



PROCUREMENT POLICY AND PROCEDURES

RURAL ECONOMIC ASSISTANCE
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Effective Date(s) of Procurement Policies

The effective date of all procurement procedures described in this manual is January 25, 2021. If a policy is added or modified subsequent to this date, the effective date of the new/revised policy will be indicated on the Amendment Matrix on the following page.



Rural Economic Assistance League, Inc
Amended Procurement
Policy & Procedures

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POLICIES ASSOCIATED WITH EXPENDITURES AND DISBURSEMENTS

PURCHASING POLICIES AND PROCEDURES

INTRODUCTION

The following procurement manual is intended to provide an overview of the procurement policies and procedures for Rural Economic Assistance League, Inc. which shall be referred to as “R.E.A.L., Inc. or “the Organization” throughout this manual.

R.E.A.L., Inc. is incorporated in the state of Texas. R.E.A.L., Inc. is exempt from federal income taxes under IRC Section 501(c)(3) as a nonprofit corporation. R.E.A.L., Inc’s tax-exempt mission is:

Overall Goals:

Dignified quality of life for rural communities in South Texas

Vision:

We honor the value, worth and dignity of ALL people through safe, caring, holistic and community-centered services.

Mission:

R.E.A.L. is the leading regional rural organization providing compassionate community-driven solutions by serving, so that EVERYONE has a fulfilling-independent quality of life.

If a particular grant or award has provisions that are more restrictive than those in this manual, the more restrictive provisions will be followed only for that grant or award.

The contents of this manual were approved as official policy of the Organization by the Board of Directors on _____. All R.E.A.L., Inc. staff members are bound by the policies herein, and any deviation from established policy is prohibited.

Overview

THE POLICIES DESCRIBED IN THIS SECTION APPLY TO ALL PURCHASES MADE BY R.E.A.L., Inc.

R.E.A.L., Inc will refer to FTA throughout this document but will be applicable to other federal, state, and local awarding agencies.

R.E.A.L., Inc requires the practice of ethical, responsible, and reasonable procedures related to purchasing, agreements and contracts, and related forms of commitment. The policies in this section describe the principles and procedures that all staff shall adhere to in the completion of their designated responsibilities.

The goal of these procurement policies is to ensure that materials and services are obtained in an effective manner and in compliance with the provisions of applicable federal statutes and grant requirements.

Responsibility for Purchasing

All department heads or their designees shall have the authority to initiate purchases on behalf of their department, within the guidelines described here. Department directors shall inform the Accounting Department of all individuals that may initiate purchases. The Accounting Department shall maintain a current list of all authorized purchasers.

The Accounting Department shall be responsible for processing purchase requisitions. The Director of Finance has approval authority over all purchases and contractual commitments and shall make the final determination on any proposed purchases where budgetary or other conditions may result in denial.

Public Access to Procurement Information

Procurement information shall be a public record to the extent provided in Texas Government Code, Chapter 552, and, except for procurement information which may be withheld from disclosure by R.E.A.L., Inc. pursuant to Subchapter C, Chapter 552, of the Texas Government Code, as amended, or which cannot be disclosed pursuant to federal or state law, shall be available to the public as provided in such statutes.

Code of Conduct in Purchasing (2 CFR Part 200.318 (c)(1))

Ethical conduct in managing the Organization's purchasing activities is essential. Staff must always be mindful that they represent the Board of Directors and share a professional trust with other staff and the general membership.

- Staff shall discourage the offer of, and decline, individual gifts, or gratuities of value in any way that might influence the purchase of supplies, equipment, and/or services.
- Staff shall notify their immediate supervisor if they are offered such gifts.
- No officer, board member, employee, or agent shall participate in the selection or administration of a contractor if a real or apparent conflict of interest would be involved. Such a conflict would arise if an officer, board member, employee or agent, or any member of his or her immediate family, his or her spouse or partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in the vendor selected.
- Officers, board members, employees, and agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from vendors or parties to sub-agreements.
- Unsolicited gifts with a value of \$25 or less may be accepted with the approval of the Executive Director.

Organizational Conflicts of Interest

Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules:

- 1 Occurrence. An organizational conflict of interest occurs when any of the following circumstances arise:
 - a Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
 - b Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - c Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Competition (2 CFR Part 200.319)

To promote open and full competition, purchasers will:

- Be alert to any internal potential conflicts of interest.
- Be alert to any noncompetitive practices among contractors that may restrict, eliminate, or restrain trade.
- Not permit contractors who develop specifications, requirements, or proposals to bid on such procurements.
- Award contracts to bidders whose product or service is most advantageous in terms of price, quality, and other factors.
- Issue solicitations that clearly set forth all requirements to be evaluated.
- Reserve the right to reject any and all bids when it is in the Organization's best interest.
- Not give preference to state or local geographical areas unless such preference is mandated by Federal statute. (200.319(b))
- "Name brand or equivalent" description may be used as a means to define the performance or requirements (200.319(c)(1))

Nondiscrimination Policy

All vendors or contractors who are the recipients of Organization funds or who propose to perform any work or furnish any goods under agreements with R.E.A.L., Inc., shall agree to these important principles:

1. Contractors will not discriminate against any employee or applicant for employment because of race, religion, color, sexual orientation, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractors.
2. Contractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for meeting the intent of this section.

Authorizations and Purchasing Limits

All completed purchase requisitions must be signed by the preparer and approved by the Program Director. The following table lists required approval levels and solicitation processes:

Amount of Purchase	Required Approvals	Required Solicitation	Required Documentation
Micro-Purchase < \$3,000	<ul style="list-style-type: none">• Director or FinanceDirector or Executive Director	Evidence of solicitation not required but purchases should be distributed among qualified vendors	Requisition & PO
Small Purchase \$3,001 < \$49,999	<ul style="list-style-type: none">• Director or FinanceDirector or Executive Director	3 written price quotes (catalogue, Internet, written)	Requisition & PO Price/Cost Comparison & DBE form
Capital Purchases ≥ \$50,000	<ul style="list-style-type: none">• Director• Executive Dir.	3 written bids (Invitation for Bids or Request for Proposals)	Copy of IFB or RFP, Requisition & PO, Proposal Scoring Grids, Written Procurement History, Proposal & Contract of Winning Bidder/Proposer

If a particular funding source requires more stringent Procurement Policies, those limitations will be followed by the applicable programs.

Procurement Procedures

The following are R.E.A.L., Inc's procurement procedures:

1. R.E.A.L., Inc. shall avoid purchasing items that are not necessary or duplicative for the performance of the activities required by a federal award. *(2 CFR Part 200.318(d))*
2. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the federal government. *(2 CFR Part 200.318(d))*. This analysis should only be made when both lease and purchase alternatives are available to the program.
3. Purchasers are encouraged to enter into state and local inter-governmental or inter-entity agreements where appropriate for procurement of use of common or shared goods and services. *(2 CFR Part 200.318(e))*
4. Purchasers are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. *(2 CFR Part 200.318(f))*

5. Documentation of the cost and price analysis associated with each procurement decision more than the simplified acquisition threshold (\$50,000) shall be retained in the procurement files pertaining to each federal award. (2 CFR Part 200.323)
6. All pre-qualified lists of persons, firms or products which are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and full competition. (2 CFR Part 200.319(d))
7. R.E.A.L., Inc. will maintain records sufficient to detail the history of procurement, including: (2 CFR Part 200.318(i))
 - a. Rationale for the method of procurement.
 - b. Selection of contract type.
 - c. Contractor selection or rejection; and
 - d. The basis for the contract price.
8. R.E.A.L., Inc. shall make all procurement files available for inspection upon request by a federal awarding agency.
9. R.E.A.L., Inc. shall not utilize the cost-plus-a-percentage-of-costs method of contracting. (2 CFR Part 200.323(d))

All staff members with the authority to approve purchases will receive a copy of and be familiar with 2 CFR Part 200.400 – 475, Cost Principles.

Federal Procurement Requirements

Contracts awarded or procurements funded by federal funds must comply with the requirements outlined in the most current versions of FTA Circulars and federal regulations. (Federal regulations prevail over any provisions contained within this Procurement Policy that may conflict with the federal regulations.

1. Third party contract clauses must be included in all federal assisted contracts and or procurements to form a sound and complete agreement. Determination of the required clauses will be made by Procurement based on the requirements as stated in FTA Circular 4220.1F and CFR Part 200.

Independent cost estimates must be developed and documented in the procurement file prior to the receipt of bids and based on the requirements of the guiding FTA Circulars and federal regulations.

Procurement will search the system for award management (SAMS) to confirm the status of the contractor's debarment and suspension status before entering into any federal funded contract or procurement. The documentation shall be placed in the procurement history file for future reference.

Procurement and staff shall perform a cost or price analysis for all procurements based on the requirements of the most current version of the applicable FTA circular and federal regulations. Cost or price analysis must be completed on all contract modifications before the modification is approved. The cost principles for evaluation of proposed costs should be

consistent with federal cost principles.

Federal guidelines prohibit any arbitrary action in the procurement process.

Federal guidelines prohibit the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals unless federal statutes expressly mandate or encourage preference. This does not preempt State licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, can compete for the contract.

Federal guidelines prohibit the use of federal monies to make payments to a third-party contractor before the contractor has incurred the costs for which the payments would be attributable.

R.E.A.L., Inc. may use federal funds to support progress payments provided that sufficient written documentation is provided to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the financial interest in the progress payment.

Liquidated Damages may be used if R.E.A.L., Inc. reasonably expects to suffer damages through delayed contract completion. The rate and measurement standards must be calculated to reasonably reflect R.E.A.L., Inc.'s costs should the standards not be met and must be specified in the contract.

Contracts more than \$10,000 shall contain termination for cause and termination for convenience provisions. Contracts above the small purchase threshold must contain remedies for breach of contract.

Cardinal Changes and Tag-Ons: A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change and is sometimes informally referred to as a "tag-on". Federal guidelines prohibit the use of tag-ons.

2. All federally funded procurements will be in compliance with federal statutory and regulatory requirements as outlined.
3. Federal guidelines prohibit unreasonable business, experience, prequalification, and bonding requirements from being placed on firms in order to do business with R.E.A.L., Inc.

Required Solicitation of Quotations from Contractors

Solicitations for goods and services (requests for proposals or RFPs) should provide for all the following:

1. A clear and accurate description of the technical requirements for the material, product, or

Service to be procured. Descriptions shall not contain features which unduly restrict competition. (2 CFR Part 200.319(c)(1))

2. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. (See the next section entitled "Evaluation of Alternative Contractors" for required criteria.) (2 CFR Part 200.319(c)(2))
3. Technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. (2 CFR Part 200.319(c)(1))
4. The specific features of "brand name or equal" descriptions that bidders are required to meet when appropriate. (2 CFR Part 200.319(c)(1))
5. A description of the format, if any, in which proposals must be submitted, including the name of the person to whom proposals should be sent.
6. The date by which proposals are due.
7. Required delivery or performance dates/schedules.
8. Clear indications of the quantity(ies) requested and unit(s) of measure.

Extension of Due Dates and Receipt of Late Proposals

Solicitations should provide for sufficient time to permit the preparation and submission of offers before the specified due date. However, an extension may be granted if a prospective offeror so requests.

Contractor proposals are considered late if received after the due date and time specified in the solicitation.

Late proposals shall be marked on the outside of the envelope and returned, unopened.

Evaluation of Alternative Contractors

Contractors shall be evaluated on a weighted scale that considers some or all the following criteria as appropriate for the purchase:

1. Adequacy of the proposed methodology
2. Skill and experience of key personnel
3. Demonstrated experience
4. Other technical specifications designated by the department requesting proposals
5. Compliance with administrative requirements of the request for proposal (format, due date, etc.)
6. Contractor's financial stability
7. Contractor's demonstrated commitment to the nonprofit sector
8. Results of communications with references supplied by vendor
9. Ability/commitment to meeting time deadlines
10. Cost
11. Minority- or women-owned business status of vendor
12. Other criteria (to be specified by the department requesting proposal)

Not all the preceding criteria may apply in each purchasing scenario. However, the department responsible for the purchase shall establish the relative importance of the appropriate criteria prior to requesting proposals and shall evaluate each proposal based on the criteria and weighting that have been determined.

After a contractor has been selected and approved by the Director, the final selection shall be approved by others according to R.E.A.L., Inc's purchasing approval policies.

Affirmative Consideration of Minority, Small Business, Women-Owned Businesses, and Labor Surplus Area Firms (2 CFR Part 200.321)

Positive efforts shall be made by R.E.A.L., Inc. to utilize small businesses, minority-owned firms, women's business enterprises, and labor surplus area firms whenever possible. Therefore, the following steps shall be taken:

1. Ensure that small business, minority-owned firms, women's business enterprises, and labor surplus area firms are used to the fullest extent practicable. *(2 CFR Part 200.321)*
2. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small business, minority-owned firms, women's business enterprises and labor surplus area firms. *(2 CFR Part 200.321(b)(4))*
3. Consider in the contract process whether firms competing for larger contracts tend to subcontract with small businesses, minority-owned firms, and women's business enterprises. *(2 CFR Part 200.321(b)(6))*
4. Encourage contracting with consortiums of small businesses, minority-owned firms, women's business enterprises, and labor surplus area firms when a contract is too large for one of these firms to handle individually. *(2 CFR Part 200.321(b)(3))*
5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the minority-owned firms and women's business enterprises. *(2 CFR Part 200.321(b)(5))*

Contract Types

TIME AND MATERIALS CONTRACT

Time and materials type contracts may only be used after a determination that no other type of contract is suitable. The contract must set a ceiling price that the contractor shall not exceed except at its own risk. R.E.A.L., Inc. is not permitted to use federal funds unless it determines that no other type of contract is suitable for the procurement of:

Time and materials type contracts mean a contract whose cost to the agency is the sum of

1. The actual cost of materials: and
2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

COST PLUS PERCENTAGE CONTRACTS

Federal guidelines prohibit the use of cost-plus percentage of cost type contracts for federally funded procurements.

REVENUE CONTRACTS

Competitive procedures shall be used to procure revenue contracts to permit interested parties an equal opportunity. The method of procurement will be determined based on the goods or services to be procured.

Competitive Sealed Bidding

(1) Conditions for Use. All procurements estimated at a cost of \$50,000 or greater shall be awarded by competitive sealed bidding except as otherwise provided in Methods of Solicitation.

(2) Invitation for Bids (IFB). An invitation for bids shall be issued and shall include detailed written specifications and all contractual terms and conditions applicable to the procurement. The request for bid must include a complete, adequate, and realistic specification or purchase description. The specifications shall identify all requirements which the bidder must fulfill and all other factors to be used in evaluation of bids. The standard contract language that the successful proposer will be required to comply with, including applicable federal clauses and certifications. The contract will be awarded to the lowest bidder, there are no negotiations concerning price or services.

(3) Public Notice. Notice inviting bids shall be published once a week for two consecutive weeks prior to the date set for closing the bid, the first notice to be no less than fourteen days prior to the closing date or as current State law requires. Federally funded projects shall be available for a minimum of twenty-one days prior to the closing date and shall be published in the State Electronic Business Daily.

(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as Procurement deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with Public Access to Procurement Information.

(5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated to determine if the bid is a responsive bid and the bidder a responsible bidder or the bidder that provides the best value to R.E.A.L., Inc. based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

(6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards of contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received by Procurement prior to the time and date set

for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of R.E.A.L., Inc. or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid. Unit price shall prevail in case of an extension error.

(a) The Director reserves the right to cancel any award or resulting contract entered into before a material mistake was identified and justified by the bidder.

(7) Award.

(a) The firm fixed price contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder or to the bidder who provides goods or services at the best value for R.E.A.L., Inc. and whose bid conforms with all the material terms and conditions of the invitation for bids and is the lowest in price. If specified in the solicitation documents a fixed price incentive or an economic price adjustment provision may be allowed. The award shall be made only to bidders who possess the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) In the event lowest responsive and responsible bid for a construction project exceeds available funds as certified by the Executive Director, and such bid does not exceed such funds by more than five percent, the Director is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder, in order to bring the bid within the amount of budgeted funds.

(c) The contract shall be awarded at the appropriate authority level as specified in 2- 301 (Award Authority).

(d) If R.E.A.L., Inc. elects to use the lowest responsive and responsible best value bidder selection method as the basis of award, the solicitation must contain the language which establishes that an award will be made on a "lowest responsive-responsible bidder" basis.

Competitive Proposals

(1) Conditions for Use. When Procurement determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to R.E.A.L., Inc., a contract may be entered into by use of the competitive sealed proposals or request for proposal method. All procurements estimated at a cost of \$50,000 or greater shall be awarded by competitive sealed proposals.

(2) Request for Proposals (RFP). Proposals shall be solicited through a Request for Proposals (RFP) process.

(a) The RFP may include but not be limited to:

(i) Pass/fail criteria to be used as an initial screening of responses for responsiveness and responsibility. Such criteria shall include, but not be limited to: insurance requirements, licensing and any other consideration which would make the proposer ineligible to perform the work;

(ii) All evaluation factors, type of evaluation (Best Value, Fixed price) and their relative importance; and,

- (iii) The standard contract language that the successful proposer will be required to comply with, including applicable federal clauses and certifications.

(3) Exception. Pursuant to Texas Government Code Chapter 2254, Designated Professional Services (Contracting for Designated Professional Services), shall be procured utilizing a Request for Qualifications process (RFQ).

(4) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as Competitive Sealed Bidding/ Public Notice.

(5) Receipt of Proposals.

(a) The proposal shall include:

- (i) All required elements as specified in the RFP.
- (ii) A list of all proposed subconsultants and subcontractors, their area of the work, and identify certified DBEs, minority and women owned firms; and
- (iii) All evaluation factors and their respective scoring weights
- (iv) The standard contract language that the most qualified proposer will be required to comply with, including applicable federal clauses and certifications
- (iv) A cost or fee as required by the RFP.

(6) Evaluation of Proposals. An evaluation committee shall be established by R.E.A.L., Inc. to perform the assessment of the proposals based on the criteria and relative importance criteria established in the RFP. Procurement shall maintain summary evaluation document(s).

(7) Discussions with Responsible Offerors and Revisions to Proposals. As provided in the RFP, once proposals have been submitted, R.E.A.L., Inc. may conduct discussions/negotiations with the offerors whom R.E.A.L., Inc. determines to be reasonably qualified for the award of the contract. All offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of the proposal. R.E.A.L., Inc. may request additional documents during the evaluation process and may request the best and final offers.

(8) List of Qualified Firms. The final list of qualified firms shall be based on the response to the RFP, technical evaluation, references, the interview, and other relevant factors. The Director shall make a recommendation which should include the evaluation committee's recommendation for negotiations with one or more firms in the competitive range.

Request for Qualifications for Designated Personal or Professional Services

(1) Conditions for Use. Pursuant to Section 460.406(c) (5), contracts for personal or professional services are precluded from the competitive bidding requirements. However, at the discretion of the Executive Director, Requests for Qualifications may be used to solicit contracts for personal or professional services in accordance with this Subsection. Services for professional services shall be in accordance with Local Government Code 2254 and the Brooks Act for federally funded procurements.

(2) Designated Professional Services. Designated professional services are defined as services provided by licensed or registered professionals. They include the following services:

- (a) accountant
- (b) architect
- (c) landscape architect
- (d) land surveyor
- (e) professional engineer
- (f) licensed real estate appraiser
- (g) physician or
- (h) registered nurse.

(3) Request for Qualifications (RFQ). Statements of Qualifications shall be solicited through a Request for Qualifications process.

- (a) The RFQ shall include:
 - (i) A comprehensive scope of work
 - (ii) Pass/fail criteria to be used as an initial screening of qualifications for responsiveness and responsibility. Such criteria shall include, but not be limited to insurance requirements, licensing and any other consideration which would make the firm ineligible to perform the work.
 - (iii) All evaluation factors and their respective scoring weights; and,
 - (iv) The standard contract language that the most qualified firm will be required to comply with, including applicable federal clauses and certifications.

(4) Evaluation of Qualifications. Procurement shall summarize evaluation materials to be maintained in the procurement file. The most qualified proposer shall be that proposer whose weighted score was the highest.

(5) Discussions. As part of the evaluation process, R.E.A.L., Inc. may conduct discussions with any proposer who submitted a statement of qualifications. Discussions shall not disclose any information derived from statements of qualifications submitted by other proposers.

(6) List of Qualified Firms. The final list of qualified firms shall be based on the response to the RFQ, technical evaluation, references, the interview, and other relevant factors. The Director shall authorize a recommendation which should include the evaluation committee's recommendation for negotiations with the most qualified proposer. Negotiations would proceed in compliance with state law.

(7) Award.

- (a) Award shall be made to the proposer determined in writing to be most highly qualified based on the evaluation factors set forth in the request for qualifications and discussions, if applicable, and negotiation of compensation determined to be fair and reasonable. If R.E.A.L., Inc. is unable to negotiate a contract with the most highly qualified proposer, R.E.A.L., Inc. must then formally end negotiations with that proposer. After negotiations have formally ended, R.E.A.L., Inc. must select the next most highly qualified proposer and attempt to negotiate a contract with that

proposer.

(b) If statements of qualifications were submitted by one or more proposers determined to be the qualified, negotiations may be conducted with such proposer in the order of their respective qualification ranking, and the contract may be awarded to the proposer then ranked most qualified if the amount of compensation is determined to be fair and reasonable.

(c) If the award is for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services the selection shall be based on qualifications excluding price. In accordance with the Brooks Act 40 U.S.C. Sections 1101 through 1104. Negotiations are first conducted with the most qualified offeror. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Negotiations with the previous offeror are formally ended before negotiations with the next most qualified offeror commences. Then, if necessary, negotiations with successive offerors in descending order may be conducted until a contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

(d) If the award is for architectural, engineering, and related services a geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

The award shall be made only to the proposer who possesses the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(e) The contract shall be awarded at the appropriate authority level as specified in the Authorizations and Purchasing limits section.

Rolling Stock Procurements

Contract term limitation for rolling stock and replacement parts shall not exceed five (5) years inclusive of options for bus fleet.

All third-party contracts to acquire rolling stock must include provisions to ensure compliance with applicable requirements of 49 USC Section 5323 and FTA regulations, Pre- Award and Post-Delivery audits of rolling stock purchases. The documentation shall be made a part of the procurement history files.

Options

Contracts may include options to ensure the future availability of property or services if justification can be shown that options are needed for public transportation or project purposes. Option quantities must be evaluated at the time of the contract award. When exercising options, ensure the options are in accordance with the contract and the price is better than prices available on the market or is more advantageous at the time the option is exercised.

Lease Versus Purchase

To obtain the best value a review of lease versus purchase alternative for acquiring property should be completed and if necessary, obtain an analysis to determine the more economical alternative. R.E.A.L., Inc. may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. FTA approval must be obtained prior to entering into a lease agreement.

Design Bid Build

The design-bid-build procurement method requires separate contracts for design services and for construction.

Design Services a qualifications-based procurement procedure must be completed in compliance with applicable Federal, State, and local law and regulations.

Construction Services may be procured using a sealed bid or competitive negotiation procurement method.

Design Build

General. R.E.A.L., Inc. may use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, R.E.A.L., Inc. must comply with applicable legal requirements including those outlined in Chapter 2267 of the Texas GovernmentCode.

Existing Contracts and Piggybacking

- (1) R.E.A.L., Inc. may find it advantageous to use existing contract rights and may use existing contracts if certain conditions are met. R.E.A.L., Inc. encourages the use of existing contracts with the state and other local intergovernmental agreements Exercise of Options: R.E.A.L., Inc. may use contract options held by another agency with the following limitations:
 - a) R.E.A.L., Inc. shall ensure the terms and conditions of the options sought are substantially similar to the terms and conditions as stated in the original contract at the time it was awarded.
 - b) R.E.A.L., Inc. shall determine that the option price is better than pricing available in the marketplace.
 - c) Award shall be treated as sole source procurement if the awarding agency failed to evaluate the options at the time the original contract was awarded. Negotiating a lower or higher price after the initial award shall also be considered a sole source procurement.

Micro and Small Purchases

- (1) General. Any contract not exceeding \$49,999 may be made in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided to constitute a small purchase under this Section.
- (2) Micro-Purchases up to \$3,000. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it accordingly. The Micro-purchase limit does not apply to federally funded construction-related purchases of \$2,000 or greater

that must comply with the Davis Bacon Act. "Construction" means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not limited to, improvements of all types, such as parkways, streets, sewers, mains, power lines, and pumping stations. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of personal property.

(3) Small Purchases \$3,001- \$49,999. Departments shall submit the purchasing request specifications for purchase along with the Independent Cost Estimate (ICE) to the Director for review. The department shall be responsible for ensuring the procurement is within the department's approved budget. Procurement will obtain three price quotes from vendors by filling out the Price/Cost Comparison & DBE form and document the determination that the price is fair and reasonable and the methodology of the determination. Documentation must be maintained in the procurement files. Purchases divided into multiple purchases to avoid requirements are prohibited. If competitive quotes are not obtained for the purchase an equitable distribution must be made to qualified suppliers.

Receipt and Acceptance of Goods

The designated individual within each program division shall inspect all goods received. Upon receipt of any item from a contractor, the following actions shall immediately be taken:

1. Review bill of lading for correct delivery point.
2. Verify the quantity of boxes/containers with the bill of lading.
3. Examine boxes/containers for exterior damage and note on the bill of lading any discrepancies (missing or damaged boxes/containers, etc.)
4. Remove the packing slip from each box/container.
5. Compare the description and quantity of goods per the purchase order to the packing slip.
6. Examine goods for physical damage.
7. Count or weigh items, if appropriate, and record the counts on the purchase order.

This inspection must be performed in a timely manner to facilitate prompt return of goods and/or communication with contractors.

Sole Source Procurement

A contract may be awarded without competition when Procurement determines in writing, after conducting a good faith review of available sources, that there is only one source due to patents, copyright, secret processes, or natural monopolies for the required supply, service, or construction item. This also includes the purchase of captive replacement parts or components for equipment if those parts or components are available from only one source. Procurement shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file. The Sole source justification documents must be approved and signed by the appropriate signature level and the Director.

Documentation required for a federally funded procurement shall include:

1. Infeasible to use small purchase, sealed bid, or competitive procedures
 - a. Item is available only from a single source.
 - b. The public exigency or emergency for the requirement will not permit a delay

- c. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from R.E.A.L., Inc.
 - d. After a solicitation from a number of sources, competition is determined inadequate.
- 2. Independent cost estimate (required for all sole source procurements not just federally funded procurements).
- 3. Cost or price analysis is required.

Availability of Procurement Records (2 CFR Part 200.324(b))

R.E.A.L., Inc. shall, on request, make available for the federal awarding agency, pre-award review and procurement documents, such as requests for proposals, when any of the following conditions apply:

- The process does not comply with the procurement standards in 2 CFR Part 200. (2 CFR Part 200.324(b)(1))
- The procurement is expected to exceed the federally defined simplified acquisition threshold (\$100,000) and is to be awarded without competition or only one bid is received. (2 CFR Part 200.324(b)(2))
- The procurement exceeds the simplified acquisition threshold and specifies a “name brand” product. (2 CFR Part 200.324(b)(3))
- The proposed award exceeds the federally defined simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed-bid procurement. (2 CFR Part 200.324(b)(4))
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the federally defined simplified acquisition threshold. (2 CFR Part 200.324(b)(5))

Provisions Included in All Contracts (2 CFR Part 200)

R.E.A.L., Inc. includes all the following provisions, as applicable, in all contracts charged to federal awards (including small purchases) with vendors and subgrants to grantees:

1. **Contracts** for more than the simplified acquisition threshold currently set at \$49,999, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts more than \$10,000 must address termination for cause and for convenience by the non-Federal entity including how it will be affected and the basis for settlement.
3. **Equal Employment Opportunity:** All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
4. **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7):** When required by Federal program legislation, all construction contracts of more than \$2,000 awarded by R.E.A.L., Inc. and its sub-recipients shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor

Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333):** Where applicable all contracts awarded by R.E.A.L., Inc. more than \$2,000 for construction contracts shall include a provision for compliance with Sections 102 and 107 of the Contract Works Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

5. **Rights to Inventions Made Under a Contract or Agreement:** Contracts or agreements for the performance of experimental, developmental or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organization and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the award agency.

6. C

Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended: Contracts and subgrants of amounts more than \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. **Mandatory** standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
8. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352):** For all contracts or subgrants of \$100,000 or more, R.E.A.L., Inc. shall obtain from the contractor or subgrantee a certification that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352.
9. **Debarment and Suspension (E.O.s 12549 and 12689):** No contract shall be made to the parties listed on the General Services List of Parties Excluded from Federal Procurement or Non-Procurement Programs in accordance with E.O.’s 12549 and 12689, “Debarment and Suspension.”

Special Purchasing Conditions

Emergencies:

Where equipment, materials, parts, and/or services are needed, quotations will not be necessary if the health, welfare, safety, etc., of staff and protection of Organization property is involved. The reasons for such purchases will be documented in the procurement file.

Single Distributor/Source:

Sole source purchases contractors may be made when one or more of the following conditions apply:

- The item or service is only available from one source.
- The situation is an emergency and will not permit a delay resulting from competitive solicitation.
- The awarding agency expressly authorizes noncompetitive proposals in response to a written request; or
- After solicitation, competition is deemed inadequate (insufficient bidders).

Approval from the awarding agency may be required.

Right to Audit Clause

R.E.A.L., Inc. requires a "Right to Audit" clause in all contracts between the Organizations and vendors that either:

1. Take any form of temporary possession of assets directed for the Organization, or
2. Process data that will be used in any financial function of the Organization.

This Right to Audit clause shall permit access to and review of all documentation and processes relating to the contractor's operations that apply to R.E.A.L., Inc., as well as all documents maintained or processed on behalf of R.E.A.L., Inc., for a period of three years. The clause shall state that such audit procedures may be performed by R.E.A.L., Inc. employees or any outside auditor or contractor designated by the Organization.

Contractor Files and Required Documentation

The Accounting Department shall maintain a contractor file for each contractor from whom R.E.A.L., Inc. purchases goods or services.

The Accounting Department shall forward a blank Form W-9 to new contractor and request that the contractor complete and sign the W-9 (or provide equivalent, substitute information) and return it.

Completed, signed Forms W-9 or substitute documentation shall be filed in each contractor's folder. Contractors who do not comply with this request shall be issued a Form 1099 at the end of each calendar year.

Procurement Grievance Procedures

Any bidder may file a grievance with R.E.A.L., Inc. following a competitive bidding process. Once a selection is made, bidders must be notified in writing of the results. The written communication mailed to bidders must also inform them that they may have a right to appeal the decision. Information on the organization's appeal procedures must be made available to all prospective contractors or subgrantees upon request, including the name and address of a contact person, and a deadline for filing the grievance. Grievances are limited to violations of federal laws or regulations, or failure of the Organization to follow its own procurement policies.

According to FTA Circular 4220.1 E § 7 (1) k and l: Grantees alone will be responsible in accordance with good administrative practice and sound judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts. The Federal Transit Administration (FTA) will not substitute its judgment for that of the grantee or subgrantee unless the matter is primarily a federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper

jurisdiction.

Potential bidders, contractors, or proposers can lodge written protests as a remedy to correct a perceived wrong that may have occurred during the procurement process. R.E.A.L., Inc. will accept and review the protest with the understanding that the integrity of the procurement process may be at stake. R.E.A.L., Inc. will use the following procedures to resolve disputes in the attempt to avoid FTA involvement or litigation.

All protests lodged by potential or actual bidders, contractors, or proposers must be made in writing and contain the following information:

1. Name, address, and telephone number of the protester.
2. Identification of the solicitation or contract number and title.
3. A detailed statement of the protest's legal and factual grounds, including copies of relevant documents.
4. Identification of the issue(s) to be resolved and statement of what relief is requested.
5. Argument and authorities in support of the protest.
6. A statement that copies of the protest have been mailed or delivered to all interested parties in the Invitation for Bid (IFB) or Request for Proposal (RFP) process. In the case of RFP, the transportation director shall direct the protester to mail or deliver the protest to relevant parties.

Mail the protest to:

Name
R.E.A.L., Inc.
Address
City, State, Zip

Or

Overnight or hand delivers the protest to:

Name
R.E.A.L., Inc.
Address
City, State, Zip

Faxed or emailed protests will not be accepted.

The R.E.A.L., Inc. transportation director will respond, in written detail, counterclaims to each substantive issue raised in the protest. The transportation director will also perform the following analysis:

1. Price Analysis or Cost Analysis for each claim.
2. Technical analysis to determine the validity of the claim(s) and determine the appropriate response(s).
3. Legal Analysis to consider all the factors available after the price, cost and technical analyses have been conducted to determine the contractor's, R.E.A.L., Inc.'s, and FTA's legal positions.

R.E.A.L., Inc.'s transportation director has the authority to render the final determination regarding the protest. Any determination rendered by R.E.A.L., Inc. will be final.

Pre-Bid or Solicitation Phase Protest

A Pre-Bid or Solicitation Phase Protest must be received in writing by R.E.A.L., Inc. transportation director a minimum of five (5) full workdays prior to the bid opening or proposal due date. If the written protest is not received in the time specified, the award may be made following normal procedures, unless the transportation director, upon investigation, determines that remedial action is required on the grounds of fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement system, and said action should be taken. Within three (3) workdays from the time the protest is received, the R.E.A.L., Inc. transportation director will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The transportation director will respond to the protest in writing within five (5) working days from the time the protest was received. If the transportation director decides to withhold the award pending the resolution of the protest, he/she may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for the award. This extension for the award acceptance must be with the consent of sureties, if any, to avoid readvertising.

R.E.A.L., Inc. will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation period, unless R.E.A.L., Inc. determines that:

1. The items or services to be procured are urgently required.
2. Delivery or performance will be unduly delayed by failure to make the award promptly, or
3. Failure to make the award will otherwise cause undue harm to R.E.A.L., Inc. or the Federal government.

The transportation director will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties where deemed necessary.

Pre-Award Protest

Protests may be lodged after the Bid Opening or Close of Request for Proposal deadline and prior to Notice of Award. Within three (3) workdays from the time the protest is received, the R.E.A.L., Inc. transportation director will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The transportation director will respond to the protest in writing within five (5) working days from the time the protest was received. If the transportation director decides to withhold the award pending the resolution of the protest, he/she may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, to avoid the need to readvertise.

R.E.A.L., Inc. will not make any award prior to five (5) working days after the protest is resolved, or if the protest has been filed with FTA during the protest negotiation process, unless R.E.A.L., Inc. determines that:

1. The items or services to be procured are urgently required.
2. Delivery or performance will be delayed by failure to make the award promptly.
3. Failure to make the award will otherwise cause undue harm to R.E.A.L., Inc. or the Federal Government.

The transportation director will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties where deemed necessary.

Post-Award Protest

R.E.A.L., Inc. should receive protest in writing within three (3) working days after the Notice of Award and letters of notification should be received by bidders or proposers. Upon receipt of a protest, the transportation director shall notify the bidder or proposer that has been awarded the contract. The transportation director will render a determination to proceed with the contract or suspend the project until the protest is resolved. The transportation director will respond to the protest in writing within five (5) working days after receipt of the protest.

Appeals

R.E.A.L., Inc.'s transportation director has the authority to settle any dispute and resolve the protest. The transportation director may solicit written responses regarding the protest from other parties. If this course of action does not result in a satisfactory resolution, the Protester may appeal in writing to the R.E.A.L., Inc.'s Executive Director within three (3) working days after the transportation director issues a final decision. The Executive Director will issue a decision within five (5) working days after receipt of the appeal.

R.E.A.L., Inc. may elect to involve legal counsel or arbitration and mediation consultants to resolve the issue(s).

The Protester has the right to appeal in writing to the Federal Transit Administration if:

1. The Protester has exhausted all administrative remedies with R.E.A.L., Inc. and
2. R.E.A.L., Inc. has failed to follow its protest procedures or failed to review a complaint or protest.

The Protester's appeal must be received by the FTA Region VI Office within five (5) working days of the date the Protester knew or should have known the violation.

Office of Operations and Program Management
U.S. Department of Transportation Federal Transit Administration Region VI
819 Taylor Street, Suite 8A36
Fort Worth, Texas 76102
Phone: 817-978-0550

When the Protester sends an appeal to the FTA, the Protester must also send a copy of the appeal to R.E.A.L., Inc. within the same time frame. In the event of a protest, the transportation director will contact FTA to check whether an appeal has been made.

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 regions will be under the jurisdiction of state or local authorities.

If data becomes available that was not previously known, or there has been an error of law or regulations, R.E.A.L., Inc. will grant an allowance for request for reconsideration.

NOTIFICATION OF FTA IN DISPUTE MATTERS

The FTA Master Agreement MA (6), October 1, 1999, Section 41 - Disputes, Breaches, Defaults, or Other Litigations, states that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. Notification to FTA. The Recipient agrees to notify FTA of any current or prospective major dispute, breach, default, or litigation that that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform the FTA before doing so.
- b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of any proceeds derived from any third-party recovery, except that the Recipient may return any liquidated damages recovered to the Project Account in lieu of returning the Federal share to the Federal Government.
- c. Enforcement. The Recipient agrees to pursue all legal rights available under any third-party contract.
- d. FTA Concurrence. The FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

FTA Circular 5010.1C, Chapter 1, Section 7b (1) (d) requires grantees to notify FTA of any current or prospective litigation or major disputed claim of more than \$100,000 relating to any third-party contract. This Circular also requires grantees to provide a list of all outstanding claims exceeding \$100,000 and a list of all claims settled during the reporting period as part of each quarterly progress report. A brief description and reasons for each claim should accompany this list.

For information on circumstances where R.E.A.L., Inc. is required to secure FTA review and concurrence in a proposed claim settlement before using Federal funds, refer to the FTA Best Practices Procurement Manual, Chapter 11.2 "FTA Review and Concurrence".

Davis Bacon Act Grievance Procedures

Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the 7 procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.