

RESOLUTION NO. 2013-003

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE ANAHEIM TRANSPORTATION NETWORK
APPROVING PROCUREMENT GUIDELINES AND
REPEALING PRIOR PROCUREMENT GUIDELINES

WHEREAS, the Anaheim Transportation Network, a California nonprofit public benefit corporation ("ATN"), is a sub-recipient of federal assistance provided by the Federal Transportation Administration ("FTA"); and

WHEREAS, ATN is required by FTA regulations and guidance to have a procurement policy meeting the "Common Grant Rule" regulations and other applicable federal laws and regulations for the procurement of goods and services with federal assistance; and

WHEREAS, in the vast majority of situations where ATN does not use federal assistance to procure goods and services, ATN nevertheless believes that good corporate governance practices requires it to have a procurement policy to establish procedures for acquisition of goods and services when federal assistance is not used and, furthermore, that such policy should be flexible enough to permit ATN to enter procurements that are in its best interest; and

WHEREAS, ATN now desires to approve the Anaheim Resort Transportation Procurement Manual attached hereto as Exhibit A (the "Procurement Manual") in order to specify processes, procedures and policies governing procurement of goods and services where federally assisted and non-federally assisted funds are used, to establish a protest process for vendors and to establish a disadvantaged business enterprise policy.

THEREFORE, THE BOARD OF DIRECTORS OF ATN DOES HEREBY RESOLVE, FIND, DETERMINE AND ORDER AS FOLLOWS:

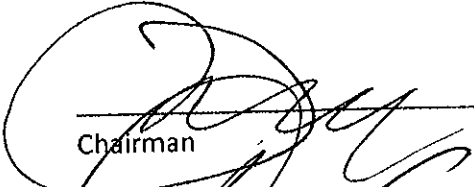
Section 1: The ATN hereby approves the Procurement Manual attached hereto as Exhibit A and adopts this manual with respect to those matters set forth therein; and

Section 2: The ATN hereby repeals in their entirety those certain Anaheim Resort Transportation Procurement and Purchasing Guidelines approved by the ATN Board of Directors in February 2012 and any other policies, procedures and guidelines previously approved by ATN's Board of Directors.

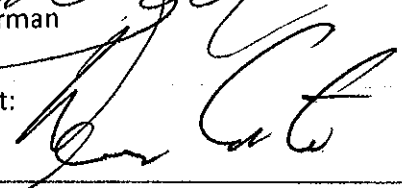
Section 3: The Executive Director of ATN is authorized and directed to implement the Procurement Manual. The Executive Director is authorized and directed to make interpretations of actions and matters contained in the Procurement Manual so long as such interpretations do not materially alter the Procurement Manual or contradict law or established FTA regulations or guidance. The Executive Director, in consultation with legal counsel, is authorized and directed to make minor amendments to the Procurement Manual that do not materially alter the approved Procurement Manual when such amendments are deemed necessary by the Executive Director (including, without limitation, in such

instances where revised or new federal guidance is delivered by the FTA with respect to federally assisted procurements).

Adopted, signed and approved this 27th day of February 2013.



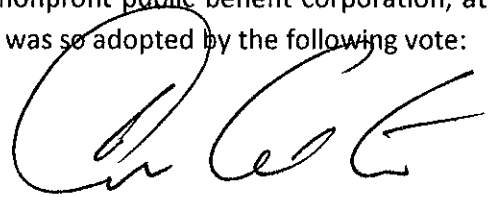
Chairman

Attest: 

Diana Kotler, Executive Director

I Diana Kotler, Executive Director of the Anaheim Transportation Network, do hereby certify that the foregoing Resolution No. 2013-003 of the Board of Directors was duly adopted by the Board of Directors of the Anaheim Transportation Network, a California nonprofit public benefit corporation, at a regular meeting of the Board on 27, February 2013, and that it was so adopted by the following vote:

YEAS:
NEAS:
ABST:



Diana Kotler, Executive Director

EXHIBIT A

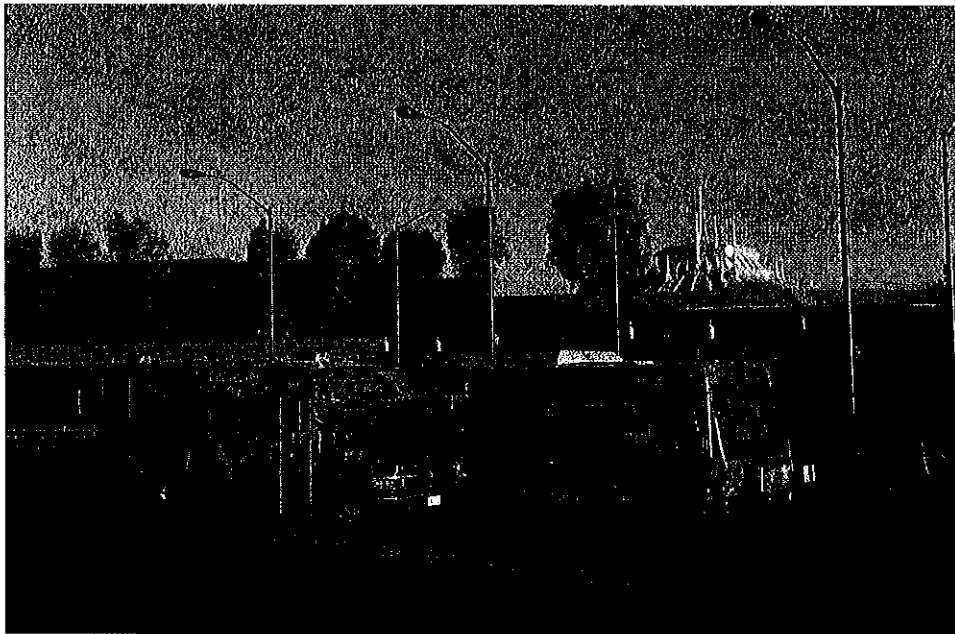
Procurement Manual

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ANAHEIM RESORT TRANSPORTATION



PROCUREMENT MANUAL



PREPARED BY ANAHEIM TRANSPORTATION NETWORK

APPROVED BY THE ANAHEIM TRANSPORTATION NETWORK BOARD OF DIRECTORS
FEBRUARY 2013

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[TO BE INSERTED AFTER REVIEW OF DRAFT]

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CHAPTER I

INTRODUCTION

The Anaheim Transportation Network (ATN) provides a range of transportation services for the general public in the Orange County region, primarily by bus services along routes in Anaheim, Orange, Buena Park, Santa Ana and Garden Grove. ATN's mission is to enhance transportation options by delivering reliable and efficient transportation solutions. ATN's commitment to customers consists of integrity, customer service, can-do spirit, communication and partnerships.

ATN is a nonprofit mutual benefit corporation that operates under a Board of Directors, governed by its Articles of Incorporation and its Bylaws. It is organized and operated exclusively for social welfare purposes, and has established its tax exempt status under Section 501(c)(4) of the United States Internal Revenue Code.

ATN procures goods, inventory items, consultant and professional services as necessary to fulfill the purposes of ATN. As a 501(c)(4) organization, the Internal Revenue Code does not obligate ATN to comply with specific procurement procedures. However, in order to ensure a fair and competitive system and to comply with industry best practices, ATN has adopted this Procurement Manual. Chapter II of this manual is applicable to all procurements by ATN. It represents the minimum standards that must be met by ATN contract administrators.

As a sub-recipient of federal funds, ATN is required to comply with certain federal rules and regulations when it procures items with the use of these federal funds. Chapter III of this manual provides the additional policies and procedures that ATN contract administrators must follow for federally funded procurements.

Chapter IV of this manual addresses ATN's compliance with the disadvantaged business enterprise (DBE) requirements that apply in relation to federal funds received by ATN as a subrecipient.

CHAPTER II

PROVISIONS APPLICABLE TO ALL PROCUREMENTS

1. **General Principles.**

1.1 **Procurement Policy.** The policies contained in this Procurement Manual are intended to maintain the integrity of ATN's procurement processes, while ensuring that purchases are made in a cost effective, timely manner; with fair and open competition; and in accordance with all applicable laws and regulations.

1.2 **Conflicts of Interest.** No preferential treatment may be given to any contractor. The ATN 'Conflict of Interest Policy', approved by the Board of Directors through Resolution No. 12-003 on June 27, 2012, as such policy may be amended or revised by Board action, shall apply to all procurements by ATN.

1.3 **Competition.** Procurement transactions should be conducted in a manner that, to the extent practical, promotes open and free competition. Awards will be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to ATN.

(a) ***Restraint of Trade.*** ATN employees, officers, and agents must not support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.

(b) ***Organizational Conflicts of Interest - Exclusion from Competition.*** Contractors who participate in the development or drafting of ATN's specifications, requirements, statements of work, invitations for bids, or requests for proposals will be excluded from competing for such procurements.

2. **Contract Administration System.** ATN's contract administration system is intended to manage procurement activities and help ensure that contractors engaged by ATN perform in accordance with the terms, conditions and specifications of their respective contracts.

2.1 **Activities.** Contract administration may involve a variety of activities, including but not limited to: monitoring project progress; monitoring financial status of contractors; ensuring contractor compliance with quality assurance requirements; and evaluating adequacy of engineering efforts.

2.2 **Evaluation.** ATN will evaluate contract performance and, as appropriate, document whether contractors have met the terms, conditions and specifications of the contract.

2.3 **Responsibilities.** ATN will identify an individual who will be responsible for the maintenance of procurement records for each project.

3. **Procurement Planning.** ATN staff should plan procurements in advance to best address the needs of ATN.

3.1 Avoidance of Duplicative Procurements. In order to avoid purchasing unnecessary items, ATN staff should keep records of and regularly review planned procurements.

3.2 Analysis of Alternatives to Purchase. As applicable and appropriate, an analysis of lease and purchase alternatives should be made to determine which option would be the most economical and practical procurement approach.

3.3 Contract Type. In determining the type of contract to be utilized, staff should consider price, risk, uncertainty, and responsibility for costs. The type of contract used should reflect the cost risk and responsibility assumed by the contractor or supplier. Contract types include, but are not limited to, the following:

(a) *Firm fixed-price contracts.* This contract type provides a firm contract price, without the right to cost adjustments except in specific circumstances as set forth in the contract terms and conditions.

(b) *Cost reimbursement/cost-plus-fixed-fee contracts.* This contract type includes an estimate of the total contract costs, to be paid on a reimbursement basis, which amount cannot be exceeded without ATN approval, plus a negotiated fixed fee.

(c) *Time and materials/labor hour contracts.* These contract types are based on payment for direct labor hours at specified, fully burdened hourly rates, and, as applicable for materials at agreed upon cost. A ceiling price should be included in the contract, with provisions specifying that the contractor exceeds this ceiling at its own risk, unless prior written approval of ATN is obtained for an increase in the ceiling price.

3.4 Procurement Type. The ATN staff responsible for the applicable procurement will determine which method of procurement is to be utilized based on the criteria set forth in this Procurement Manual. Procurement methods include small purchase procedures, low bid competitive procurement, competitively negotiated procurement, non-competitive procurement, micropurchases and the additional procurement methods set forth in Section 10 below. The available methods of procurement are further described below. ATN does not currently anticipate utilizing the Design-Build method of procurement.

4. **Micropurchases.** Micropurchases do not require multiple quotes, formal bidding procedures or non-competitive procurement findings. For non-federally funded procurements, the threshold for micropurchases is \$10,000. For federally funded procurements, the threshold for micropurchases is \$3,000. Procurements should not be split (i.e., segmented into smaller contracts to fall under the micropurchase thresholds) to avoid competition.

4.1 Micropurchase Procedures. Micropurchases may be made by obtaining a single proposal or quotation from a commercial vendor that makes available to the public, in significant quantities, equipment, materials or supplies at a price determined by ATN to be fair and reasonable.

4.2 Purchasing Method. ATN may use a purchasing method that best serves the needs of ATN.

4.3 Federally Funded Micropurchases.

(a) Federally funded micropurchases should be made from various commercial vendors offering competitive pricing, on a rotating basis or other basis providing equitable distribution among qualified vendors.

(b) ATN should retain, in the procurement file, a written determination that the price obtained for a micropurchase is fair and reasonable, and the basis for the determination.

5. **Small Purchase Procurements.** For the purposes of determining the manner in which a solicitation may be made, \$100,000 shall represent the small purchase threshold for ATN. Small purchase procurements do not require formal bid procedures and may be made pursuant to an informal process of soliciting independent bids or quotes.

5.1 Number of Bids. ATN will seek no less than three (3) bids from separate and independent entities.

5.2 Choice of Contractor's Solicited. ATN has wide latitude in the choice of contractors solicited, subject to ATN's competition and conflict of interest rules set forth herein.

5.3 Selection of Contractor. ATN has wide latitude in selecting a contractor for a small purchase procurement. In making its determination, ATN may consider: cost/price analysis, the quality and timeliness of past work for ATN, as applicable, the community reputation of the contractor, and any other factors relevant to ATN's interests.

5.4 Federally Funded Small Purchase Procurements. For federally funded small purchase procurements, ATN must document in the file a determination that the price obtained is fair and reasonable.

6. **Low Bid Competitive Procurement.** A low bid competitive procurement pursuant to issuance of an invitation for bids (IFB) may be used where a complete, adequate, and sufficiently generic specification is developed; adequate competition is available in the marketplace (two or more responsive and responsible bidders will compete); and the procurement lends itself to a firm-fixed price contract. An IFB will be used when required by the applicable funding source based on the project type and anticipated contract value.

6.1 Notice.

(a) For federally funded procurements, ATN will notify potential bidders of the availability of the IFB through public advertisement. Publication should be made early enough to provide sufficient time for bidders to submit bids by the deadline set forth in the IFB, as determined by ATN.

(b) For non-federal procurements, unless otherwise required by the applicable funding source, ATN may provide notice of the IFB by any means deemed appropriate and sufficient by ATN.

6.2 Public Opening; Evaluation. Bids will be evaluated without discussions with bidders. Bids received after the time identified in the IFB will not be considered. Bids will be opened publicly at the time stated in the IFB.

6.3 Basis of Award; Tie Bids. If a contract is awarded, it will be awarded to the lowest responsive, responsible bidder. If two or more bids are tied, ATN may negotiate with the lowest bidders or may simply select the bid which ATN, in its sole judgment, prefers.

6.4 Rejection of Bids. ATN should include, in its bid documents, a right to reject any and all bids. For federally funded procurements, ATN should document in its files a sound business reason for rejection of bid(s).

7. **Competitively Negotiated Procurement.** A competitively negotiated procurement pursuant to issuance of a Request for Proposals (RFP) or Request for Qualifications (RFQ) may be used where a low bid competitive procurement is not appropriate or desirable for the solicitation, including, but not limited to, the procurement of professional services including architect, engineering, construction management, accounting, legal and other similar services, and the contract is anticipated to exceed the small purchase threshold.

7.1 Formulation. ATN may exercise flexibility in the formulation of the RFP/RFQ, so long as it is in compliance with the procurement specification requirements and other provisions of this manual. The RFP/RFQ should contain the scope of work and the model contract to be used with the successful offeror, or should identify key contractual components/requirements if a model contract is not available at the time of RFP/RFQ distribution.

(a) *Federally Funded RFP/RFQs.* For federally funded procurements, ATN must include all evaluation factors that will be considered, along with the relative importance of each.

7.2 Board Approval Prior to Issuance. Prior to issuance of an RFP/RFQ for a contract anticipated to exceed the small purchase threshold, the Board of Directors must approve the criteria to be used in evaluating the RFP/RFQ.

7.3 Notice.

(a) For federally funded procurements, ATN will notify potential offerors of the availability of the RFP/RFQ through public advertisement and proposals will be solicited from an adequate number of qualified sources. Publication should be made early enough to provide sufficient time for offerors to submit proposals by the deadline set forth in the RFP/RFQ, as determined by ATN.

(b) For non-federal procurements, unless otherwise required by the applicable funding source, ATN may provide notice of the RFP/RFQ by any means deemed appropriate and sufficient by ATN.

7.4 Interaction with Contractors. After the issuance of the RFP/RFQ, ATN contract administrators may host an informational conference or open a written question and answer period for the benefit of offerors.

7.5 Evaluation Committee. The Executive Director (or the Board if it chooses) may select an Evaluation Committee to review bids and offers submitted in response to each solicitation for which a

judgment call is required. All members of the Evaluation Committee must declare that they have no conflicts of interest related to the RFP/RFQ. The Evaluation Committee, if utilized, will review the bids and offers received, and recommend for approval the best offer considering the evaluation factors established in the RFP/RFQ.

7.6 Negotiation with Top Ranked Firm; Award. As appropriate based on the solicitation procedures set forth in the RFP/RFQ, ATN may negotiate with the top ranked firm(s) and may:

(a) Award a contract to the offeror whose proposal is most advantageous to ATN with price and other factors considered, as determined based on the factors set forth in the RFP/RFQ.

(b) Award a contract on the basis of best value to ATN, provided that the solicitation documents establish that award may be made on the basis of best value.

(c) For federally funded procurement of architectural and engineering services, ATN will, and for other procurements where ATN believes it is in ATN's best interest, ATN may, conduct a two-step procurement process and will not consider price in the initial evaluation of proposals. ATN will first negotiate with the most qualified offeror. If agreement cannot be reached with the most qualified firm, ATN will negotiate with the next firm(s) until agreement is reached on a fair and reasonable price.

8. **Options.** ATN may include in any procurement, an option providing ATN the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract.

8.1 Options Used in Federally Funded Procurements. For a federally funded procurement, option quantities must be evaluated as part of the contract award. Prior to exercise of an option utilizing federal funds, ATN must ensure and document in the file that exercise of the option is in accordance with the terms set forth in the contract, and that exercise of the option results in a procurement that is more economical and/or advantageous than otherwise available in the marketplace.

9. **Non-Competitive Procurements.** In the following situations, procurements may be made through solicitation of a proposal from only one source. For federally funded procurements, ATN must perform a cost and profit analysis prior to making the award, which analysis must be included in the procurement file. An amendment to an existing contract that is beyond the scope of the original procurement, including any negotiated options, or that increases the contract amount over the small purchase threshold ("tag-on") is subject to this section.

9.1 Emergency; Unusual and Compelling Urgency. If ATN has an unusual and urgent need for the property or services, such that ATN would be seriously injured by having to comply with competitive procurement requirements. ATN may also enter into a contract in a non-competitive manner when the public exigency or emergency will not allow for the delay of engaging in a competitive procurement.

9.2 Sole Source. Where goods or services are available from only a single responsible source, and other suppliers or service providers will not satisfy the needs of ATN.

9.3 Single Response; Adequate Competition. Where only one bid or offer is received as a result of the competitive procurement process, the selection may be made in a non-competitive manner.

(a) For federally funded procurements, ATN must first review its specifications to verify that they are not unduly restrictive and to ensure that the lack of response was due to factors beyond ATN's control.

9.4 Permitted by Federal Regulations, or Authorized by Federal Funding Agency. Where other circumstances exist that justify non-competitive procurement as set forth in the rules and regulations applicable to the federal funding source, or when authorized by the federal funding agency.

9.5 Best Interests of ATN. For non-federally funded procurements only, non-competitive procurements may be made upon determination by the Executive Director or the ATN Board of Directors that such non-competitive procurement is in the best interests of ATN.

10. **Additional Procurement Methods.**

10.1 California Multiple Award Schedule and State Master Agreements. As applicable, ATN may utilize the State Master Agreements and the California Multiple Award Schedule (CMAS) established between the California Department of General Services (DGS) and vendors who agree to the terms and conditions established by DGS.

(a) Except as specified below, ATN must solicit three or more bids from CMAS and State Master Agreement vendors. If less than three bids are received, documentation of solicitation methods must be included in the procurement file.

(b) ATN is not required to solicit three offers for CMAS and State Master Agreements based on competition, such as Cal-Store, the Master Rental Agreement, Western States Contracting Alliance (WSCA), etc. CMAS and State Master Agreement information is available www.dgs.ca.gov/pd.

10.2 Piggybacking. ATN may "piggyback" on a contract/solicitation process completed by another entity that complies with the requirements of this manual, if the procurement allows another entity to purchase the same supplies or equipment under the original contract/solicitation process. Examples include:

(a) Procurements that contain a clause allowing the assignment of all or part of the specified deliverables as originally procured and awarded.

(b) For federally funded procurements, the original solicitation and contract must contain a minimum and a maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation, and must otherwise comply with federal requirements.

11. **Procurement Specifications.** In order to provide for fair, unbiased review and evaluation of competitive proposals, ATN solicitations for goods and services over the small purchase threshold should provide clear specifications.

11.1 Specification Requirements for Locally Funded Procurements. All competitive solicitations should provide, as applicable:

(a) A clear and accurate description of the technical requirements for the material, product, or service to be procured.

(b) A description of the requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(c) A description of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

11.2 Additional Specification Requirements for Federally Funded Procurements. In addition to the above, federally funded procurements should provide:

(a) Technical requirements for the procurement that do not contain features which unduly restrict competition.

(b) Use of "brand name or equal" purchase descriptions only if:

(i) An adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration; and

(ii) When minimum needs are carefully identified and those salient physical and functional characteristics of the brand name product are clearly set forth in the solicitation.

(c) The acceptance, to the extent practical and financially feasible, of products and services dimensioned in the metric system of measurement.

(d) The preference, to the extent practical and financially feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

12. Contractor Selection.

12.1 Responsible Contractors. ATN will only award contracts to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the procurement. In making this determination, ATN may consider contractor integrity, record of past performance, and financial and technical resources or accessibility to other necessary resources.

13. Contract Award.

13.1 Approval Authority. Final authority for procurement rests with ATN's Board of Directors except as delegated by the Board to the Executive Director.

13.2 Executive Director Approval Threshold. The Executive Director is authorized to approve and enter into contracts, including contract amendments, on behalf of ATN under his/her single signature authority where the expenditure is less than fifty thousand dollars (\$50,000) ("Single Signature Authority"). Segmentation of contracts to avoid this threshold is not permitted.

13.3 Option Contracts. If the exercise of an option under an existing contract entered into by the Executive Director under his/her Single Signature Authority will result in a total contract value in excess of the Single Signature Authority threshold, approval of the Board of Directors is required.

13.4 Contract Amendments. Where an amendment to an existing contract entered into by the Executive Director under his/her Single Signature Authority will result in a total contract value in excess of the Single Signature Authority threshold, approval of the Board of Directors is required.

13.5 Board Approval. The Board of Directors is the only entity permitted to award contracts valued at fifty thousand dollars (\$50,000) or more.

14. **Procurement Records.**

14.1 Procurement Files. ATN will keep and maintain, in accordance with its records retention policy, a file or record for each procurement in excess of the small purchase threshold. For federally funded procurements, this file or record must include:

- (a) The rationale for the method of procurement.
- (b) The basis for the contract type selected.
- (c) The basis for contractor selection.
- (d) The justification for lack of competition where competitive bids or offers are not obtained.
- (e) The basis for the award cost or price.

15. **Protest Procedures.**

15.1 Applicability. These protest procedures apply to all ATN formal competitive procurements (RFPs, RFQs and IFBs), unless different procedures are included in the procurement documents. Procurements that intend to utilize the protest procedures set forth herein should include a reference to these procedures. As used in this section, an "interested party" is any person or entity that has timely submitted a bid or proposal in response to a formal procurement. Protests may only be filed by an interested party.

15.2 Guidelines for Protests.

(a) *Strict compliance*. Strict compliance with the protest procedures is required. No statement by ATN employees, officers, or agents will modify or otherwise alter the protest procedures. Only ATN's Board of Directors is authorized to modify these procedures, or the protest procedures set forth in the applicable procurement documents.

(b) *Exhaustion of Remedies Required Prior to Pursuing Protest with Federal Funding Agency or any legal action in any court or tribunal*. The protest procedures are intended to constitute administrative remedies that must be exhausted prior to an interested party commencing any legal action or requesting review by any applicable federal funding agency.

(c) *Deadline.* Protests must be filed promptly after the basis for the protest is known, but no later than:

(i) Seven (7) calendar days after any request for clarifications or questions period set forth in the procurement documents has closed, if the protest relates to the contents of the procurement documents;

(ii) Five (5) calendar days after issuance by ATN of an addendum to the procurement documents;

(iii) Seven (7) calendar days after notification is provided regarding firms included on a "short-list" developed pursuant to an RFP/RFQ issued by ATN, if the protest relates to the firms included/ not included on the "short-list";

(iv) Seven (7) calendar days after the ATN Board takes action on the contract that is the subject of the protest;

(d) *Contents Of Protest.* Protests must clearly identify the interested party and the procurement involved in the protest. Protests must completely and succinctly state each and every ground for protest in detail, its legal authority for each protest allegation, and the factual basis for such protest. The protest must include all factual and legal documentation in sufficient detail to establish the merits of the protest. Items that are not included in a protest shall be deemed waived and uncontested.

(e) *Filing Of Protest.* Protests must be filed by hand delivery to the ATN offices during normal business hours (but in no event later than 5:00 p.m.) on or before the applicable deadline. Protests delivered by other means (facsimile, email, US Mail, etc.) shall not be deemed properly filed. Protests must be directed to the attention of the Executive Director of ATN.

15.3 Resolution. Protests will be decided on the basis of written submissions and any other fact finding determined necessary or appropriate by ATN. ATN may establish a protest evaluation team, and may consult with its legal counsel.

15.4 Decision On Protest. The Executive Director will issue a written decision regarding the protest within thirty (30) days after the filing of the detailed statement of protest. The Executive Director's decision is final.

15.5 Actions Following Protest. If necessary to address the issues raised in a protest, ATN may, in its sole discretion, make appropriate revisions to the solicitation by issuing addenda, may reject all proposals, or may take such other actions as deemed appropriate.

15.6 FTA Funded Procurements. If a protest involves an FTA funded procurement, the contract administrator will disclose information regarding the protest to FTA, and will keep the FTA informed about the status of the protest.

[END OF CHAPTER]

CHAPTER III

REQUIREMENTS FOR FEDERALLY FUNDED PROCUREMENTS

1. **Applicability of Chapter III; Conflicts with Other Provisions.** This Chapter III of the Procurement Manual applies to federally funded procurements only. The provisions in this Chapter are based on the requirements of the federal Common Grant Rule applicable to non-governmental entities (49 CFR Part 19). The requirements in this Chapter III are in addition to the requirements contained in Chapter II of this manual, which also apply to federally funded procurements. Should a section of Chapter II conflict with a section of this Chapter III, the provisions of this Chapter III shall govern.

2. **Conflicts of Interest - Additional Rules for Federally Funded Procurements; Standards of Conduct.** It is ATN's goal to avoid actual or perceived conflicts of interest in contracts and to promote full and open competition. In the case of a real or apparent conflict of interest, the ATN employee, officer, or agent with the actual or perceived conflict must not participate in the selection, award, or administration of such contract.

2.1 The following standards of conduct govern employees engaged in the selection, award or administration of federally funded contracts:

(a) The officers, employees and agents of ATN must not solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements.

(b) Section 2.1 above does not apply to unsolicited gifts of nominal value.

(c) A conflict of interest is deemed to exist if the employee, officer or agent of ATN, his/her partner, any member of his/her immediate family, or an organization that employs or is about to employ any of the foregoing, has a financial or other interest in the proposed contract.

(d) For purposes of this Section 2 only, a conflict of interest will not be deemed to exist where the financial interest is insubstantial. Notwithstanding that the Political Reform Act is inapplicable to ATN or its officials, an interest shall be deemed insubstantial if it would not create a conflict of interest for a public official under the California Political Reform Act (Government Code sections 81000, et. seq.).

2.2 ATN may take disciplinary action for violations of these standards by officers, employees, or agents of the recipient. Such action may include imposition of mandatory ethics training, suspension of authority to participate in procurement activities and/or repayment of all or a portion of the penalties or costs incurred by ATN related to the violation, if such violation is made in bad faith, and as legally permitted.

3. **Utilization of Specific Businesses.** ATN employees, officers, and agents shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises in federally funded procurements.

3.1 *Steps to promote participation.* As feasible, ATN should do the following:

(a) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(b) Make information on forthcoming opportunities available and arrange timeframes for purchases and contracts to encourage and facilitate participation by such organizations.

(c) Consider in the contract process whether firms competing for larger contracts intend to subcontract with such organizations.

(d) Consider contracting with consortiums of such organizations when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of organizations similar to the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of such organizations.

3.2 ATN must also comply with the DBE Program set forth in Chapter IV.

4. **Independent Cost Estimate.** An independent cost estimate should be completed prior to the solicitation/receipt of bids or proposals for federally funded procurements in order to assist with determining price reasonableness. Depending on the procurement type and scope, independent cost estimates may be completed by ATN staff, by independent third-party staff, or by a firm retained to complete the estimate. Methods of completing the independent cost estimate vary based on the procurement and include:

4.1 Checking historical records or published price guides.

4.2 Completing a detailed and in-depth estimate, such as required for preparing an engineer's estimate for a construction contract.

5. **Cost and Price Analysis.** ATN staff must perform some form of documented cost or price analysis for every federally funded procurement action, which must be maintained in the project file.

5.1 Price Analysis. Acceptable methods of price analysis include the comparison of price quotations submitted, market prices and similar indicia, together with discounts.

5.2 Cost Analysis. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

5.3 Federal Cost Principles. As applicable, ATN should utilize the guidelines provided in Federal Acquisition Regulations, Part 31, to determine whether proposed costs are reasonable, allowable and allocable.

6. Prohibited Procurement Practices; Specific Contracting Requirements.

6.1 Requirements/Prohibitions Related to Contract Selection and Reimbursement Methods. ATN must comply with the following prohibitions and requirements related to selecting the type of contract or basis for reimbursement for federally funded procurements.

(a) ATN must not utilize the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting.

(b) ATN must not utilize the "time and materials" contract unless ATN determines that no other contract type is suitable and the contract explicitly specifies a ceiling price that the bidder or offeror may only exceed at its own risk.

(c) Where ATN chooses to enter a "cost reimbursement" contract, its employees, officers, and agents must comply with the applicable provisions of Federal Acquisition Regulation (FAR) Part 31. Specifically, ATN must utilize the guidelines in FAR Part 31 to determine whether the contractor's proposed costs are reasonable, allowable, and allocable.

(d) ATN must not enter into a tag-on contract (as defined in Chapter II, Section 9 of this manual) without making an acceptable non-competitive procurement finding.

(e) Advance payments of federal funds are prohibited unless prior written concurrence is obtained from the federal funding agency.

(f) If progress payments are used for a selected contract, such payments must be made on the basis of costs incurred or, for construction contracts only, on the basis of percentage of completion of the relevant project. ATN must obtain adequate security (i.e., title to work in progress; letter of credit) for any progress payments made.

(g) ATN must not enter into contracts for rolling stock and/or replacement parts that not exceed a term of five (5) years, including option extensions, without approval of the federal funding agency. Contract terms for all other procurements may be negotiated based on the sound business judgment of ATN.

6.2 Exclusionary or Discriminatory Specifications. ATN, its employees, officers, and agents must not use federal funds to support an exclusionary or discriminatory specification. In conformity with this mandate, ATN must not:

(a) Impose unreasonable business requirements for bidders or offerors.

(b) Impose unnecessary experience requirements for bidders or offerors.

(c) Require excessive prequalification of contractors.

(d) Make a noncompetitive award to a person or firm on a retainer contract for anything not covered under the retainer contract.

(e) Impose excessive bonding without the original recipient's and the funding agency's written concurrence.

(f) Specify a brand name product without allowing offers of an equal product.

(g) Specify in-State or local geographic preferences, except to comply with State licensing requirements or in the case of procuring architectural engineering or disaster relief services.

6.3 **Debarment and Suspension.** ATN must not contract with parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" and 49 C.F.R. part 29. ATN employees, officers, and agents shall conduct this check prior to forming a contract for procurement. These records may presently be checked at www.sam.gov.

7. **Contractual Remedies.** All federally funded contracts awarded by ATN shall include the following provisions, if applicable.

7.1 **Remedies for Breach of Contract.** Contractual provisions that provide for administrative, contractual, or legal remedies for contractor violations or breaches of the contract terms, and provisions for remedial actions, as appropriate, must be included in contracts in excess of the small purchase threshold, currently \$100,000.

7.2 **Termination Provision.** Contracts in excess of the small purchase threshold must include termination provisions allowing ATN to terminate the contract for convenience and for cause. The termination provisions must specify the procedure pursuant to which termination will be effected and the basis for settlement.

7.3 **Liquidated Damages.** If liquidated damages are used, they must be specified in the contract and must be assessed at a specific rate per day for each day of overrun. Any damages recovered must be credited to the relevant federally funded project, unless otherwise allowed by the federal funding agency.

8. **Bid Guarantees, Performance Bonds, and Payment Bonds.** The following requirements apply to federally funded contracts for construction or facility improvements.

8.1 **Contracts Under \$100,000.** Unless otherwise required by the applicable funding source, ATN may utilize its own requirements related to bid guarantees, performance bonds and payment bonds.

8.2 **Contracts Over \$100,000.** In the absence of a determination by the federal awarding agency that the Federal Government's interest is adequately protected, ATN must require:

(a) ***Bid Guarantee.*** A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of its bid, execute such contractual documents as may be required within the time specified.

(b) ***Performance Bond.*** A performance bond to be provided by the selected contractor, in a form provided or approved by ATN for one hundred percent (100%) of the contract price. A "performance bond" is a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) *Payment Bond.* A payment bond to be provided by the selected contractor, in a form provided or approved by ATN, for one hundred percent (100%) of the contract price. A "payment bond" is a bond executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(d) *Bonds Generally.* ATN will only permit bonds to be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 C.F.R. part 223.

9. **Access to Records.** All negotiated contracts in excess of the small purchase threshold must include a provision permitting ATN, the federal awarding agency, the Comptroller General of the United States, or any other duly authorized representatives, to access any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

10. **Required Federal Provisions.** As applicable, ATN shall comply with and include the following provisions in its contracts that exceed the small purchase threshold.

10.1 **Buy America Requirements.** When ATN receives funds from the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), or the Federal Aviation Administration (FAA), for procurements above the small purchases threshold under 41 U.S.C. 403 (11), currently \$100,000, it must:

(a) Ensure all iron, steel, and manufactured products used in infrastructure projects are produced in the United States.

(i) All iron and steel manufacturing processes must take place in the United States with the exception of metallurgical processes.

(ii) All of the manufacturing processes for the products must take place in the United States, and all components for the products must be of U.S. origin.

(iii) Each bidder or offeror for the procurement of steel, iron, or manufactured products must complete and submit the appropriate certification form (See Attachment).

(b) Ensure that at least 60% of the total cost of rolling stock (transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars, and buses) is attributable to the cost of components and assembly in the United States.

(i) Each bidder or offeror for the procurement of rolling stock must complete and submit the appropriate certification form (See Attachment).

(c) Promptly inform the original grantee of ATN's desire to obtain a waiver of the Buy America requirements if it believes this will be in the best interests of ATN.

(d) ATN employees, officers, and agents should review the current Buy America regulations at 49 C.F.R. §661 *et seq.* prior to initiating a procurement subject to this section.

10.2 Cargo Preference. Where the procurement involves the shipment of goods by sea from a foreign destination, ATN must require compliance with the requirements of the Cargo Preference Act and applicable regulations at 46 C.F.R. § 381 *et seq.*

10.3 Equal Employment Opportunity. All contracts must 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 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

10.4 Prompt Payment to Subcontractors.

(a) Pursuant to 49 CFR part 26, contracts entered into by ATN that exceed the small purchase threshold must require that the prime contractor or subcontractor make payment to any subcontractor within no more than 7 days of receipt of a progress payment from ATN, unless otherwise agreed to in writing. Payment must be in the amount paid to the contractor on account for the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the case of a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may be permitted to withhold no more than 150 percent of the disputed amount.

(b) ATN must also require the prompt return of retention payments from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed.

10.5 Nondiscrimination. ATN contracts must contain a provision requiring that the contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the ATN contract. Such provision must require that the contractor carry out applicable requirements of Title 49 CFR, Part 26. The contract must specify that failure by the contractor to carry out these requirements is a material breach of the contract, which may result in the termination or such other remedy as the ATN deems appropriate.

10.6 Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c). All contracts in excess of \$2,000 for construction or repair awarded by ATN must include a provision requiring compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States"). The Act provides that each contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. ATN must report all suspected or reported violations to the FTA.

10.7 Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7). Construction contracts over \$2,000 awarded by ATN must include a provision requiring compliance with the Davis-Bacon Act (40 U.S.C. 276a to a(7)) as supplemented by Department of Labor regulations (29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). The Davis Bacon Act requires contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Act also requires contractors to pay wages not less than once a week. ATN will place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a

contract will be conditioned upon the acceptance of the wage determination. ATN will report all suspected or reported violations to the federal awarding agency.

10.8 Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). Where applicable, all contracts awarded by ATN in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

10.9 Rights to Inventions Made Under a Contract or Agreement. Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

10.10 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 in excess of \$100,000 must 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).

10.11 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors who apply or bid for an award of \$100,000 or more must be required to file the certification required by 49 C.F.R. part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above 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. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

10.12 Debarment and Suspension (E.O.s 12549 and 12689). No contract may be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" and 49 C.F.R. part 29. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold must be required to provide the required certification regarding its exclusion status and that of its principal employees.

9.12 Third Party Contract Matrix. In addition to the above requirements, this manual contains an FTA third party contract clause matrix. If required by the federal recipient providing federal funds to ATN as a subrecipient, ATN will include the applicable third-party contract provisions from the matrix in its relevant federally funded third party contracts (excluding micropurchases, except otherwise specified). ATN staff may update the attached matrix without ATN Board approval based on regulatory changes.

11. **Federal Awarding Agency Review**. ATN must, on request, make available all procurement documents, including RFPs, IFBs, and independent cost estimates, to the federal funding agency in any of the following circumstances:

(a) ATN's procurement procedures or operation fails to comply with federal procurement standards.

(b) The procurement is expected to exceed the small purchase threshold under 41 U.S.C. 403(11), currently \$100,000, and is to be awarded without competition including where only one bid or offer is received in response to a solicitation.

(c) The procurement specifies a "brand name" product without allowing for an "or equal" and is expected to exceed the small purchase threshold.

(d) The contract is above the small purchase threshold and is to be awarded to a party other than the apparent low bidder following issuance of an IFB for a low bid competitive procurement.

(e) A proposed contract modification alters the scope of a contract or increases the contract to an amount above the small purchase threshold.

Third Party Contract Clause Matrix

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel
Fly America	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted)	>\$100,000	>\$100,000 (also ferries)	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries)	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations			
Alcohol Misuse and Testing		Transit operations			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually		EPA-selected items \$10,000 or more annually	EPA-selected items \$10,000 or more annually
Conformance with ITS National Architecture	ITS projects	ITS projects	ITS projects	ITS projects	ITS projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

CHAPTER IV

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

1. **OCTA DBE Program.** As a subrecipient of federal funds from the Orange County Transportation Authority ("OCTA"), ATN is adopting, to the extent applicable, the OCTA DBE Program in order to comply with federal funding requirements, and to assist OCTA in meeting its DBE requirements and goals. ATN will endeavor to implement the OCTA DBE Program, to the extent applicable, and in accordance with this Chapter IV.

1.1 ATN will make reasonable, race-neutral efforts to promote the utilization of DBE firms and small business enterprises (SBEs) to assist OCTA in meeting its established DBE goals.

1.2 ATN will engage in procurement practices that support participation of DBE and SBE firms, such as those practices set forth in Section 3 of Chapter III of this Procurement Manual and as described in the OCTA DBE Program.

2. **DBE Liaison Officer.** ATN has designated a DBE Liaison Officer who is responsible for developing, implementing and monitoring the DBE program.

3. **Bidder's List.** The DBE Liaison Officer, with assistance of ATN staff, will create and maintain a Bidder's List which will consist of information about all DBE and non-DBE firms that bid/quote on federally assisted contracts. A Bidder's List will be included in applicable procurement documents.

4. **DBE Commitment Form.** ATN will include a DBE commitment form to be completed by the selected contractor to report DBE participation on federally assisted contracts.

5. **DBE Final Utilization.** ATN will require the selected contractor to complete a final utilization payment form to report actual payments made to DBE firms on federally assisted contracts.

6. **Applicable Forms.** ATN will utilize the applicable forms for the Bidder's List, and for DBE commitment and utilization reporting included as part of the OCTA DBE Program.

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 CFR 661.11.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____