Negotiation

The steps to be used for proposal evaluation and contract negotiation for A/E and related services solicitations are as follows:

- i. A qualified evaluation committee shall be established by the PM to review eligible firms and all responses to a RFQ. The evaluation committee is briefed by the PM on NVTA procedures and instructed to maintain confidentiality about the proposal evaluation process.
- ii. Evaluation Committee evaluates the firms based on:
 - (A) Professional qualifications for performance of the required services;
 - (B) Specialized experience and technical competence in the type work required;
 - (C) Capacity to accomplish the work in the required time; and,
 - (D) Past performance in terms of cost control, quality of work and compliance with performance schedules.
- iii. Evaluation team ranks the proposers and if necessary holds discussions with the most highly qualified firms ("short list").
- iv. Evaluation team prepares a selection report listing in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the review of the basis upon which the recommendations were made. A copy of the selection report will be maintained in the procurement file.
- v. The final selection shall be made by the PM or ED.

15. Sole Source Procurements

Sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable.

Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive

proposals and at least one of the following circumstances applies:

- a. The item is available only from a single source;
The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to NVTa, or a situation requiring immediate action by NVTa, as determined by NVTa) for the requirement will not permit a delay resulting from competitive solicitation;
- b. FTA authorizes noncompetitive negotiations;
- c. After solicitation of a number of sources, competition is determined inadequate; or
- d. 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:
 - i. That such manufacturer or supplier is the only source for such item; and
 - ii. that the price of such item is not higher than the price for such item by like customers.

A cost analysis must be conducted before an award of sole source contract.

The reasons for the sole source procurement and the cost analysis will be documented in the Procurement File.

16. Emergency Procurements

Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical NVTa function or activity) will be handled immediately and expedited as required. The ED has the authority to approve the purchase of all goods and services in emergency conditions. If the ED is unavailable to authorize an emergency procurement, the ED may provide the PM with the necessary authorization. Upon completion of the emergency procurement, the PM will document the actions taken and execute a proper requisition.

17. Vendor Protest Procedures

Protest procedures will be included directly or by reference in all procurements. For procurements under \$100,000 vendors need to be directed to NVTa's website where a copy of the protest procedures can be obtained. For procurements over \$100,000 the protest procedures will be included in the procurement solicitation.

NVTA Protest Procedures

A protest must be submitted by an Interested Party no later than seven (7) business days prior to the date and time designated for submittal of bids or proposals or within 5 business days after the allegedly aggrieved person or party is notified of the intent to award or recommend award of the contract. If the fifth day falls on a Saturday, Sunday or holiday it shall be submitted by 5:00 p.m. the following business day. All protests must be in writing and shall contain the following:

- the procurement title and/or number under which the protest is made;
- the name and address of the allegedly aggrieved party;
- a detailed description of the specific grounds for the protest and all supporting documentation;
- the specific ruling or relief requested; and
- the written protest shall be addressed to Executive Director, NVTA, 625 Burnell Street, Napa, CA 94559 with copies sent to all other bidders.

1) Response to Protest.

- i. Upon receipt of a timely written protest, the ED will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the Chairman of the Board.
- ii. The decision made by the ED shall be final and conclusive unless appealed in writing to the Board Chair within 5 business days of receipt by the protestor. The Board Chair will consider the appeal and promptly issue a written decision, which shall be final and conclusive.
- iii. A Protestor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the protestor's right, if any, to commence litigation.
- iv. Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in its rejection by NVTA.
- v. After the exhaustion of all administrative remedies, the protestor shall have 10 calendar days to commence litigation. Failure to commence litigation within this limitation shall constitute an absolute waiver of the protestor's right. State laws permit NVTA to award and execute the Contract during this 10-day period.

- vi. Public Work/Construction Contracts. For construction contracts awarded by the NVTB Board, the protesting party may appear and be heard at the meeting during which the contract is scheduled for award. In the event a protesting party has been declared non-responsible, the protesting party is entitled to a public hearing before the Board.

- a. Written Protest Procedures for FTA Funded Projects

(Only if Federal Transit Administration funds are used in the procurement)

All disputes relating to NVTB for FTA procurements will be addressed as documented in Article

Appeals and Remedies. In all instances where a protest is received in regards to a contract required to comply with PTA Circular 4220.IF, as may be amended, NVTB is required to disclose information regarding the protest to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with NVTB before pursuing a protest with FTA.

FTA protest reviews will be limited to: 1) NVTB's failure to have, or to have followed, its protest procedures, or its failure to review a complaint or protest; or 2) violations of federal law or regulation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within 5 business days of the date the Protester knew or should have known of an adverse decision by NVTB or other bases of appeal to FTA. Violations of federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of the State or local authorities.

CHAPTER 4 CONTRACT ADMINISTRATION

F. Contract Administration Guidelines

1. NVTB will originate the agreement.
2. Once a contract has been fully executed, a Notice to Proceed will be issued to initiate contract work.
3. All agreements will be assigned a contract number, which must be referred to on all orders and the contractor's invoices.
4. PM, ED and FD will approve all invoices before payment is issued.
5. For each contract over \$100,000 a contracting administrator will be assigned to monitor contract terms and conditions. The contract administrator and the project manager should not be the same individual.

6. A contract amendment is necessary for a change in scope of work, term or compensation and must be completed before additional work or payment is authorized.
7. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.
8. The ED/PM will prepare a letter of completion for the NVTB Board of Director's approval and recorded with the Napa County Recorder's office.

G. Federal Procurement Requirements and State Law

The formation of contracts shall conform to the Federal Transit Administration's (FTA) Third Party Contracting Guidance, as contained in FTA Circular 4220.IF, and applicable California State law, whichever is more stringent. Any subsequent changes or amendments to either the Circular or State law after the effective date of this Procurement Policy shall be incorporated into said Policy by this reference.

The procurement rules dispersed throughout this Policy are extracted from, or fashioned after, FTA Circular 4220.F, and Third Party Contracting Guidance.

The aforementioned Circular applies to all FTA grantees and sub-grantees that contract with outside sources under NVTB-assisted programs. This Circular sets forth the requirements that NVTB, as a grantee, must adhere to in the solicitation, award, and administration of its FT A-assisted third party contracts.

If a grantee accepts FTA operating assistance, the requirements of this Circular apply to all transit-related third party Purchase Orders and contracts awarded with only that portion of operating funds specifically allocated to the property or services being procured. These requirements do not apply to procurements undertaken in support of capital or non-capital projects completely accomplished without PTA funds, or to those operating and planning contracts awarded by grantees that do not receive FTA operating and planning assistance.

Conformance with State and Local Law. NVTB shall use its own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, including the requirements and standards identified in FTA Circular 4220.IF.

Self-Certification. The FTA intends to rely primarily on grantees' "self-certifications" that their procurement system meets FTA requirements to support the required finding that a grantee has the technical capacity to comply with Federal procurement requirements. Consequently, the Executive Director must self-certify NVTB procurement system in the FTA Annual

Certification/Assurance Process when applying for grants. The FT A will monitor compliance as part of its routine oversight responsibilities.

APPENDIX LIST

- A. FTA Required Model Clauses
- B. Determination of Price Reasonableness
- C. Procurement File Checklist
- D. Procurement Documentation Checklist

APPENDIX A: FTA & FHWA Required Clauses

The FTA requires certain contract provisions for each procurement depending on the nature, type and value of the procurement. As the federal government makes regular updates to procurement guidelines and the clauses required in such, the CA will reference the required clauses tables provided by the FTA either through the Best Practices Procurement Manual (BPPM) or the Triennial Review Program latest workshop workbook available through the FTA website.

- [Best Practices Procurement Manual](#)
- [Third Party Contract Requirements – FTA Circular 4220.1F](#) (or most recent)
- [FTA Frequently Asked Questions Procurement and Contracting](#)

The FHWA requires certain contract provisions for each procurement depending on the nature, type and value of the procurement. As the federal government makes regular updates to procurement guidelines the PM shall reference the applicable provisions as outlined in the current edition of the Local Assistance Procedures Manual issued by Caltrans.

<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>

APPENDIX B: DETERMINATION OF PRICE REASONABLENESS

PO/Contract Number: _____(If applicable)

Vendor: _____

Items Purchased: _____

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

- ☐ Adequate competition
- ☐ Current price lists
- ☐ Catalog price
- ☐ Prices found reasonable on recent previous purchases
- ☐ Advertisements
- ☐ Similar items in a related industry
- ☐ Independent price estimate (based on a good understanding of what the item should cost)
- ☐ Other basis. Explain Below:

Prepared By: _____

Date: _____

APPENDIX C: PROCUREMENT FILE CHECKLIST

GENERAL INFORMATION

Procurement Summary Memo (utilize template)

- General Description of the Procurement Item
- Explanation of the choice of procurement being used
- Federal Clauses and Certifications Checklist
- Bid Number
- Procurement Control Record
 - Date/Time RFP is distributed
 - Names/Addresses of Vendors receiving such
- Independent Cost Estimate
- Price/Cost Analysis
- Bid Opening Date/Time
- Names of Bidders
- Bid prices
- Determination of Responsive and Responsible Bidders
- Bid Evaluation Information
- Original scoring forms, or summary records of the Evaluation Committee scoring
- Reason for not choosing the lowest bid, if such is not chosen
- California Secretary of State Business Entity Web Page Printout
- Santa Rosa Business License Number
- Selection Report

IF APPLICABLE

- Buy America Certifications
- Lobbying Certifications
- SAM.gov Web Page Printouts
- Pre-Proposal Conferences
 - List of information made available
 - List of vendors attending

APPENDIX D: PROCUREMENT DOCUMENTATION CHECKLIST

Contract #: _____

Date: ____/____/____

Project: _____

Contract Term: _____

TAB 1 - Project Identification:

- ☐ Project planning and identification
- ☐ Rationale for method of procurement
- ☐ Selection of Contract Type
- ☐ Written narrative of Procurement (over \$100,000)

TAB 2 - Solicitation Development:

- ☐ Independent Cost Estimate
- ☐ If only quotes required, check here
- ☐ State or local government purchasing schedule
- ☐ No geographic preferences
- ☐ Solicitation and specification development
- ☐ Appropriate supporting documentation
- ☐ Attachment of required federal clauses and certifications
- ☐ Bus Contract (less than five years)
- ☐ Progress payments-Provisions for title to property (materials, work in progress, and finished goods)
- ☐ Other provisions (e.g. performance bond)

TAB 3 - Solicitation and Bid Opening:

- ☐ Advertisement of the solicitation (no geographic preference)
- ☐ Approved Equals/Request for Clarifications process
- ☐ Documentation of Pre-Bid Meeting
- ☐ Proposal(s) opening and recording (if Sole Source, include justification)
- ☐ Review of all proposals in accordance with selection criteria
- ☐ Evaluation of all Proposals for responsiveness
- ☐ Tabulation of Proposal documents including selection criteria
- ☐ Cost or Price Analysis
- ☐ Award Selection and Justification
- ☐ Basis for contract price
- ☐ No advanced payments
 - ☐ Advanced payment justification
 - ☐ FTA approval, if required
- ☐ Progress Payments

- ☐ Written notice of activity approval given to proceed

TAB 4 - Award and Contract Administration:

- ☐ Progress Payments
- ☐ Contract w/appropriate clauses and certifications.
- ☐ Document "Change Orders" and associated "Cost or Price Analysis"
- ☐ Modify and report to oversight agency the changes to milestones and anticipated closeout.

TAB 5 - Project Closeout and Reimbursement:

- ☐ Request documentation to advance to reimbursement process
- ☐ Finalize milestones
- ☐ Begin physical and administrative closeout proceedings
- ☐ Review final project file for completeness and file away
- ☐ Request approval for project closeout

Procurement Complete : _____(Reviewer)

Date: ____/____/____

**APPENDIX E: CHAPTER 10 OF CALIFORNIA DEPT. OF TRANSPORTATION
LOCAL ASSISTANCE PLANNING MANUAL**

(Attach Chapter 10 Here)