

THE SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

**PASSENGER VEHICLE PROCUREMENT
THROUGH
COMPETITIVE NEGOTIATION PROCESS**

BY

WILLIAM J. RHINE

Director, System Design and Analysis
Southern California Rapid Transit District

ARUN M. VIRGINKAR

Manager, Vehicle Procurement
Booz•Allen & Hamilton Inc.

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THE AUTHORS

WILLIAM J. RHINE

William Rhine is the Director of Systems Design and Analysis, Southern California Rapid Transit District (SCRTD) for the Los Angeles Metro Rail Project. His responsibilities encompass design and procurement management of the major operating systems for Metro Rail, as well as systems engineering and safety and systems assurance. His previous experience includes positions as Director of Safety and Product Qualification, UMTA, Washington, D.C.; and Director of Engineering, BARTD, San Francisco, California. He also has had 20 years experience in the aerospace industry. He has a B.S. in Engineering from UCLA, and an M.S.B.A. from Georgetown.

ARUN M. VIRGINKAR

Arun Virginkar is a Senior Associate with the Transportation Consulting Division of Booz, Allen & Hamilton Inc. He specializes in the areas of transit technology, testing, and quality and system assurance. Presently, he is managing Booz, Allen's consulting services contract for the Southern California Rapid Transit District heavy railcar procurement project in Los Angeles, California. He was the Program Manager for Booz, Allen on the recently completed procurement of sixty heavy rail cars for the Greater Cleveland Regional Transit Authority (GCRTA), Cleveland, Ohio. He has an M.S. degree in Electrical Engineering and an M.B.A. degree in Finance.

I. HISTORICAL PERSPECTIVE

Transit authorities in the United States have traditionally procured rail cars using a one-step sealed bid competitive process. In such a process, the contract is awarded to the bidder with the lowest price and determined to be responsible and responsive to the transit property's requirements. This approach served the transit authorities with satisfactory results through the 1960s. Major reasons for successful use of this approach appear to be that:

- Rail cars were procured by transit authorities already in operation
- Rail cars had a fairly standardized design, since transit authorities were usually buying an upgraded version of rail cars with detailed specifications
- Design complexity was "manageable" for transit property maintenance staff
- Car builders were mostly domestic and were a "known quantity."

In fact, rail cars were identified either by design, such as a PCC car, or by the car builders, such as a Pullman car, a Budd car, or a St. Louis car.

A shift in the procurement strategy began to take place in the 1970s, as U.S. economic environment experienced sudden changes during the decade (e.g., double digit inflation rate and oil embargo). First, United States Congress provided a renewed emphasis on mass transit and funded several new rail starts. These new transit authorities began their first rail car procurements. Second, both existing and new transit authorities were more or less forced to make rail operation "energy efficient." As a result, procurement emphasis shifted from that of the standardized design concept to that of "state-of-the-art" and "energy efficient" rail car design. This move opened doors for the participation of European, Japanese, and Canadian car builders ready to provide rail cars with advanced designs already operational in their countries.

With procurements of rail cars using more complex and unique designs, transit authorities have begun to experiment with alternatives to a one-step sealed bid competitive process to obtain quality products at the lowest possible price. Several rail car procurements in the late 1970s used a two-step sealed bid competitive process which required prequalification of a proposer's design in the first step, followed by invitations to qualified proposers for submittal of sealed price bids. The emphasis in a two-step procurement process, as in a one-step process, remains, however, on contracting with a proposer with lowest possible price, as long as the proposer is determined to meet with RFP requirements.

Recently, transit authorities have begun to experiment with yet another approach to procure rail cars--an approach using competitive negotiations. This approach is significantly different from a one-step or two-step procurement process. Exhibit 1 summarizes key differences between the three processes. The emphasis in a competitive negotiation process is to obtain quality products by awarding the contract to the proposer whose offer is the most advantageous to the transit property, price and other factors considered. This approach to rail car procurements is a recent development, and as such, there are few rail transit precedents to be followed in conducting a rail car procurement using competitive negotiations.

This paper familiarizes the reader with a representative competitive negotiation process and its key steps which will be useful to a rail car procurement; describes the planning efforts required; and summarizes the current status of the Southern California Rapid Transit District's rail car procurement using competitive negotiations.

EXHIBIT 1
Comparison of Competitive Negotiation Process With
One-Step and Two-Step Processes

ITEM	KEY ELEMENT	TYPE OF PROCUREMENT PROCESS		
		ONE STEP	TWO STEP	COMPETITIVE NEGOTIATION
1	Request for Proposals (RFP) or Invitation to Bid (ITB)	ITB	RFP/ITB	RFP
2	Specifications prepared	Yes	Yes	Yes
3	Price and technical proposal required in response to RFP/ITB	Price proposal and a brief technical proposal	Detailed technical proposal	Detailed technical and price proposals
4	Subsequent proposals required	No	Price proposal only (by proposers with prequalified technical proposals and who are invited to bid)	One or more revisions of technical and price proposal possible
5	Bid opening	Public	Public	Not mandatory
6	Meetings with bidders/proposers to discuss proposal contents	None	Meetings for clarification of technical design issues	Meetings for clarification of technical design and price issues
7	Negotiations	None	None	One or more rounds of negotiations on technical and/or price issues
8	Basis of contract award	Bidder determined to be: • Lowest priced • Responsible and responsive	Proposer, with prequalified technical design determined to be: • Lowest priced • Responsible and responsive	Proposer whose offer is most advantageous, price and other factors considered
9	Planning effort required for the procurement.	Low complexity	Medium complexity	High complexity

II. COMPETITIVE NEGOTIATION PROCESS

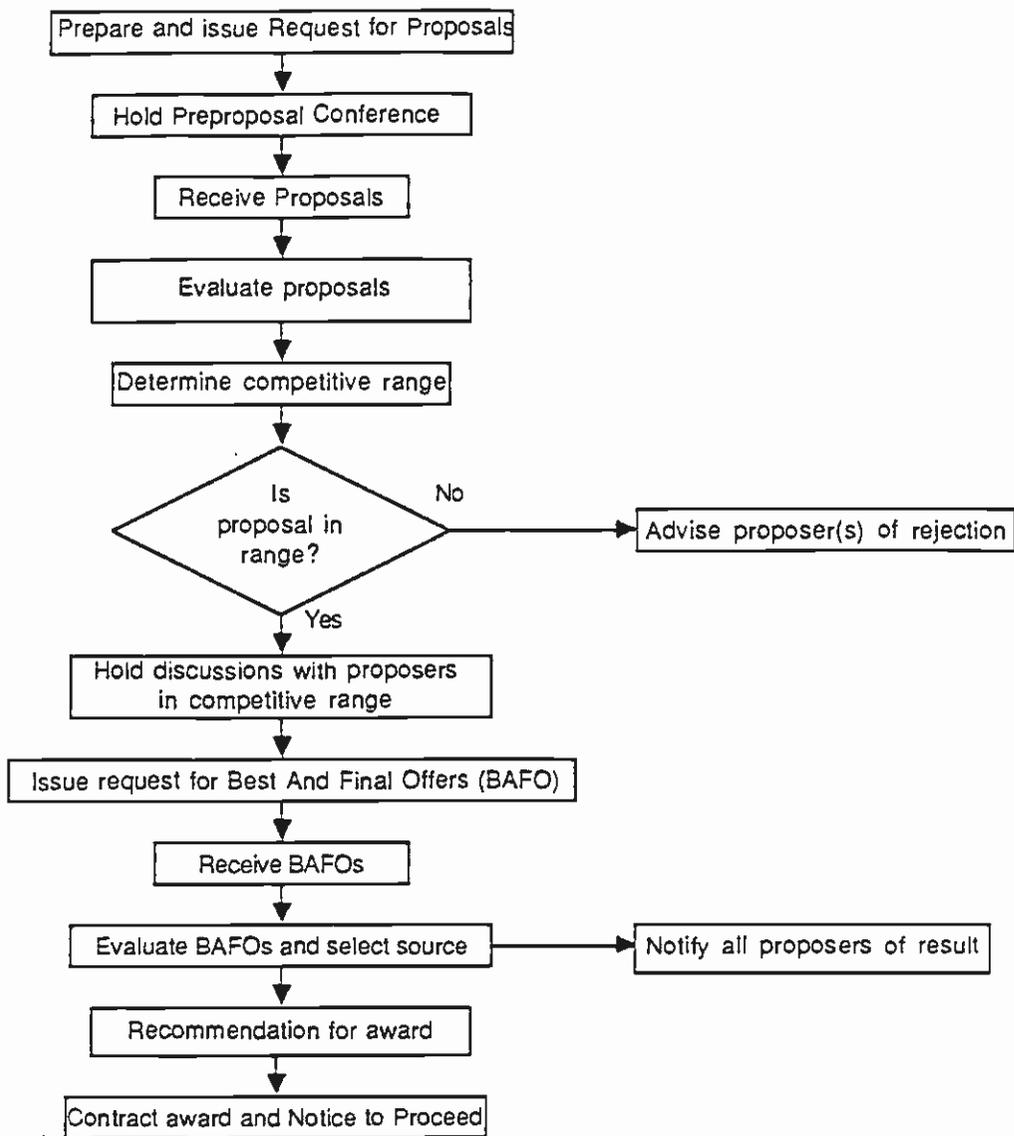
In order to procure rail cars using a competitive negotiation process, the overall process must be understood. Although it is a relatively new approach to rail transit, the competitive negotiation process is extensively used by U.S. federal agencies, including military departments and NASA. Today's federal procurements are governed by a system of regulations known as Federal Acquisition Regulations (FAR). The FAR prescribes the contracting procedures to be followed by federal agencies, and dictates which clauses must be included in contracts.

The major steps in a procurement process using competitive negotiations are:

- Prepare and issue a Request for Proposal
- Hold a preproposal conference
- Receive proposals
- Evaluate proposals
- Determine which proposers have proposals in the competitive range
- Hold discussions (negotiations) with proposers in the competitive range
- Request Best and Final Offers (BAFOs)
- Evaluate BAFOs
- Recommend award
- Contract award and Notice-to-Proceed

Exhibit 2 is a flow chart depicting the above process.

EXHIBIT 2
Competitive Negotiation Process



PREPARE AND ISSUE REQUEST FOR PROPOSALS

A Request for Proposals (RFP) should include technical specifications of the rail car, terms and conditions of the contract, and instructions for proposers. An RFP must clearly describe the transit authority's needs in such a way as to allow a proposer to prepare a proposal properly. There are three basic considerations of paramount importance in preparing the RFP. First, the transit authority's needs must be fully and clearly described. Second, the RFP must ensure maximization of competition. This is particularly applicable to technical design requirements which should describe salient features and avoid brand name products to the maximum extent practicable. Third, the RFP must disclose the evaluation criteria used to determine which proposal will result in a contract award, including all factors and any significant subfactors. Disclosure of factors and subfactors must also include their relative importance, if any, although numerical weighting schemes may or may not be disclosed. Selection of factors is within the discretion of the transit authority and could include items such as:

- Conformance with technical specifications
- Price
- Service history of rail car subsystems and equipment
- Contractor's performance on past programs
- Adequacy of facilities
- Qualifications of personnel
- Program management and financial capability
- Quality assurance program
- After sales and warranty support capability.

Once the RFP is prepared, it should be thoroughly reviewed to determine that it satisfies the objectives stated for competitive negotiations.

In order to ensure the greatest possible competition, the RFP must be advertised in such a way to make it available to the maximum number of sources.

HOLD PREPROPOSAL CONFERENCE

Because rail car procurements are of a highly technical nature, a preproposal conference should be held to explain more fully how the transit authority intends to

procure rail cars. In preparing for the preproposal conference, transit authorities must ensure that all potential proposers who received the RFP have adequate notice of the time, place, and scope of the conference. If time allows, potential proposers should be requested to submit written questions in advance of the conference. This will allow the transit authority to research the questions and have answers ready for the conference.

During the preproposal conference, the transit authority's representative conducting the conference should provide identical information to all prospective proposers, have a complete record made of the conference proceedings, and arrange to have the record promptly distributed to all prospective proposers after the conference. Also, all attendees must be advised that remarks and explanations made at the conference shall not qualify the terms of the RFP and they remain unchanged unless the RFP is amended in writing.

RECEIVE PROPOSALS

Receipt and handling of proposals must be accomplished with the same degree of security and confidentiality as the one-step or two-step sealed bids. Prior to receiving proposals, a facility for providing secure storage must be available. After receipt, proposals should be safeguarded from unauthorized disclosure.

The number of proposals received, information contained in them, and the names of the proposers should be maintained confidential. Disclosure of this information to the public or other proposers is not required. The facility requirements for examining and evaluating proposals must be established with this in mind.

Proposers shall be responsible for delivering the proposals in accordance with the instructions contained in the RFP. Proposals delivered to the specified facility should be entered in a log with the date and time noted. Each proposal should be inventoried. Discrepancies, shortages, or other problems discovered during the inventory should be noted and documented. After the inventory has been finished, the proposal should be placed in secure storage to await further processing.

EVALUATE PROPOSALS

Proposals should be evaluated in order to:

- Determine that proposals either meet as a minimum or exceed the evaluation criteria
- Establish a competitive range for negotiations if a single, most beneficial source cannot be selected based on the evaluation
- Determine which proposals (technical and price) are in a competitive range which qualifies the proposer to participate in further negotiations
- Identify nonconforming areas and potentially beneficial substitute designs for further discussions with proposers
- Identify and document any requirements in the RFP which may have to be changed.

An evaluation method and a proposal evaluation team must be established prior to receipt of proposals. The evaluation method should provide a rational basis for source selection and the evaluation should be conducted in good faith and in accordance with the evaluation criteria identified in the RFP.

The proposals must be evaluated and a ranking established based on the results. The evaluation must be accomplished through an objective application of the evaluation procedure. Grading or scoring systems may be used to help in the ranking and determination of the competitive range for negotiation. If a numerical weighting system is used in the evaluation, it need not be disclosed to the proposers. An analysis of the price proposal should also be completed to determine if the proposed price is fair and reasonable. The result of the analysis is needed as an aid to the transit authority in its negotiations with the proposers. The results of the evaluation must be adequately documented.

ESTABLISH THE COMPETITIVE RANGE

The evaluation of proposals shall determine which proposals are in the competitive range for the purpose of conducting discussions. The competitive range should be based on the evaluation factors included in the RFP and should include all proposals that have a reasonable chance of being selected for award. Where there is doubt as to whether a proposal is in the competitive range, it should be included.

A reasonable latitude should be used in determining the competitive range. It should be done after an analysis of the results of the evaluation. There should not be preestablished parameters, such as evaluation scores or given number of proposers, used as a basis for determining the competitive range.

An unsuccessful proposer should be notified in writing at the earliest practicable time that its proposal is no longer eligible for award.

HOLD DISCUSSIONS WITH PROPOSERS IN COMPETITIVE RANGE

Discussions should be conducted with all proposers whose proposals are in the competitive range. The content and extent of the discussions may vary from one proposal to another, but all proposers must be treated fairly.

Proposers should be given a written notice to prepare for discussions of their proposals. The notice should provide information, such as:

- The location where the discussions will take place
- The date and time that discussions with the proposer's organization are scheduled to begin
- The expected participants and duration of the discussions
- Notification of any specific alternatives that will be discussed

- Addenda, if any, identifying changed requirements to the Proposal Documents
- Specific elements of proposal requiring clarifications or discussions.

Notification to each of the proposers should provide the schedule for discussions and indicate areas of interest or concern with their proposal that the transit authority wishes to examine in more detail during the discussions.

During the negotiations with each proposer, the transit authority should:

- Advise the proposer of deficiencies or nonconformities in his proposal so that the proposal is given an opportunity to satisfy the RFP requirements
- Attempt to resolve any uncertainties regarding the technical proposal and other terms and conditions of the proposal
- Resolve any suspected mistakes by calling them to the proposer's attention as specifically as possible without disclosing information concerning other proposals or the evaluation process
- Provide the proposer a reasonable opportunity to submit any revisions to his initial proposal that may result from the discussion
- Avoid any technical leveling, transfusion, or auctioning techniques
- Protect proprietary information to the maximum extent possible.

A written record of all negotiation proceedings must be maintained.

REQUEST FOR BEST AND FINAL OFFERS

Following the conclusion of discussions with the proposers, all of the proposers who remain under consideration for award should be invited to submit a Best and Final Offer (BAFO). The BAFO provides the opportunity for the proposers to modify their offers as a result of the information gleaned at the negotiations. They have the opportunity to correct any deficiencies or nonconformities that were indicated. The BAFO also provides the opportunity to submit the final price. Each proposer should be notified that BAFOs be based on the:

- Original RFP and all issued addenda
- Initial proposal submitted by the proposer
- Revisions or modifications to the initial proposal as mutually agreed upon during the negotiations.

The Request for BAFOs should provide the time and place for submission of BAFOs and any other applicable conditions that apply.

BEST AND FINAL OFFER EVALUATION

Following the receipt of the BAFOs, a review should be conducted of the information submitted by the proposers. The purpose of the BAFO evaluation is to determine if the supplementary information provided as part of the BAFO changes the results of the initial proposal evaluation. The BAFO evaluation should be conducted in accordance with a predetermined evaluation criteria, and is intended to determine the most advantageous proposal to the District. The BAFO evaluation findings should be documented similar to the initial proposal evaluation.

After receipt of the BAFOs, the transit authority should not reopen discussions with any proposer unless it is clearly in the transit authority's interest to do so. If discussions are reopened, another round of BAFOs should subsequently be requested.

RECOMMEND AWARD

When the recommended source has been determined, the transit authority should cause the contract to be finalized. Any remaining questions of responsibility should be investigated and resolved with the recommended proposer. If determined to be necessary, a pre-award survey may be conducted at this time. When all items are cleared, a recommendation to award the contract should be sent to the transit authority management for its approval.

III. PLANNING FOR THE PROCUREMENT

Proper planning for the procurement is essential if the transit authority desires to accomplish the objective of the competitive negotiation process: to select the source whose offer is most advantageous to the transit authority, price and other factors considered. Planning is of particular importance for developing the RFP, proposal evaluation, and conducting negotiations. A well planned and documented process serves two purposes. First, selection of the source can be accomplished in an organized manner using resources and meeting schedule. Second, the reputation of the transit authority will be enhanced in that both successful and unsuccessful proposers can be reasonably sure that the selection was conducted in a fair and good-faith manner.

PROCUREMENT PLANNING TEAM

A Procurement Planning Team should be in place as soon as the decision for the procurement is finalized. This team should be tasked with setting up top level policies and developing guidelines pertaining to the specific procurement, within the transit authority's normal procurement practices and framework, from finalizing the RFP to recommending the selection of source. The Procurement Planning Team should include representatives from the procurement, engineering, maintenance, operations, and legal departments. This team will need to make decisions on many challenging and diverse issues related to the procurement. Exhibit 3 shows a list of representative planning issues related to a rail car procurement requiring resolution early in the procurement process.

PROPOSAL EVALUATION AND NEGOTIATION TEAM

Once the overall procurement specific policies are set and guidelines established, a Proposal Evaluation and Negotiation Team should be organized. The team should be responsible for:

- Developing detailed procedures related to proposal evaluation, negotiations, and pre-award survey

EXHIBIT 3

List of Representative Planning Issues Related to a Railcar Procurement

<u>Item</u>	<u>Description</u>
1	What is the source of funds for the procurement, and what procurement requirements arise from that fund source?
2	To what extent is the procurement governed by state or local codes and regulations?
3	What should be the major steps in the competitive negotiation process?
4	Should the process follow the requirements of FAR? If so, to what extent?
5	What is the planned schedule for the process, including for specific steps such as advertisement, receipt of proposals, completing evaluation, completing negotiation, receipt of BAFOs, recommending award, and notice to proceed?
6	What should be the precise wording in the RFP describing the evaluation factors?
7	What type of technical specification should be used; design, performance, or a combination?
8	What grading/scoring system should be used in evaluation?
9	What is the review and approval process for the selected grading scheme and evaluation procedure?
10	Are formal procurement procedures for proposal security, pre-award survey, proposal evaluation, etc., already in place? If not, how should these be developed?
11	What publications or source list should be used to advertise the RFP in order to maximize competition?
12	How much time should be allowed for bidders to prepare and submit proposals?
13	Should there be a format for the proposal and any limits regarding the number of pages in a proposal?
14	Should a preproposal conference be held? If so, what topics should be emphasized at the conference?
15	What is the procedure to issue addenda, information letters, etc.?
16	To what extent should contact be allowed between proposers and transit authority during the advertisement period, and what is the procedure to handle such a contact?
17	When should proposers be allowed to modify their proposals during the procurement process?
18	What are the means to verify the financial capability and stability of proposers?
19	What should be the basis to determine the competitive range?

EXHIBIT 3 (Continued)
List of Representative Planning Issues Related to a Railcar Procurement

<u>Item</u>	<u>Description</u>
20	Are options involved in the procurement? If so, how should they figure into the evaluation?
21	Should life-cycle costing be part of evaluation?
22	Should alternate designs be allowed? If so, how should they be treated and evaluated?
23	What is the extent of the planning for negotiations? Should goals and objectives be formalized and approved by higher management? If so, what are they?
24	What are the major potential negotiating points likely to be encountered?
25	How much discretionary authority should be given to the negotiating team to enable them to negotiate effectively?
26	How much time should be allowed for discussion with each proposer?
27	What is the extent of documentation to be provided for negotiation proceedings?
28	What, if any, will be the involvement of transit authority's higher management in the negotiation process?
29	At what point in the process should addenda to the RFP be issued?
30	How much time should be allowed for the preparation and submittal of BAFOs?
31	How should BAFOs be evaluated? Should they be treated differently than initial proposals?
32	What written documentation will be required for the final selection of the source?
33	Is a pre-award survey contemplated? If so, what are the main areas to be investigated? Is there a formal procedure on file related to pre-award survey?
34	To what extent should contract documents be formalized and agreed to prior to recommending the award?
35	Should the proposal be made part of contract document or will it be used only as a reference document?
36	What are the documentation requirements for an audit trail to show that all offers were received and treated on an equal basis and that true competition did exist?

- Conduct evaluation of proposals and BAFOs
- Conduct negotiations and, if required, a pre-award survey
- Recommend selection of source.

The Proposal Evaluation and Negotiation Team should conduct its business in a manner consistent with its own procedures and the overall policies and guidelines set by the Procurement Planning Team.

SURVEY OF PEER PROPERTIES

Planning for a rail car procurement using the competitive negotiation process is facilitated by the comprehensive guidelines in the FAR. Once the transit authority establishes its plans and procedures for the rail car procurement, either based on the FAR or its own in-house requirements, a survey of peer properties will best serve to fine tune the whole process. Transit authorities within the United States are most willing to share with each other their information and experiences. A transit authority undertaking a rail car procurement using a competitive negotiation process should certainly take advantage of this wealth of information and experience.

Survey of the peer properties can be conducted in one of the following manners:

- Review of information used on past similar procurements
- Telephone inquiries
- Site visits.

The telephone inquiry and site visits should use a survey questionnaire as an aide to streamline the discussion. Such a questionnaire can be readily developed from the list of representative issues shown in Figure 3.

IV. SCRTD PROCUREMENT STATUS

The Southern California Rapid Transit District (SCRTD) is in the process of procuring passenger vehicles for use on the Minimum Operable Segment-1 (MOS-1) of its planned Metro Rail system. The SCRTD had originally planned to procure these vehicles through a two-step procurement process. In November 1986, however, the SCRTD Board of Directors approved a change to the procurement plan and required that passenger vehicles be procured through the process of competitive negotiation. This change was made pursuant to an amendment to the California Public Contract Code.

During the 1984 Legislative session, the SCRTD sponsored an amendment to the California Public Contract Code authorizing the purchase by SCRTD of "high tech" products utilizing competitive negotiations. This amendment authorized the use of competitive negotiations for the procurement of computers, telecommunications equipment, fare collection equipment, and other related electronic equipment and apparatus. In 1986, passenger vehicles were added to the list of authorized products.

The change in the procurement plan from a two-step to a competitive negotiation process required major changes to the planning effort and the RFP documents. The ensuing description, which is excerpted from the RFP documents issued on March 16, 1987, is the result of the effort by the SCRTD and its consultants to meet the objectives of the procurement set by the SCRTD Board of Directors. The description highlights the SCRTD's approach to its heavy rail car procurement using the competitive negotiation process.

PROCUREMENT PROCESS

The SCRTD will award the contract by competitive negotiations. Proposals will be received and evaluated by the SCRTD. There will be no public opening of proposals.

After evaluating proposals, an award may be made if the evaluation determines that the best achievable and technically acceptable proposal has been received. In the absence of such a determination, the SCRTD will hold discussions with proposers whose proposals

are within the competitive range. The remaining proposers will be given written notification that their non-competitive proposals are no longer eligible for award.

Following discussion, the SCRTD may request BAFOs. After receipt and evaluation of BAFOs, the SCRTD may select an offer for the award of a contract.

EVALUATION OF PROPOSALS

The SCRTD will evaluate proposals to accomplish the following objectives:

- Ensure that proposals meet the requirements of the RFP Documents in all respects
- Ensure that prices quoted are realistic, fair, and reasonable for the work being offered
- Evaluate the proposer's qualifications to implement the work if awarded the contract.
- Ensure that the proposer has adequate personnel resources, financial capability, and available facilities to perform the work in the time allotted
- Determine which proposers have submitted proposals within the competitive range (If discussions are deemed necessary, the SCRTD will hold discussions only with those proposers in the competitive range.)
- Determine if changes should be made to the RFP Documents to obtain better prices or permit the use of more reliable service-provided equipment
- Determine whether adequate price competition exists with the proposals as submitted.

EVALUATION FACTORS

The following factors and significant subfactors will be considered in the evaluation of proposals and the source selection. The factors are listed in order of decreasing weight of importance from 1 through 4.

The factors and subfactors are:

1. Total price including options.
Price realism
2. Technical design
Compliance with General Requirements
3. Qualifications of proposer and its team
Past performance
Extent of use of service-proven equipment
Proved engineering capability
Manufacturing capability
4. Management program
Management approach
Systems assurance program
Test program
Systems support

PRICE EVALUATION

The SCRTD will evaluate offers for award purposes by adding the total price for the option to the total price for the basic requirements. Evaluation of the option will not obligate the SCRTD to exercise the option.

The SCRTD will consider an offer as nonconforming if it is materially unbalanced as to prices for the basic requirement and the option quantity. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

The SCRTD will evaluate the pricing information to determine whether there is sufficient price competition to ensure a fair and reasonable price for the procurement. The SCRTD may also require submission of detailed cost data. Proposers will be required to certify all price and cost data submitted as to its completeness, accuracy, and currency. Such data will also be required from any subcontractor where the value of the subcontract exceeds \$100,000. The SCRTD will be the sole judge of adequacy of competition and need for additional cost and pricing data.

NEGOTIATIONS

Upon completion of the evaluation of proposals, if discussions are required, the SCRTD will schedule meetings for this purpose with all proposers whose proposals are in the competitive range. The meetings will be held in Los Angeles.

BEST AND FINAL OFFERS

When all discussions have been completed, the SCRTD will issue an addendum requesting BAFOs. The addendum will contain any changes to requirements of the RFP Documents and define the conditions applicable to submission of BAFOs. When BAFOs have been received and evaluated, the SCRTD will make the selection for the award. All proposers submitting BAFOs will be notified of the results at that time.

CONTRACT AWARD

The SCRTD will award a contract resulting from this solicitation to the responsible proposer whose offer, conforming to the requirements of the solicitation, will be most advantageous to the SCRTD, with price and other factors considered. The SCRTD may award a contract on the basis of initial proposals received, without discussions. Therefore, each initial proposal should contain the proposer's best terms from a price and technical standpoint.

The SCRTD issued the RFP for the rail car procurement on March 16, 1987. A preproposal conference was held at the SCRTD's Los Angeles facility on April 7, 1987. The SCRTD is scheduled to receive proposals on July 15, 1987. Selection of the source is expected to be in January 1988.