



U.S. Department
of Transportation
**Federal Transit
Administration**

ORDER

FTA O 4206.1B

April 27, 1999

**Subject: SOURCE SELECTION PROCEDURES FOR COMPETITIVE
NEGOTIATED PROCUREMENTS**

1. **PURPOSE.** This order applies to competitive negotiated procurements to be awarded under a fixed-price contract or cost-reimbursement type contract, where price and other factors are considered in selecting the contractor. It also applies to procurements where technical and/or management proposals are obtained and where evaluation criteria is included in the solicitation. This order does not apply to procurements below \$50,000, nor those estimated at \$50 million and above.
2. **CANCELLATION.** This order cancels FTA Order 4206.1A, "Source Selection Procedures for Competitive Negotiated Procurements," dated 5-19-94.
3. **REFERENCES.**
 - a. 48 CFR, Chapter 1, Federal Acquisition Regulation (FAR).
 - b. 48 CFR, Chapter 12, Transportation Acquisition Regulation (TAR).
 - c. Competition in Contracting Act of 1984, P.L. 98-369.
 - d. Transportation Acquisition Manual (TAM), Subchapter 1204.70, "Review and Approval of Contracts and Contract Related Documents," dated 10-1-94.
 - e. Transportation Acquisition Manual (TAM), Subchapter 1207.1, "Acquisition Plans," dated 10-1-94.
 - f. FTA Order 4201.1, "Procurement Request Package," dated 6-18-90.
 - g. FTA Order 4208.1, "Advance Procurement Planning System," dated 10-19-90.
 - h. FTA Order 4215.1A, "End of Year Purchases," dated 7-22-91.
4. **DEFINITIONS.**
 - a. Competitive Negotiated Procurements--A situation where the selection of a contractor is made after two or more firms have submitted offers in response to a Government request, and a contract is awarded whereby discussions may be held with the responding firms.

Distribution: FTA Headquarters Offices (T-W-2)
FTA Regional Offices (T-X-2)

OPI: Office of Procurement

- b. Advance Procurement Plan (APP)--A plan which covers all FTA procurements over \$50,000, developed jointly by the originating program office and the Office of Procurement, which provides a listing of all proposed acquisitions for a specified fiscal year.
- c. Request for Proposal (RFP)--The solicitation document issued to all prospective sources prescribing the requirements to be fulfilled in the preparation and submission of a proposal.
- d. Technical Evaluation Committee (TEC)--A panel which is composed of a minimum of three members and no more than seven with specialized skills and knowledge in the field of endeavor on which proposals have been developed and performed pursuant to the terms of the RFP.
- e. Technically Acceptable. This classification is assigned to a proposal which has been determined to be capable of performing all required work as set forth in the RFP. A proposal may not be classified as being technically acceptable if the revision to the proposal would constitute a total rewrite of the proposal.
- f. Capable of becoming Technically Acceptable. This classification would include those proposals whose initial review indicates that the offeror has a reasonable chance of becoming technically acceptable and of being selected for award. These offerors will be afforded an opportunity, through the communications process, to address the ambiguities in the proposal or other concerns (e.g., perceived deficiencies, weaknesses, errors, or omissions) in their proposal in order to determine technical acceptability.
- g. Technically Unacceptable. This classification is assigned to a proposal, which, upon evaluation, has been determined to be incapable of performing all required work. A proposer in this category will not be afforded an opportunity to submit additional material because the revision of such a proposal would constitute a total rewrite of the proposal. This determination must be based upon evaluation of the proposal solely on the basis of its actual content against the express criteria set forth in the RFP.
- h. Competitive Range. A written determination by the Contracting Officer which establishes those firms that have the most highly rated proposals, unless the range is further reduced for purposes of efficiency. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency, the contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Determinations for the competitive range are made on the basis of technical, cost or price, past performance, and other factors that were stated in the solicitation.
- i. Clarification. Means limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated (offerors may be given the opportunity to clarify certain aspects of proposal).

- j. Communications with offerors before establishment of the competitive range. Communications are exchanges between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. Communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.
 - k. Exchanges with offerors after establishment of the competitive range (Discussions). This means negotiations between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal.
 - (1) discussions are tailored to each offeror's proposal
 - (2) the primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.
 - (3) The Contracting Officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award.
 - l. Deficiency. Refers to a material failure of a proposal to meet a Government's requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.
 - m. Weaknesses. Refers to a flaw in the proposal that increases the risk of unsuccessful contract performance.
 - n. Statement of Work. Refers to the document that describes technical requirements for goods or services, translates requirements into contracts and contracts into performance environments for the achievement of projects and programs.
 - o. Contract Specialist. Refers to the individual acting as a representative of the Contracting Officer serving in the capacity of coordinating, negotiating, and finalizing all aspects; i.e., both technical and business, as it relates to procedures for negotiated procurements.
 - p. Contracting Officer. The official to whom authority has been delegated pursuant to FAR Subpart 1-603 entitled, "Selection, appointment, and termination of appointment" by the Administrator, FTA, to enter into, administer, or terminate contracts and make related determinations and findings.
5. **APPLICABILITY.** This order establishes the administrative procedures governing the direct competitive acquisition of goods and services for use by FTA.
6. **POLICY.** It is the policy of FTA that all goods and services be procured in a manner that ensures maximum full and open competition. To that end, competition without providing

for full and open competition is a violation of law, unless permitted by one of the exceptions in FAR Subpart 6.3 entitled, "Other Than Full and Open Competition." This policy shall not adversely affect such congressionally mandated programs as those dealing with small, minority, and disadvantaged businesses, or such Presidential actions as those dealing with the establishment of minority goals.

7. **PROCUREMENT REQUEST (PR) PACKAGE.** Prior to implementation of the steps involved in the competitive procurement process, a PR package shall be prepared to serve as the foundation for the procurement. Initiation of the PR package is to be handled by the responsible program office. When completed, the PR package shall be forwarded to the Office of Procurement, and should include the documents as described under FTA Order 4201.1, "Procurement Request Packages." It shall also provide adequate lead time in accordance with the lead times and cut-off dates specified under FTA Order 4215.1A, "End of Year Purchases."
8. **PROCEDURES.**
 - a. Procedures to be followed by the Office of Procurement. The following steps shall be followed by the Office of Procurement in processing negotiated competitive procurements involving multiple sources when the award is to be made on the basis of price and other factors:
 - (1) Complete the PR Status Report and Procurement Plan (see Attachment 1);
 - (2) Provide sponsoring program office formal notification of receipt of PR package, including results of review of PR content and schedule for accomplishment of major steps of procurement process (see Attachment 2);
 - (3) Synopsise the proposed procurement in the Commerce Business Daily;
 - (4) Prepare and issue the solicitation document;
 - (5) Receive and evaluate, from a financial and business perspective, the technical, management, and cost proposals. Concurrently with performing the business and financial evaluation, transmit the technical proposals to the sponsoring program office for evaluation by the TEC;
 - (6) Participate as a nonvoting member in the technical evaluation of proposals through attendance at the TEC meeting;
 - (7) Transmit proposals estimated at \$500,000 and above, when deemed appropriate, to the Defense Contracting Audit Agency or the FTA contractor directly for a preaward audit, or perform cost analysis when the preaward may be waived under the conditions prescribed in FAR Subpart 15.404-2, Information to support proposal analysis;
 - (8) Determine the competitive range;
 - (9) Prepare prenegotiations plan for approval by the Contracting Officer and concurrence by the Director, Office of Procurement;

- (10) Conduct written or oral discussions with all offerors in the competitive range;
 - (11) Request and receive revised proposals and/or subsequent final proposal revisions;
 - (12) Perform business and financial evaluation of revised proposals and/or subsequent final proposal revisions;
 - (13) Prepare source selection determination for approval by the Contracting Officer and concurrence by the Director, Office of Procurement setting forth the rationale and basis for selection of the successful awardee for award;
 - (14) Finalize preparation of contract file documentation, such as post summary of negotiations, contract document, Public Affairs Notice, Contract Approval Sheet and memorandum for approval by the FTA Administrator; and,
 - (15) Conduct debriefing of unsuccessful offerors upon their written request.
- b. Procedures to be followed by the sponsoring program office. The following steps shall be followed by the sponsoring program office in processing negotiated competitive procurements:
- (1) Prepare the PR consistent with the requirements set forth in FTA Order 4201.1 which addresses the PR package.
 - (2) Be responsible for organizing and structuring evaluation of technical and cost proposals from a technical perspective. The sponsoring program office shall recommend for approval by the Contracting Officer, a list of individuals to serve on the Technical Evaluation Committee (TEC). This list, inclusive of the background of each prospective member must be included in the PR package or submitted at least two weeks prior to the due date for receipt of proposals as set forth in the RFP. The membership of the TEC shall be such that it is:
 - (a) Composed of a minimum of three qualified voting members with background skills and knowledge in the field of endeavor covered by the respective RFP. It is recommended that the committee be composed of five to seven voting members to avoid disruption of the procurement process. (NOTE: Dependent on the stage of the process, it may be necessary to either cancel the procurement or reevaluate the proposals should one member of a three-member TEC find that he/she is unable to complete the evaluation process for circumstances beyond his/her control.)
 - (b) Comprised of individuals with absolute authority to make decisions independent of and free from undue influence from supervisory management staff control. Accordingly, the membership of the committee will not be composed of both supervisory staff and subordinates who report either directly to him/her or to subordinate supervisors under the chain of his/her command.

- (c) Chaired by a voting member of the TEC. The Chairperson shall be appointed by the Office Director of the originating office for the procurement. The Chairperson will assume responsibility for preparing and submitting to the Office of Procurement a comprehensive evaluation report of the results of the TEC.
- (3) In addition, the members of the TEC must be informed that the committee will not be disbanded prior to receipt and evaluation of final revised proposals. To that end, no member will be appointed to the TEC who cannot serve and participate in the evaluation of proposals throughout the entire duration of the procurement commencing with evaluation of initial proposals through award of the resultant contract and debriefing of unsuccessful offerors. No changes will be made to the composition of the TEC without prior approval of the Contracting Officer.
 - (4) Ensure that members of the TEC are familiar with their responsibilities, which entail the following. Each member shall:
 - (a) Be available at the designated place and time for scheduled meetings. If for some reason this is not possible, the TEC Chairperson should be notified as soon as possible of the anticipated absence;
 - (b) Be discrete in conduct during the evaluation process, especially in the presence of offerors. The Contract Specialist or the Contracting Officer will counsel individuals new to the contracting process when circumstances warrant such action;
 - (c) Be prepared to fully discuss the issues at each meeting of the panel;
 - (d) Review the RFP and each proposal in detail and provide the Chairperson with detailed information regarding the strengths and weaknesses (both favorable and unfavorable) of each proposal for use in developing a comprehensive evaluation report; and
 - (e) Score each proposal in accordance with the established evaluation criterion set forth in the RFP and rank each offeror on the basis of his/her technical standing, in accordance with each of the phases set forth in the succeeding paragraphs.
 - (5) Transmit the technical proposals to the members of the TEC along with precise written instructions that establish how to safeguard and treat proposal data. These instructions shall be designed to maintain the integrity of the evaluation process by ensuring that:
 - (a) All proposal information be maintained in strict confidence and only released on a need-to-know basis for purposes of proposal evaluation. No information shall be disclosed to anyone whose official duties do not require such knowledge concerning the identity and number of proposals

received. Any questions regarding the proposals' content or the evaluation process should be directed only to the Contract Specialist or the Contracting Officer. No contact whatsoever shall be made with any of the proposing organizations;

- (b) There is no conflict of interest on the part of anyone participating in the evaluation. It is required that anyone participating in the evaluation process have been so identified to the Office of Procurement by a list identifying these individuals who will perform as procurement officials. A conflict of interest may exist when a panel member has had formal connection with one of the offerors, such as: outstanding or current offers of employment, significant ownership of stock, or partnership in any organization submitting a proposal; and
 - (c) No communication regarding the requirement is held between any evaluation panel member and any of the organizations making an offer. This does not prohibit the response of the panel Chairperson to inquiries made and answered through the Contracting Officer either for technical clarification of the RFP, prior to the time proposals are submitted or during the discussion stage, and the panel member is a participant in such discussion at the direction of the Contracting Officer.
- (6) Schedule a formal meeting of the TEC to take place no later than five working days following receipt of the proposals for evaluation purposes from the Office of Procurement. Ensure that the Contract Specialist assigned the procurement or an authorized designee of the Contracting Officer is advised of and in attendance at the TEC meeting for the evaluation of initial proposals received, as well as the evaluation of final proposal revisions.
 - (7) Assist the Office of Procurement in the preparation of the content of letters to unsuccessful offerors and in debriefing sessions with unsuccessful offerors.

9. EVALUATION PHASES.

- a. Initial Evaluation Phase. Upon receipt of proposals from the Office of Procurement, the TEC shall begin reviewing the technical proposals in the following sequence:
 - (1) Following completion of the preliminary reviews by each member, the Chairperson shall convene the panel for in-depth discussion of the findings. Each member shall bring written comments and point-ranking scoresheets. The written comments and scoring of the proposals may be adjusted as a result of and during the course of the formal evaluation meeting of the TEC.
 - (2) Following detailed discussions among the TEC members, each member shall rescore the technical proposals and rewrite his comments as deemed necessary, based on such discussions. Members should be cautioned that no undue influence shall be exerted on any member relative to his/her respective findings and assessment of the proposals. As a result of evaluation of the respective proposals, each will be classified as technically acceptable, technically unacceptable or capable of becoming technically acceptable. These classifications must be supported by written narrative both on the individual

rater's sheet and the summary evaluation report. It is important that each member comment lucidly and specifically on the strengths and weaknesses of each proposal based on application of evaluation criteria set forth in the RFP.

These comments are used for purposes of oral and written negotiations, debriefing offerors after award, and will become a part of the official contract file.

- (3) Following the initial meeting of the TEC, the Chairperson shall prepare a comprehensive evaluation report summarizing the overall consensus of the TEC relative to each proposal. The summary report shall contain a narrative discussion of the strengths and weaknesses by criterion found in each proposal, inclusive of a list of questions to be raised during oral or written discussions with those offerors whose proposal was determined to be either technically acceptable or capable of becoming technically acceptable through communications. A cover memorandum to the Contracting Officer transmitting the technical evaluation will be prepared and submitted to the Contracting Officer under the signature of the TEC.
 - (4) The Chairperson of the TEC shall select at least one of the panel members to serve on a subpanel with the Chairperson for the purpose of assisting the Contract Specialist in holding technical discussions, as needed, with offerors during negotiation of technical aspects of proposals. The TEC should provide sufficient instructions to the subpanel regarding the questions formulated by the committee to be addressed during negotiations to enable offerors to present intelligent oral responses and subsequent addenda to their proposals for further evaluation by the TEC.
- b. Final Evaluation Phase. Within five working days after the last technical discussion and/or submission of additional information by the offerors has been received, the TEC subpanel shall reconvene and evaluate the addendum or Final Revised Proposals and prepare the final technical evaluation report. This report shall be prepared by the Chairperson of the TEC in the same manner and with the same level of specificity as indicated above for the initial proposal evaluation.
- c. Cost Proposal Evaluation. Subsequent to completion of the evaluation of technical proposals, the accompanying cost proposals, exclusive of all pricing data identifying proposed dollar amounts for such factors as the proposed labor rates, general and administrative rates, and material costs, etc. will be furnished to the TEC if deemed necessary by the Contracting Officer, for review after oral or written discussions are underway. The cost proposals shall be expunged of all pricing data that could serve to unnecessarily influence or sway the technical scoring and ranking of the respective firms by the TEC. The cost proposals will be evaluated by the TEC as follows:
- (1) The proposed resources (labor, materials, space, etc.) excluding prices, shall be evaluated from a quantitative and qualitative point of view. The TEC shall review the number of hours or days, i.e., level of effort of technical staffing proposed as well as the ratio of senior to support level expertise. The use of consultants and/or subcontracts will be evaluated to determine their necessity and qualifications. The panel will examine major indirect cost items such as

materials, computer time, and travel to determine the necessity for and if the proper balance of such items is presented by the offeror to result in satisfactory performance of the contract objectives.

- (2) Upon completion of the review of the cost proposals, the Chairperson of the TEC shall submit a written report to the Contracting Officer enumerating the TEC's recommendations for both negotiating purposes and documentation of the contract file.
- (3) Technical and cost proposal evaluations are to be completed and the comprehensive summary report, inclusive of the individual rating sheets prepared by each member of the TEC and submitted to the Office of Procurement not later than seven working days following each meeting of the TEC.

10. DEBRIEFING RESPONSIBILITIES.

- a. The TEC chairperson shall be available to debrief all unsuccessful offerors. During the debriefing, the TEC chairperson is responsible for explaining and justifying the technical strengths and weaknesses of the technical evaluation scores.
- b. The Contracting Officer is responsible for the overall cost/technical responsibilities during the debriefings.

(Original signed by Gordon J. Linton)

Gordon J. Linton
Administrator

ATTACHMENT 1

PROCUREMENT REQUEST (PR)
STATUS REPORT AND PROCUREMENT PLAN

1. PR Number and Date Received:
2. Method of Procurement:
3. Program Office/Program Person:
4. Brief Description of Procurement:
5. Date PR Reviewed by Undersigned:
6. Review of the PR discloses the following:
 - a. Clearances identified below are required:

	<u>TYPE</u>	<u>DATE OBTAINED BY PROGRAM OR TARGET DATE FOR CLEARANCE TO BE OBTAINED BY SPECIALIST</u>
***	(1) ADP thru M-30 and _____ TAD-1 & 20 -- All competitive and sole source actions exceeding \$50,000,000	
	(2) OMB--When data will _____ be collected from 10 or more respondents	
	(3) EEO Clearance thru _____ appropriate DOL Office on actions exceeding \$10 Million	
	(4) Small Business _____ Subcontracting Plan thru TCR-1 and SBA Reps pursuant to PL 95-507	

DATE OBTAINED BY PROGRAM
OR TARGET DATE FOR
CLEARANCE TO BE OBTAINED
BY SPECIALIST

TYPE

- (5) Small and Disadvantaged Business Committee Review _____

- b. Discussion of condition of SOW, planned course of action and target date for completion of action required by you; (i.e., is SOW adequate or contain deficiencies requiring revision by program office) _____

- c. Competitive Actions Discussion of condition of evaluation criteria, planned course of action, and target date for completion of action required by you _____

- d. Non-competitive Actions Discussion of condition of JOFOC, planned course of action, and target date for completion of action required by specialist _____

- 7. Source Selection Plan Approval _____

- 8. Target Date for completion of drafting of CBD Synopsis _____

- 9. Target Date for Completion of Drafting of Solicitation Document _____

- 10. Submission of solicitation document to OST for approval _____

11. Target date for release of RFP _____
12. Target date for receipt of proposals _____
13. Target date for forwarding proposals to program office for review _____
14. Target date for forwarding proposals to Oversight Board for distribution to the TEC

15. Approximate time allowed for completion of the technical evaluation _____
16. Target date for completion of :
 - a. Competitive Range Determination _____
 - b. Prenegotiation Objectives _____
17. Target date for conducting negotiation _____
18. Target date for final revised proposals _____
19. Target date for completion/drafting of:
 - a. Summary of negotiations _____
 - b. Oversight Board report to SSO _____
 - c. SSO selection of contractor _____
 - d. Contract document _____
 - e. Contract Award _____
 - f. Award synopsis on actions exceeding \$25,000 pursuant to FAR 5.301

 - g. COTR letter to contractor _____
 - h. COTR memo to program office _____
20. Target date for completion of PAR form _____

ATTACHMENT 2

SCHEDULE FOR ACCOMPLISHMENT OF
MAJOR STEPS OF PROCUREMENT PROCESS

Planned Schedule for Processing of
Procurement Request for Contract

Lucy T. Jackson, Director
Office of Procurement, TAD-40

Office Director of Responsible
Program Office

Please be advised that your procurement request (PR), providing for the acquisition of _____, was received in the Office of Procurement on _____. The number assigned to the PR is _____.

Review of the PR discloses that the following areas require correction:

- a.
- b.
- c.
- d.

Considering that the corrections required are minor, I have elected to commence with the procurement process. However, it is requested that the supplemental information be forwarded for receipt by this office within five (5) working days of the date of this memorandum.

(or)

The nature of the above required corrections preclude this office from commencing with the procurement process because:

- a.
- b.
- c.
- d.

Accordingly, the subject PR is returned herewith. The procurement process will be initiated immediately upon receipt of a new PR revised in accordance with the corrections outlined above. I would be happy to meet with and assist you in the preparation of a revised PR.

It is contemplated that the procurement schedule for accomplishment of the major steps in the procurement process will be as follows:

RFP Issue Date:	_____
RFP Closing Date:	_____
Technical Evaluation Report Due:	_____
Prenegotiation Position Approved:	_____
Anticipated Date of Negotiations:	_____
Summary of Negotiations Approved:	_____
Date of Administrator's Approval of Contract:	_____

Approval for Sole Source Acquisitions is as follows:

Contracting Officer - Proposed contract not exceeding \$500,000;

Competition Advocate - Proposed contract over \$500,000 but not exceeding \$10,000,000;

Head of the Procuring Activity - Proposed contract over \$10,000,000 but not exceeding \$50,000,000;

Senior Procurement Executive - Proposed contract over \$50,000,000;

Final Review and Approval of Contract Award by Source Selection Official _____;
and

Anticipated Contract Award Date _____.

All of the above dates are predicated upon completion of the prenotification review process by the date set forth above. If the established date for completion of the prenotification review is not met, these dates will be adjusted accordingly and you will be so notified.

The Contract Specialist assigned this procurement is _____, who can be reached on 366-4980.