Chapter 8

Revenue Vehicle

Competitive Negotiation

April 2015

**8.0 GUIDELINES FOR COMPETITIVE NEGOTIATION**

**8.1 Background**

Prior to the FTA’s notice of May 3, 1984, the MBTA’s standard policy for procuring rolling stock was based on competitive bids with the award to the lowest responsive and responsible bidder.

The Competitive Negotiation (CN) method of procurement is an acknowledgment that, in addition to price and basic responsiveness to technical specifications, there are other factors which may also be considered in the procurement of rolling stock in order to determine what is in the best interest of the MBTA and, correspondingly, the most efficient and economical use of public funds.

It should also be understood that the Competitive Negotiation Process is designed to ensure to the maximum extent possible that the award(s) will be made on a competitive basis.

Wherever in these Guidelines the following terms are used, it is understood that the meaning as stated below shall apply:

**Contracting Officer** – The Director of Materials, who is charged with the responsibility to lead the Competitive Negotiation Process and is referred to as the *Contracting Officer*. Wherever the term *Contracting Officer* appears, it is understood that the term “*or Designee*” shall apply.

**Part A** – That portion of the offer which generally contains, but is not limited to, the quoted price offer, required cost data, or any other information as required by the RFP. It is understood that reference to Part A as “Cost Proposal” or “Price” does not limit this Section of the Offer in any way.

**Part B** – That portion of the offer which generally contains, but is not limited to, the proposal submittal and related documents as required by the RFP for proper review and evaluation. It is understood that reference to Part B as “Technical/Contractual (T/C)” does not limit this Section of the Offer in any way.

**Rolling Stock – 5 Year (Bus) or 7 Year (Railcar) Options Contract Term Limitation**

“To comply with 49 U.S.C 5325 (e)(1), a multi-year third party contract to purchase additional rolling stock and replacement parts may not have options that extend more than five or seven years after the date of the original contract.”

“FTA interprets this five year (to buy additional bus or replacement parts) or seven year period (to buy additional railcars or replacement parts) as covering the recipient’s rolling stock and replacement needs from the first day when the contract becomes effective to those at the end of the fifth or seventh year (as applicable). This means that the contract may not encompass more rolling stock and replacement parts than the recipient needs within five or seven years.  The five or seven-year rule does not mean delivery, acceptance, or even fabrication must be completed in five or seven years years (as applicable) – only that a contract is limited to purchasing no more than the recipient’s rolling stock or replacement parts needs for five or seven years (as applicable) based on the effective date of the contract.” [[FTA C 4220.1F](http://www.fta.dot.gov/documents/FTA_Circular_4220.1F_-_Finalpub1.doc), IV, 2.e.(10)]

**8.2 General Overview**

1. The MBTA prepares a Request for Proposals (RFP), which includes the technical specifications defining the actual minimum needs and identifies all significant evaluating factors, listed in their respective order of importance. For internal reference only, a confidential memorandum to the file is prepared for each procurement which establishes and documents the evaluating factors and their respective weights. Additionally, a sealed confidential copy is filed with the General Counsel and remains unopened until a final recommendation is made.
2. Evaluation Committee membership is determined by the Contracting Officer and the Using Department and will consist of representatives from the Materials Department and members of various other departments as required. Subcommittee Chairperson(s) will be appointed by the Contracting Officer as deemed necessary.
3. The RFP is publically advertised and issued to Offerors.
4. By an established date, Offerors submit proposals in two sealed envelopes. One envelope (Part A) includes, but is not limited to, the quoted price and cost data, while the second (Part B) includes, but is not limited to, the Technical and Contractual (T/C) proposal. All information, including the number of Offerors, is kept confidential until after an award is made.
5. The Contracting Officer opens the T/C proposals (Part B) and refers them to the Evaluation Committee for review. The cost proposal (Part A) remains sealed until the Evaluation Committee completes its review of Part B
6. Part B proposals are reviewed by the Committee to determine if they comply with the specifications advertised in the RFP.
7. The committee, based on the pre-established criteria, evaluates proposals.
8. The Evaluation Committee makes their recommendation to the Contracting Officer based on the criteria established in Item Number 1.
9. The Contracting Officer opens Part A in the presence of the General Counsel or his/her designee and other witnesses, as determined by the Contracting Officer.
10. A decision is made to:

a) Award immediately

b) Negotiate with Offerors found to be within the Competitive Range\*

c) Reject proposals in the best interest of the MBTA

\*NOTE: The *Competitive Range* includes all proposals that have a reasonable chance of being selected for award. It is important to note that the MBTA may elect to award a Contract without negotiation.

1. If negotiation is appropriate, all Offerors within the Competitive Range are formally notified in writing. The Contracting Officer will determine whether negotiations will be conducted by written correspondence or by oral discussion. All meetings will be held individually under the direction of the Contracting Officer. Following the negotiations, Offerors may modify their original proposal and submit a “best and final offer” by a specified due date.
2. If negotiation is used, repeat Items 4 through 9, as required.
3. Recommendation is made to the General Manager and/or the Board of Directors for their approval. At this time only, documentation is available for public review. Proprietary information will be respected within legal constraints.

**8.3 COMPETITIVE NEGOTIATION PROCESS**

**8.3.1 Preparation**

The Materials and Using Department(s) prepare the Contract Documents.

The Contracting Officer:

* + Establishes the Basis of Award
  + Determines the Evaluation Criteria, including the priority of items which are incorporated into the Contract Documents
  + Determines members of the Evaluation Committee with input from the Using Department(s)

1. The Contracting Officer, or Designee, will chair the Committee.
2. The Evaluation Committee reserves the right to seek assistance on an advisory capacity from other sources as necessary.
3. A permanent advisor to the Evaluation Committee will be appointed by the General Counsel.
4. All Committee members are required to sign a “Certification”, a copy of which is found at the end of this section.
   * Appoints Subcommittee Chairperson(s) as deemed necessary.
   * Determines the Procedure and Format to be followed.

The Contracting Officer also prepares memorandum to file documenting the established criteria, its proportional weights, and other data as required. The Contracting Officer forwards a sealed copy of same to the General Counsel before proposals are opened for Counsel’s confidential file. The memorandum is for the MBTA’s internal reference only and shall remain sealed until a final recommendation is made.

**8.3.2 Announcement Procedure**

The Contracting Officer advertises the Request for Proposals (RFP) and issues them to potential Offerors. Both the advertisement and RFP will contain:

* + Evaluation criteria, prioritized in order of importance, upon which the basis of award will be determined.
  + A statement to the effect that the MBTA may award a Contract upon evaluation of the proposals or may determine the need to negotiate; whichever is in the best interest of the MBTA.

The Contracting Officer schedules a Pre-Proposal meeting, if required, to publicly discuss the RFP.

The Contracting Officer issues any addendum (a) to the RFP to all potential Offerors listed on the Solicitation.

**8.3.3 Proposal Submittal**

Sealed proposals are submitted in two (2) envelopes by a specified scheduled date and time:

Part A – Includes, but is not limited to, the quoted price offer and cost data.

Part B – Includes, but is not limited to, the proposal submittal and Technical and Contractual (T/C) related documents required by the RFP for proper review and evaluation.

**8.3.4 Proposal Opening**

There is no public opening of proposals under this procedure. Part B (the T/C proposal) is opened in the presence of a witness(es) and is submitted to the Evaluation Committee. Part A remains sealed until the Evaluation Committee has completed its evaluation of Part B. The opening of any Part A submittal is done by the Contracting Officer in the presence of the MBTA’s General Counsel, or his/her Designee, and additional witness(es) as may be deemed appropriate by the Contracting Officer.

**8.3.5 Evaluation of Proposals**

Evaluation Committee, while maintaining strict confidentiality:

1. Reviews (Part B) proposal(s) to determine if they comply with the specifications advertised in the RFP.
   * + If compliant, proceed to Step 2
     + To determine that a proposal is non-compliant, a unanimous recommendation of the Committee is required. A non-compliant determination is forwarded to the General Counsel with supporting documentation.
     + A final decision will be made by the Contacting Officer with concurrence of General Counsel.
2. Compliant (Part B) proposals are evaluated in accordance with the prioritized criteria listed in the RFP and advertisement.

NOTE: Only the evaluation criteria are made public. The criteria rating points and weight assignments are not made public during the evaluation process

1. Recommendations are formalized.

**8.3.6 Contracting Officer**

Once the Proposals are deemed compliant, the Contracting Officer will:

1. Upon receipt of the Evaluation Committee’s recommendations (Part B), the Contracting Officer opens Part A (Price and cost data envelope) in the presence of the General Counsel, or his/her designee, and any other witness(es) he/she deems to be appropriate. The proposals submitted are not made public until the evaluation process is completed and a recommendation is made.
2. Analyze the prices (Part A) submitted with the Evaluation Committee’s recommendations in Part B. The MBTA will respect proprietary data within legal constraints. The MBTA reserves the right to conduct a cost analysis, if necessary.
3. Determine if it is in the best interest of the MBTA to proceed. If so, options include:
   1. Recommend award immediately as the best offer has been received. (Proceed to Section on “Award”).
   2. Negotiate (Proceed to “Negotiation Procedures”)
   3. Cancel RFP and/or other action as deemed necessary.

**8.3.7** **Negotiation Procedures**

The Competitive Range of the compliant proposals is determined based upon the price information (Part A), the Evaluation Committee’s recommendation on Part B, and the Contracting Officer’s final decision. The Competitive Range shall include all compliant proposals which have a reasonable chance of being selected for award. When there is a doubt as to whether a proposal is within the Competitive Range, that doubt shall be resolved by including the proposal in the Competitive Range (The procedure used to rank proposals is included at the rear of this section.)

The Contracting Officer will determine whether negotiations will be conducted by written correspondence or by oral discussions. Offerors within the Competitive Range are formally notified, in writing, by the Contracting Officer that negotiations will be conducted and whether they will be by correspondence or by oral discussions. All meetings or correspondence will be undertaken by the Contracting Officer. All meetings will be held individually with each respective Offeror.

No evaluation and/or price comparisons will be allowed between proposals. Discussion will not disclose strengths and/or weaknesses of competing proposals.

After negotiations are concluded, Offerors are advised that their *Best and Final Offer* is now due by a specified closing date and time.

All *Best and Final Offers* must be submitted by a scheduled closing date and time.

Subsequent to the specified closing date and time the process will be repeated by returning to Proposal Opening and Evaluation of Proposals procedures. Steps will be executed as applicable. No further negotiations will be undertaken. A decision must be made to award or to cancel the RFP

**8.3.8** **Award**

The Contracting Officer determines that an award can be made that is judged by the MBTA to be in its best interest.

A recommendation is made to the General Manager with documentation to include the Evaluation Committee’s recommendation.

The Contracting Officer, or Designee, prepares request for approval by the General Manager and the Board of Directors. All contracts with a value in excess of $15 million require the approval of the Board.

The Federal Transit Administration (FTA) and/or the Massachusetts Department of Transportation (MassDOT) approvals are obtained (if required).

All Offerors will be advised, in writing, of the MBTA’s decision.

**8.3.9 Notice to Proceed**

Upon execution of the Contract, a formal Notice to Proceed will be issued to the Contractor.

**NOTE: The MBTA reserves the right to amend the process, as applicable, it its own best interest.**

**8.4** **COMMITTEE MEMBER CERTIFICATION/EVALUATION**

As a member of the committee to review proposals for\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, I hereby certify that, to the best of my knowledge, I do not have a conflict of interest, either real or apparent, as a result of any financial or other interest on my part or that of any member of my immediate family, nor of my partner(s), in relation to any contract or subcontract under consideration by this Committee. I further certify that none of the above are currently employed by or have an arrangement for future employment with any organization under consideration.

If, during the course of this review process, I become aware of an appearance of conflict of interest due to previous employment or other relationships with a firm involved with this process, I will notify the Contracting Officer in writing of the facts surrounding the situation.

I also certify that, prior to a final selection decision by a Contracting Officer, no discussions will be held outside the Committee membership.

I further certify that I will not solicit or accept gratuities, favors, or anything of monetary value from any organization associated with this selection.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Member’s Signature & Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**8.5 Procedure to Determine Award/Negotiation**

Prior to opening Proposals, a determination is made as to the proportional weight assigned to PART A and to PART B. At the same time, a decision is made as to the evaluation criteria to be used under PART B and its respective value(s) of the Technical/Contractual evaluation criteria are prioritized in order of importance in the Request for Proposal and in the corresponding advertisement.

In the Evaluation Criteria (PART B) review, a 100-point tabulation will be established for each criterion with zero (0) designation the lowest (worst) and one hundred (100) designating the highest (best). The Committee Members will judge and rate each proposal in accordance with the Evaluation Criteria. These pre-established weight factors for PART B are then applied to the number of points achieved to determine the total weighted points achieved for PART B.

The Evaluation Committee submits the achieved PART B scores in its recommendation to the Contracting Officer.

The review of PART A, conducted by the Contracting Officer or Designee, follows a similar procedure. For items that are quantifiable, the following method will be applied; Using a 100 point tabulation method with one hundred (100) being the highest (best), the best proposal submitted within the Competitive Range will receive the maximum 100 points, and all other proposals in the Competitive Range will be pro-rated based upon its relationship to (variance from) the best offer submitted. The pre-established weight for PART A is then applied to the number of points achieved to determine the total weighted points achieved for PART A.

The weighted scores for PARTS A and B are then combined to determine the total score for each proposal.

Unless all proposals are rejected, an award shall be made to that Offeror whose proposal, conforming to the solicitation, is judged to be most advantageous to the MBTA, price/cost or other factors considered.