

## Federal Railroad Administration, DOT

## § 269.5

studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction. Final design and engineering work will also be initiated for the down-selected project(s). To be down-selected a project must appear to meet the project eligibility standards contained in §268.11 (b), rate highly in the project selection criteria specified in §268.17, be judged by FRA to have a good chance of being constructed with the Federal funds authorized for this program, and be successfully operated by a public/private partnership.

(b) Only one project will be selected in Phase IV of the Maglev Deployment Program and be eligible for any Federal construction funds that Congress chooses to make available. That one project must meet each and every project eligibility standard contained in §268.11 (b). If more than one project down-selected in Phase III and funded through Phase IV meets all of these standards, then FRA will evaluate and compare the eligible projects according to the set of project selection criteria contained in §268.17.

(c) In reviewing competing projects under the project eligibility standards and project selection criteria, the FRA will exercise particular vigilance regarding the following elements of the preconstruction planning process, although not to the exclusion of others:

(1) The credibility of the demand and revenue forecasts, cost estimates, and benefit/cost comparisons; and

(2) The credibility of the financial plan.

(d) FRA intends to make periodic reviews of the processes and products of grant recipients. Such reviews may include, at the FRA's option, reviews at key milestones in the preparation of project descriptions.

### PART 269—COMPETITIVE PASSENGER RAIL SERVICE PILOT PROGRAM

Sec.  
269.1 Purpose.  
269.3 Limitations.  
269.5 Definitions.  
269.7 Petitions.  
269.9 Bid process.  
269.11 Evaluation.  
269.13 Award.

269.15 Access to facilities; employees.  
269.17 Cessation of service.

AUTHORITY: Sec. 11307, Pub. L. 114-94; 49 U.S.C. 24711; and 49 CFR 1.89.

SOURCE: 82 FR 31487, July 7, 2017, unless otherwise noted.

#### § 269.1 Purpose.

The purpose of this part is to carry out the statutory mandate in 49 U.S.C. 24711 requiring the Secretary to implement a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes.

#### § 269.3 Limitations.

(a) *Route limitations.* The pilot program this part implements is available for not more than three Amtrak long-distance routes.

(b) *Time limitations.* An eligible petitioner awarded a contract to provide passenger rail service under the pilot program this part implements shall only provide such service for a period not to exceed four years from the date of commencement of service. The Administrator has the discretion to renew such service for one additional operation period of four years.

#### § 269.5 Definitions.

As used in this part—

*Act* means the Fixing America's Surface Transportation Act (Pub. L. 114-94 (Dec. 4, 2015)).

*Administrator* means the Federal Railroad Administrator, or the Federal Railroad Administrator's delegate.

*Amtrak* means the National Railroad Passenger Corporation.

*Eligible petitioner* means one of the following entities, other than Amtrak, that has submitted a petition to FRA under § 269.7:

(1) A rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route, or another rail carrier that has a written agreement with a rail carrier or rail carriers that own such infrastructure;

(2) A State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for providing intercity rail passenger transportation with a written agreement with the rail carrier or

## § 269.7

rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation; or

(3) A State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for providing intercity rail passenger transportation and a rail carrier with a written agreement with another rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation.

*File* and *filed* mean submission of a document under this part to FRA at *PassengerRail.Liaison@dot.gov* on the date the document was emailed to FRA.

*Financial plan* means a plan that contains, for each Federal fiscal year fully or partially covered by the bid:

(1) An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds, including the operating subsidy amount) attributable to the route; and

(2) A statement of the assumptions underlying the financial plan's contents.

*FRA* means the Federal Railroad Administration.

*Operating plan* means a plan that contains, for each Federal fiscal year fully or partially covered by the bid:

(1) A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; connectivity with other intercity transportation services; and compliance with applicable Service Outcome Agreements; and

## 49 CFR Ch. II (10–1–24 Edition)

(2) A statement of the assumptions underlying the operating plan's contents.

*Long-distance route* means those routes described in 49 U.S.C. 24102(5) and operated by Amtrak on the date of enactment of the Act.

### § 269.7 Petitions.

(a) *In general.* An eligible petitioner may petition FRA to provide intercity passenger rail transportation over a long-distance route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(b).

(b) *Petition requirements.* Eligible petitioners must:

(1) File the petition with FRA no later than 180 days after September 5, 2017;

(2) Describe the petition as a “Petition to Provide Passenger Rail Service under 49 CFR part 269”;

(3) Describe the long-distance route or routes over which the eligible petitioner wants to provide intercity passenger rail transportation and the Amtrak service that the eligible petitioner wants to replace; and

(4) If applicable, provide an executed copy of all written agreements with all entities that own infrastructure on the long-distance route or routes over which the eligible petitioner wants to provide intercity passenger rail transportation. The written agreement(s) must demonstrate the infrastructure owner's support for the petition.

### § 269.9 Bid process.

(a) *Notification.* FRA will notify the eligible petitioner and Amtrak of receipt of a petition filed with FRA and will publish a notice of receipt in the FEDERAL REGISTER not later than 30 days after FRA's receipt of such petition.

(b) *Bid requirements.* An eligible petitioner that has filed a timely petition under § 269.7 and Amtrak, if Amtrak desires, may file a bid with FRA not later than 120 days after FRA publishes the notice of receipt in the FEDERAL REGISTER under paragraph (a) of this section. Each such bid must:

(1) Provide FRA with sufficient information to evaluate the level of service

described in the proposal, and to evaluate the proposal's compliance with the requirements in § 269.13(b);

(2) Describe how the bidder would operate the route;

(i) This description must include, but is not limited to, an operating plan, a financial plan and, if applicable, any executed agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the bidder.

(ii) In addition, if the bidder intends to generate any revenues from ancillary activities (*i.e.*, activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance, together with the assumptions underlying the estimates of such incremental impacts.

(3) Describe what passenger equipment the bidder would need, including how it would be procured;

(4) Describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments;

(5) Contain a staffing plan describing the number of employees the bidder needs to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid;

(6) Describe the capital needs for the passenger rail service including in detail any costs associated with compliance with Federal law and regulations;

(7) Describe in detail the bidder's plans for meeting all FRA safety requirements, including equipment, employee, and passenger parameters;

(8) Describe, for each Federal fiscal year fully or partially covered by the bid, a projection of the passenger rail service route's total revenue, total costs, total contribution/loss, and net cash used in operating activities per passenger-mile attributable to the route;

(9) Describe how the passenger rail service would meet or exceed the performance required of or achieved by Amtrak on the applicable route during the last fiscal year, and how the bidder would report on the performance standards. At a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid a projection of the route's expected Passenger Miles per Train Mile, End-Point and All Stations On-Time Performance, Host Railroad and Operator Responsible Delays per 10,000 Train Miles, Percentage of Passenger Trips to/from Underserved Communities, Service Interruptions per 10,000 Train Miles due to Equipment-Related Problems, and customer service quality;

(10) Analyze the reasonably foreseeable effects, both positive and negative, of the passenger rail service on other intercity passenger rail services;

(11) Describe the bidder's compliance with all applicable Federal, state, and local laws; and

(12) Provide State or States written concurrence of the bid for a route that receives funding from a State or States.

(c) *Supplemental information.* (1) FRA may request supplemental information from a bidder and/or Amtrak if FRA determines it needs such information to evaluate a bid.

(2) FRA's request may seek information about the costs related to the service that Amtrak would still incur following the cessation of service, including the increased costs for other services.

(3) FRA will establish a deadline by which the bidder and/or Amtrak must file the supplemental information with FRA.

#### § 269.11 Evaluation.

(a) *Evaluation.* FRA will select a winning bidder by evaluating the bids based on the requirements of this part.

(b) *Notification.* (1) Upon selecting a winning bidder, FRA will publish a notice in the FEDERAL REGISTER describing the identity of the winning bidder, the long-distance route the bidder will operate, a detailed justification explaining why FRA selected the bid, and any other information the Administrator determines appropriate.

## § 269.13

(2) The notice under this paragraph (b) will be open for public comment for 30 days after the date FRA selects the bid.

### § 269.13 Award.

(a) *Award.* FRA will execute a contract with a winning bidder that is not or does not include Amtrak, consistent with the requirements of this section and as FRA may otherwise require, not later than 270 days after the bid deadline established by § 269.9(b).

(b) *Contract requirements.* Among other things, the contract between FRA and a winning bidder that is not or does not include Amtrak must:

(1) Award to the winning bidder the right and obligation to provide intercity passenger rail transportation over that route subject to such performance standards as FRA may require for a duration consistent with § 269.3(b);

(2) Award to the winning bidder an operating subsidy, as determined by FRA and based on Amtrak's final audited publicly-reported fully-allocated operating costs of the route for the prior fiscal year, excluding costs related to Other Postretirement Employee Benefits, Amtrak Performance Tracking System Asset Allocations, Project Related Costs, and Amtrak Office of Inspector General activities, subject to the availability of funding, for the first year at a level that does not exceed 90 percent of the level in effect for that specific route during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation;

(3) State that any award of an operating subsidy is made annually, is subject to the availability of funding, and is based on the amount calculated under paragraph (b)(2) of this section, adjusted for inflation;

(4) Condition the operating and subsidy rights upon the winning bidder providing intercity passenger rail transportation over the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award;

(5) Condition the operating and subsidy rights upon the winning bidder's compliance with performance standards FRA may require, but which, at a minimum, must meet or exceed the

## 49 CFR Ch. II (10–1–24 Edition)

performance required of or achieved by Amtrak on the applicable route during the fiscal year immediately preceding the year the bid is submitted;

(6) Subject the winning bidder to the grant conditions established by 49 U.S.C. 24405; and

(7) Subject the winning bidder to the requirements of the appropriations act(s) funding the contract.

(c) *Publication.* The winning bidder shall make their bid available to the public after the bid award with any appropriate redactions for confidential or proprietary information.

### § 269.15 Access to facilities; employees.

(a) *Access to facilities.* (1) If the award under § 269.13 is made to an eligible petitioner, Amtrak must provide that eligible petitioner access to the Amtrak-owned reservation system, stations, and facilities directly related to operations of the awarded route(s).

(2) If Amtrak and the eligible petitioner awarded a route cannot agree on the terms of access, either party may petition the Surface Transportation Board under 49 U.S.C. 24711(g).

(b) *Employees.* The employees of any person, except as provided in a collective bargaining agreement, an eligible petitioner uses in the operation of a route under this part shall be considered an employee of that eligible petitioner and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak.

(c) *Hiring preference.* The winning bidder must provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan the winning bidder submits and the grant conditions established by 49 U.S.C. 24405.

### § 269.17 Cessation of service.

(a) If an eligible petitioner awarded a route under this part ceases to operate the service or fails to fulfill its obligations under the contract required under § 269.13, the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with title 49 of the United States Code to enforce the

## Federal Railroad Administration, DOT

## § 270.3

contract and ensure the continued provision of service, including the installment of an interim service and re-bidding the contract to operate the service.

(b) In re-bidding the contract, the entity providing service must either be Amtrak or an eligible petitioner.

### PART 270—SYSTEM SAFETY PROGRAM

#### Subpart A—General

Sec.

270.1 Purpose and scope.

270.3 Application.

270.5 Definitions.

270.7 Penalties and responsibility for compliance.

#### Subpart B—System Safety Program Requirements

270.101 System safety program; general.

270.103 System safety program plan.

270.105 Discovery and admission as evidence of certain information.

270.107 Consultation requirements.

#### Subpart C—Review, Approval, and Retention of System Safety Program Plans

270.201 Filing and approval.

270.203 Retention of system safety program plan.

#### Subpart D—System Safety Program Internal Assessments and External Auditing

270.301 General.

270.303 Internal system safety program assessment.

270.305 External safety audit.

#### Subpart E—Fatigue Risk Management Programs

270.401 Definitions.

270.403 Purpose and scope of a Fatigue Risk Management Program (FRMP).

270.405 General requirements; procedure.

270.407 Requirements for an FRMP.

270.409 Requirements for an FRMP plan.

APPENDIX A TO PART 270 [RESERVED]

APPENDIX B TO PART 270—FEDERAL RAILROAD ADMINISTRATION GUIDANCE ON THE SYSTEM SAFETY PROGRAM CONSULTATION PROCESS

APPENDIX C TO PART 270—PROCEDURES FOR SUBMISSION OF SSP PLANS AND STATEMENTS FROM DIRECTLY AFFECTED EMPLOYEES

AUTHORITY: 49 U.S.C. 20103, 20106–20107, 20118–20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

SOURCE: 81 FR 53896, Aug. 12, 2016, unless otherwise noted.

### Subpart A—General

#### § 270.1 Purpose and scope.

(a) The purpose of this part is to improve railroad safety through structured, proactive processes and procedures developed and implemented by passenger rail operations. This part requires certain passenger rail operations to establish a system safety program that systematically evaluates railroad safety hazards and the resulting risks on their systems and manages those risks to reduce the number and rates of railroad accidents, incidents, injuries, and fatalities.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of railroad system safety programs. This part does not restrict passenger rail operations from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(c) This part prescribes the protection of information generated solely for the purpose of planning, implementing, or evaluating a system safety program under this part.

[81 FR 53896, Aug. 12, 2016, as amended at 85 FR 12843, Mar. 4, 2020]

#### § 270.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all—

(1) Passenger rail operations that operate intercity or commuter passenger train service on the general railroad system of transportation; and

(2) Passenger rail operations that operate commuter or other short-haul rail passenger train service in a metropolitan or suburban area (as described by 49 U.S.C. 20102(2)), including public authorities operating passenger train service.

(b) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation;