 <div>HAMPTON ROADS TRANSIT</div> POLICY AND PROCEDURES MANUAL	<div>NUMBER</div> <div>PRO-001</div> <div>Rev. 16</div>	<div>EFF. DATE</div> <div>5/1/2025</div>
	<div>SUPERSEDES</div> <div>PRO-001 Rev. 15 – November 8, 2024</div>	
<div>RESPONSIBLE DEPARTMENT</div> <div>Procurement</div>	<div>KEY SUBJECT</div> <div>Procurement, Contracts</div>	
<div>TITLE</div> <div>Procurement Policy and Procedures Manual</div>		
<div>APPLIES TO</div> <div>All Departments</div>	<div>APPROVAL(S)</div> <div>Luther / Burns / Harrell</div>	

HAMPTON ROADS TRANSIT

PROCUREMENT POLICY AND PROCEDURES MANUAL

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 2 of 339
--	--------------------------------------	-------------------------	------------------------------

This page intentionally left blank.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 3 of 339
--	--------------------------------------	-------------------------	------------------------------

Approvals

The individuals below, submitting and signing this Procurement Policy and Procedures Manual verify that it was prepared in accordance with the requirements set forth by the Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200 (2 CFR Part 200); 2 CFR 1201, 2 CFR Part 180; 49 CFR Part 26; the Federal Transit Administration (FTA) Circular 4220.1G; FTA's Master Agreement, and the Virginia Public Procurement Act (VPPA) Title 2.2, Chapter 43, *Code of Virginia*; that they are authorized representatives of the Transportation District Commission of Hampton Roads; that their signatures attest that all items and conditions contained in this manual are understood, accepted and approved; and that they are committed to following the policies and procedures contained herein.

APPROVED BY:



William E. Harrell, President/CEO, Hampton Roads Transit

4/29/25
Date

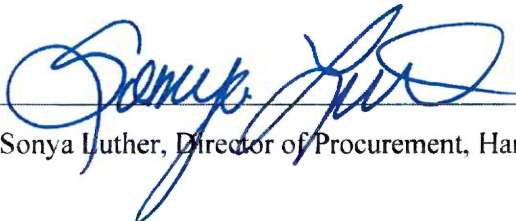
RECOMMENDED BY:

FC Burns

Conner Burns, Chief Financial Officer, Hampton Roads Transit

04.28.2025

Date



Sonya Luther, Director of Procurement, Hampton Roads Transit

4/28/2025

Date

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 4 of 339
--	--------------------------------------	-------------------------	------------------------------

This page intentionally left blank.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 5 of 339
--	--------------------------------------	-------------------------	------------------------------

REVISIONS

REVISION	DATE	SECTION	DESCRIPTION	AUTHORITY
1	01/23/2012	Various	PSR updates	FTA
2	10/04/2012	Various	VPPA / Audit updates	VPPA
3	06/16/2015	Various	Titles / Administrative	HRT
4	10/20/2015	Various	PSR updates	FTA
5	12/14/2016	Various	<ul style="list-style-type: none"> Document Board Approval Threshold Increase Incorporate Safety and Security Requirements Other Administrative Edits 	HRT/DRPT
Review	05/14/2018		No Changes	S. Luther
6	06/28/2018	Various	<ul style="list-style-type: none"> Simplified Acquisition Threshold Administrative FMO Updates 	HRT/FTA
7	03/07/2019	<ul style="list-style-type: none"> Part B, Section 6 Appendix D 	<ul style="list-style-type: none"> Methods of Procurement General Conditions 	HRT/DBE
8	07/15/2019	Various	<ul style="list-style-type: none"> Micro-purchase Threshold Simplified Acquisition Threshold Administrative 2 CFR 200 	FTA/VPPA
9	05/01/2021	Various	<ul style="list-style-type: none"> General Conditions Form and Checklist Updates Purchase Order Memo inclusion Administrative 	Safety Department/S. Luther

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 6 of 339
--	--------------------------------------	-------------------------	------------------------------

10	08/15/2022	Various	<ul style="list-style-type: none"> Protest Policy Numerous regulation updates 	Legal / S. Luther
11	01/13/2023	Various	<ul style="list-style-type: none"> Build America, Buy America Act Addition General Conditions Updates 	S. Luther
12	08/01/2023	Various	<ul style="list-style-type: none"> General Conditions Updates Form Updates ICE Update 	S. Luther
13	04/15/2024	Various	<ul style="list-style-type: none"> Procurement Request Form Updates 	S. Luther
14	07/19/2024	Various	<ul style="list-style-type: none"> Added Purpose section General Conditions Updates Emergency Procurement Update Provisions, Certifications, Forms and Other Updates 	S. Luther
15	11/8/2024	Various	<ul style="list-style-type: none"> Added Debarment Policy and Procedure Incorporated updates to 2 CFR 200 Updated Procurement Request Form Updated Method of Procurement Decision Matrix 	S. Luther
16	05/01/2025	Various	<ul style="list-style-type: none"> Incorporation of the FTA's Circular 4220.1G Consolidated Policy and Procedures Added Values and Guiding Principles of Public Procurement 	S. Luther/R. Travers

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 7 of 339
--	--------------------------------------	-------------------------	------------------------------

This page intentionally left blank.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 8 of 339
--	--------------------------------------	-------------------------	------------------------------

TABLE OF CONTENTS

I. Purpose	32
II. Applicability and Governance.....	33
III. Values and Guiding Principles of Public Procurement	35
IV. Standards of Conduct.....	37
V. Contracting Authority.....	41
A. The Contracting Officer	41
B. Delegation of Contracting Authority	41
C. Legal Counsel.....	41
VI. General Procurement Standards	42
A. Contract Oversight	42
B. Public Notice	42
1. Full and Open Competitive Procurements	42
2. Noncompetitive Procurements	42
C. Competition	42
D. Public Access to Procurement Records.....	43
E. Avoidance of Unnecessary or Duplicative Items	44
F. Specifications	44
G. Canceling a Solicitation.....	44
H. Use of Value Engineering Clauses	45
I. Procurement Records and Access	45
1. Procurement History.....	46
2. Reasonable Documentation.....	46
3. Constructive Changes.....	46
4. Access to Records	46
J. Use of Technology/Electronic Commerce	46
1. Sufficient System Capacity	46
2. Written Procedures	47
3. Uses	47

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 9 of 339
--	--------------------------------------	-------------------------	------------------------------

K. Data Rights	47
1. Protection.....	47
2. Types of Data Rights.....	47
L. Fraud.....	47
M. Settlement of Contractual and Administrative Issues	47
N. Protests and Disputes.....	47
1. Policy.....	48
2. Purpose and Scope.....	48
3. Definitions	48
4. Submittal Procedures.....	48
5. Time for Filing	50
6. Review of Protests.....	51
7. Response to Protests.....	51
8. Decisions by the Commission	52
9. Protest Record	53
10. Commission Administration of Protests.....	53
11. Notice of Protest Policy.....	54
O. Alternative Dispute Resolution	54
P. Debarment	54
1. Policy.....	54
2. Purpose and Scope.....	55
3. Ineligibility or Disqualification of Manufacturer	57
4. Debarment Period.....	57
5. Debarment Notification and Appeal Procedure	58
Q. Examples of Labor and Employment Practices	59
R. Contract Period.....	59
1. Rolling Stock and Replacement Parts	59
2. Other than Rolling Stock.....	60
S. Cost Principles.....	60

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 10 of 339
--	--------------------------------------	-------------------------	-------------------------------

T. Contract Clauses	60
U. Authorization to Transact Business in the Commonwealth	60
V. Nondiscrimination	61
W. Contract and Purchase Order Administration	62
X. Domestic Preference.....	63
Y. Procurement of Recovered Materials	63
VII. Full and Open Competition (Solicitation Requirements and Restrictions)	65
A. Written Procurement Procedures	65
1. Clear Descriptions	65
2. Nonrestrictive Specifications	65
3. Quality Requirements	65
4. Preference for Performance Specifications	65
5. Brand Name or Equal	65
6. Necessity	65
7. Lease versus Purchase	65
8. Environmental and Energy Efficiency Preferences.....	65
9. Procurement Methods.....	66
10. Legal Restrictions	66
11. Third-Party Contract Provisions.....	66
12. Sources	66
13. Resolution of Third-Party Contracting Issues	66
B. Full and Open Competition.....	66
1. Excessive Qualifications	66
2. Unnecessary Experience.....	66
3. Self-Dealing and Bid Rigging	66
4. Improper Qualification	66
5. Retainer Contracts	67
6. Excessive Bonding	67
7. Brand Name Only.....	67

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 11 of 339
--	--------------------------------------	-------------------------	-------------------------------

8. Geographic Restrictions	67
9. Organizational Conflicts of Interest	68
10. Restraint of Trade	70
11. Arbitrary Action	70
C. Unsolicited Proposals.....	70
1. Receipt.....	70
2. Adequate Description	70
3. Interest in the Property or Services	70
4. Adequate Opportunity to Compete.....	70
5. Contract Award Based on Proposals Received	71
VIII. Procurement Methods.....	72
A. General Standards	72
B. Informal Procurement Methods for Small Purchases	74
1. Micro-Purchases	74
2. Simplified Acquisitions.....	75
C. Formal Procurement Methods	76
1. Sealed Bids (Formal Advertising).....	76
2. Competitive Proposals (Request for Proposals).....	81
3. Two-Step Procurement Procedures	88
4. Architectural, Engineering, and Professional Services	90
5. Mixed Architectural and Engineering Contracts.....	92
D. Other than Full and Open Competition	95
1. When Authorized	95
2. When Prohibited.....	97
3. Procurement Procedures.....	97
E. Emergency Procurements.....	98
1. General Authority.....	98
2. Existence of Emergency Conditions	99
3. Notification of Emergency	99

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 12 of 339
--	--------------------------------------	-------------------------	-------------------------------

4. Public Notification	99
5. Source Selection Method.....	99
6. Scope of Emergency Procurements.....	100
7. Request for Proposals	100
8. Negotiation Procedures	100
9. Contract Requirements	100
10. Record of Procurement.....	100
11. Modification Restriction.....	100
F. Options	100
G. Time and Material Contracts	101
H. Cost Reimbursement Contracts	102
I. Construction Contracts for Publicly Funded Buildings	102
J. Information Technology Procurements.....	103
K. Safety, Risk, and Emergency Management Related Procurements	103
L. Security Related Procurements	103
M. Rolling Stock Procurements.....	103
1. Open Market.....	103
2. State Cooperative Procurement	104
3. Joint Procurement Clearinghouse.....	104
4. Capital Lease	105
5. Joint Procurements	105
6. Exercise of Options	106
7. Acquisition Through Assigned Contract Rights/Piggybacking	106
8. Special Contract Provisions for Rolling Stock.....	107
9. Non-Revenue Rolling Stock.....	109
N. Procurement Arrangements Using Strategic Sourcing.....	109
1. State or Local Government Purchasing Schedules or Purchasing Contracts.....	109
2. Intergovernmental Agreements	110
3. Information Technology	111

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 13 of 339
--	--------------------------------------	-------------------------	-------------------------------

4. Competition and Price Reasonableness.....	111
5. Existing Contracts (Assignments).....	111
IX. Receipt and Evaluation of Bids and Proposals	114
A. General	114
B. Sealed Bids	114
C. Competitive Proposals.....	114
D. Responsiveness.....	114
E. Responsibility	115
1. Technical Capacity	115
2. Financial Resources.....	115
3. Past Performance.....	115
4. Integrity and Ethics	115
5. Debarment and Suspension	116
6. Public Policy.....	116
7. Tax Liability and Felony Convictions.....	116
8. Fair Labor Standards Act	116
F. Determination of Non-Responsibility	116
G. Debarment and Suspension	118
1. DOT Debarment and Suspension Regulations.....	118
2. System for Award Management (SAM)	118
3. State and Local Debarment and Suspension Lists.....	118
H. Options	118
I. Evaluators	118
J. File Content	119
X. Contract Cost and Price Analysis	120
A. Independent Estimate	120
B. Cost and Price Analysis.....	120
1. Cost Analysis.....	120
2. Price Analysis.....	121

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 14 of 339
--	--------------------------------------	-------------------------	-------------------------------

XI.	Bonding Requirements.....	124
	A. Construction	124
	B. Non-Construction	125
	C. General Provisions	125
XII.	Payment Provisions	126
	A. Advance Payments	126
	1. Sound Business Reasons	126
	2. Adequate Security for Advance Payments	126
	B. Progress Payments	126
	1. Adequate Security for Progress Payments	127
	2. Adequate Documentation	127
XIII.	Liquidated Damages.....	128
	A. Risk Management.....	128
	B. Calculation	128
	C. Measurement	128
	D. Solicitation Requirement.....	128
	E. Disposition of Recovered Amounts	128
XIV.	Contract Approval Requirements.....	129
	A. Commission Approval.....	129
	B. President/CEO Approval	129
	C. Director of Procurement Approval.....	129
	D. Micro-Purchases	129
	E. Capital Design and Construction Delegations	129
	F. Other Delegations.....	129
	G. Execution.....	129
	H. Contract Modifications.....	130
	I. Emergency Modifications	130
XV.	Contract Award	131
	A. Award Only to a Responsible Bidder or Offeror	131

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 15 of 339
--	--------------------------------------	-------------------------	-------------------------------


	B. Award to Other than the Lowest Bidder or Offeror	131
	C. Extent and Limits of Contract Award	131
	D. Contract Announcement.....	131
XVI.	Sound and Complete Agreement	132
XVII.	Contract Provisions	133
XVIII.	Contracts Outside the Scope of this Policy.....	134
	A. Other Acquisitions	134
	B. Revenue Contracts	134
XIX.	Small Businesses	135
	A. Disadvantaged Business Enterprises.....	135
	B. Contracting with Small Businesses, Minority Businesses, Women’s Business Enterprises, Veteran-Owned Businesses, and Labor Surplus Area Firms.....	135
XX.	Procurement Planning	136
	A. Applicability.....	136
	B. Determining Needs.....	136
	1. Eligibility.....	136
	2. Necessity	136
	C. User Department Responsibilities.....	139
	1. Procurement Background and Objectives	139
	2. Plan of Action.....	140
	3. Project Manager Identification.....	141
	D. Project Manager Responsibilities.....	141
	1. Scope or Specification.....	141
	2. Source Selection Procedures	141
	3. Procurement Considerations.....	141
	4. Budget and Funding	141
	5. Product or Service Description.....	141
	6. Management Information Required	141
	7. Test and Evaluation	141

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 16 of 339
--	--------------------------------------	-------------------------	-------------------------------

8. Logistic Consideration	142
9. HRT-Furnished Property	142
10. HRT-Furnished Information.....	142
11. Environmental and Energy Conservation Objectives	142
12. Contract Administration	142
13. Milestones for the Procurement Cycle	142
14. Independent Cost Estimate	144
15. Submission to Procurement.....	144
E. Procurement Considerations	144
F. Solicitation Document.....	145
G. Disadvantaged Business Enterprise and Risk Management Input	145
H. Final Review	145
I. Vendor's List.....	145
J. Solicitation Issuance and Distribution	145
K. Evaluation Panel.....	146
L. Planning File Content.....	146
XXI. Independent Cost Estimate.....	147
A. Background	147
B. Principles	147
C. Application	149
1. Importance of a Quality ICE in Acquisitions	149
2. Time Phasing of Costs.....	149
3. Total Ownership Costs/Life Cycle Cost in Acquisitions	149
D. Performing an Independent Cost Estimate	150
1. Publicly Published Price Lists	150
2. Recently Invoiced Price.....	150
3. Outreach/Market Survey	150
E. Market Research.....	150
F. Cost Estimation Methods	151

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 17 of 339
--	--------------------------------------	-------------------------	-------------------------------

1. Analogy (Top Down).....	151
2. Parametric (Statistical).....	151
3. Engineering (Bottom Up)	152
4. Actual Costs (Extrapolation)	152
G. General Best Practices.....	152
XXII. Contract Administration Functions.....	153
A. Contract Solicitation.....	153
B. Solicitation File Documentation	153
C. Contract Administration	153
D. Contract Administration File Documentation.....	154
E. Contract Administration File Contents	154
F. Contract Administration Functions	154
G. Contract Compliance.....	155
H. Closeout	156
XXIII. Contract Modifications (Change Orders)	157
XXIV. Contract Closeout.....	160
A. Contractor Performance Evaluation Report.....	160
B. Proof of Insurance Coverage.....	160
C. Release of Bonds.....	160
D. Contractor’s General Release.....	160
E. Warranty.....	161
F. Close-Out Audits.....	161
 APPENDICES	
Appendix A – Quick Reference – Methods of Procurement	166
Appendix B – Checklists.....	169
Appendix C – Forms	205
Appendix D – Other Resources (Provisions, Certifications, Reports, Forms, and Other Matrices)	245
Appendix E – Boilerplate General Conditions (Third-Party Contract Provisions).....	258

 <div>HAMPTON ROADS</div> <div>T R A N S I T</div> <div>POLICY AND PROCEDURES MANUAL</div>	<div>NUMBER</div> <div>PRO-001</div> <div>Rev. 16</div>	<div>EFF. DATE</div> <div>5/1/2025</div>
	<div>SUPERSEDES</div> <div>PRO-001 Rev. 15 – November 8, 2024</div>	
<div>RESPONSIBLE DEPARTMENT</div> <div>Procurement</div>	<div>KEY SUBJECT</div> <div>Procurement, Contracts</div>	
<div>TITLE</div> <div>Procurement Policy and Procedures Manual</div>		
<div>APPLIES TO</div> <div>All Departments</div>	<div>APPROVAL(S)</div> <div>Luther / Burns / Harrell</div>	

Definitions

Administrative Change: A unilateral contract change, in writing, which does not affect the substantive rights of the parties (e.g., changes of address for submittal of documents, reports, etc.).

Advance Payments: A payment made that a federal agency or pass-through entity makes by any appropriate payment mechanism and payment method prior to performance of work under the contract.

Agency or Commission or TDCHR or Board of Commissioners: Transportation District Commission of Hampton Roads, the governing body of HRT.

Alternative Contracting Method (ACM): Any method of contracting for a construction project other than traditional design-bid-build. ACMs include, but are not limited to, design-build, progressive design-build, construction manager/general contractor, construction manager-at-risk, public-private partnership, and other innovative methods with or without a name.

Amendment: Written modifications issued by HRT that make changes to a solicitation.

Best and Final Offer (BAFO): A term used in solicitations for a proposal containing final pricing and deliverables, based on the outcome of the negotiations conducted during the initial evaluation stage of the procurement, and a determination by the Contracting Officer that negotiations are completed.

Best Value: Characterizes a procurement strategy that prioritizes obtaining the most advantageous offer for HRT. It goes beyond evaluating proposals solely on cost or price, allowing for a comprehensive assessment that includes additional factors to secure technical superiority, even at a higher cost. The ‘premium’ is identified as the cost difference between the lowest-priced proposal and the proposal deemed to offer the greatest overall benefit. ‘Best value’ procurement is aimed at achieving the most favorable outcome for HRT, considering a project’s specific requirements and what is deemed most critical for its success. While the FTA does not prescribe specific evaluation criteria, criteria must be transparently disclosed in solicitation documents. Potential factors may include, but are not limited to, technical design and approach, delivery schedules, quality of

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 19 of 339
--	--------------------------------------	-------------------------	-------------------------------

personnel, past performance, and management plans.

Bid: A formal offer by an individual or entity to provide goods or services specified, in a formal Invitation for Bids, at a specified price.

Bidder: An individual or entity submitting a bid.

Blanket Purchase Agreement: A purchase agreement used to fill repetitive requirements for goods and services under a single award.

Bond: A written guarantee of performance, secured by a surety listed in the Comptroller General's List of Approved Sureties (OMB Circular 570) that is authorized to do business in the Commonwealth of Virginia. The three (3) relevant bonds are Bid Bond, Payment (or labor and material payment) Bond, and Performance Bond. A **Bid Bond** equivalent to five percent (5%) of the bid price is submitted with a bid. The Bid Bond ensures that, upon HRT's acceptance of the Bid, the Bidder will proceed with the work. If the Bidder does not proceed, HRT is due from the guarantor the difference between the bid price and the next highest bid price. A **Payment Bond** or **labor and material payment bond** secures payment of all contractual obligations by the Contractor. A **Performance Bond** secures the obligation to complete the work.

Brand Name: A name of a product or service that is limited to the product or service produced or controlled by one (1) private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one (1) manufacturer.

Buyer: A purchasing agent who is granted the authority to procure goods or services on behalf of HRT.

Cardinal Change: A major deviation from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative, that, in effect, the contractor is required to perform very different work from that described in the original contract.

Certificate of Insurance: A document issued by, or on behalf of, a surety verifying that the insured party named on the certificate has purchased the specified insurance coverages. It is typically provided to a third-party, such as HRT, as evidence that the specified coverages are in effect. The certificate typically identifies the specific coverages involved, the providing insurance company, the effective date and expiration date of the policy, and the dollar limits for each type of coverage. HRT requires that its contractors identify the Transportation District Commission of Hampton Roads as an additional insured; this information, and the number and title of the contract involved, should be noted on the certificate. HRT also requires thirty (30) days advance notice if the policy is cancelled; this may be but usually is not noted on the certificate. A certificate is only evidence of coverage as of the date issued; it is not in itself an insurance policy, nor does it give the certificate holder any rights under the policies referenced.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 20 of 339
--	--------------------------------------	-------------------------	-------------------------------

CFR: Code of Federal Regulations.

Change Order (CO) or Modification (Mod): A formal directive issued by HRT under the authority of a contract, compelling the contractor to implement specified contractual modifications. These changes adhere to predefined contract clauses for such adjustments and may proceed with or without the contractor’s explicit agreement.

Closeout: When it is determined that all applicable administrative actions and all required contractual work have been completed.

Common Rules or Common Grant Rules: Any one (1) or more of the following:

- U.S. Department of Transportation (DOT) regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. Office of Management and Budget (OMB) regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200; and
- U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” former 49 CFR Part 18.

Conflict of Interest: When an offeror or contractor has any contractual or other financial relationship with the Commission, its members, officers, employees, agents, or board members other than the contractual relationship established under the contract.

Construction Manager/General Contractor (CM/GC) or Construction Manager at Risk (CMAR): Delivery method that consists of two (2) phases: design and construction. In this delivery method, a Construction Manager is selected based on qualifications, experience, or best value. The Construction Manager aids with design up to approximately 60%-90%, after which HRT and the Construction Manager negotiate a maximum price, generally called the Guaranteed Maximum Price (GMP), for the Construction phase. If both parties agree on the GMP, they sign a construction contract, at which point the Construction Manager becomes a General Contractor. The CM/GM method can help optimize efficiency, especially on complex or technically challenging projects. Variations in this process occur. For example, a project owner and construction manager may agree to a GMP early during the design phase, with or without a subsequent price negotiation as design nears completion.

Constructive Change: Occurs through an action or failure to act by HRT that effectively alters the contractual scope of work without a formal ‘change order.’ This concept recognizes that changes in project work, whether explicitly directed or inferred from HRT’s conduct, necessitate adjustments in contract terms and potentially in budget.

Consultant or Contractor or Vendor or Supplier: The person or entity entering into a contract for the performance of services or delivery of goods or equipment to HRT.

Contract or Agreement: The executed agreement between HRT and a contractor for performance

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 21 of 339
--	--------------------------------------	-------------------------	-------------------------------

and completion of work. A mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. It encompasses various commitments that obligate the Commission to expenditure in writing, including bilateral instruments, awards, job orders, letter contracts, and purchase orders that become effective by acceptance or performance. Contracts under Federal awards must adhere to procurement standards established in 2 CFR 200.

Contract Administration: The post-award administration of contracts to ensure contract deliverables are fulfilled by the contractor in accordance with the contract terms and conditions. These responsibilities may be delegated to a Project Manager (PM) serving as the point of contact with the contractor; however, depending on the contract type, complexity, and resource availability, functions may be retained by the Contracting Officer.

Contracting Officer: A procuring official who has delegated authority, including authority, to sign contracts and amendments on behalf of HRT. The person, or their designee, is granted authority to act on behalf of the Commission in all contractual matters concerning a contract.

Contractor: The person or entity that has been awarded a contract for goods or services.

Cooperative Agreement: A financial assistance instrument the FTA awards to HRT for a particular project in which the FTA retains substantial involvement, as described in 31 U.S.C. 6305.

Cost Analysis: A process that entails the review and evaluation of the separate cost elements, including direct costs (labor, materials, equipment, etc.), proposed indirect costs (overhead), and profit of a contractor's cost or pricing data, and the judgmental factors applied in determining the reasonableness of costs. A cost analysis is generally conducted to form an opinion on the degree to which the proposed cost, including profit, represents what the performance of the contract should cost, assuming reasonable economy and efficiency.

Days: Except as otherwise provided in a contractual document, calendar days, including weekends and holidays.

DBE: Disadvantaged Business Enterprise.

DBE Goal: The participation goal established, subject to the requirements of 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." When only non-federal sources are being used to fund the procurement, Virginia's Small, Women, and Minority Owned Business Certifications (SWaM/MBE/WBE) is an acceptable substitution for the FTA's required DBE certification.

Debarment – An action taken to deny prequalification, disqualify, or debar an individual or firm from consideration for award of contracts by the Commission. A debarment shall not be for a period exceeding three (3) years and during that time, the debarred entity or individual shall be ineligible to bid or propose on the Commission's solicitations.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 22 of 339
--	--------------------------------------	-------------------------	-------------------------------

Design-Bid-Build: The traditional delivery method for construction projects under which HRT commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.

Design-Build: As delineated in 49 U.S.C. §5325(d)(1), it is a delivery method where HRT contracts with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment thereof, meeting specified performance criteria. This contract may include an option to extend to the financing, operating, or the maintenance of the system or segment. The essence of the design-build delivery method is the integration of design and construction services into a single contract, potentially offering benefits such as expedited completion times and cohesive project execution. Beyond the primary scope defined in 49 U.S.C. § 5325(d)(1), design-build also extends to contracts combining the design and construction of public transportation facilities, aiming to streamline project delivery and enhance performance outcomes.

Electronic Commerce (E-Commerce): Consists of electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web internet technology, electronic bulletin boards, purchase cards, electronic funds transfer, electronic signatures, and electronic data interchange.

Emergency: A situation (such as a flood, epidemic, riot, equipment failure, or other reason) that creates an immediate threat to public health, welfare, or safety.

Equitable Adjustment: The difference between the reasonable cost of the contract performance without the change(s) and the reasonable cost, actual or estimated, of contract performance with the change(s). The purpose of an equitable adjustment is to fairly compensate the contractor for the changed work. It is not a vehicle for increasing the contractor's profit or reducing its loss for reasons unrelated to a change.

Federal Government: The United States of America (U.S.) and any of its executive departments or agencies.

Federal Requirement:

- An applicable federal law, regulation, or executive order;
- An applicable provision of the Underlying Agreement, including any Special Condition, Requirement, Provision, or Condition of Award;
- The FTA's Master Agreement;
- A later Master Agreement after the FTA and the Commission have entered into an Underlying Agreement; or
- Another applicable federal mandate.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 23 of 339
--	--------------------------------------	-------------------------	-------------------------------

Federal Transit Administration or FTA: An operating administration of the U.S. Department of Transportation (DOT).

Final Acceptance: Written notice by HRT acknowledging that a contractor has fulfilled all obligations under the contract, and that HRT has accepted the work as of the date stated in the written notice. Final Acceptance is a condition precedent to Final Payment and defines commencement of the warranty period.

Final Completion: Fulfillment of all of the contractor's obligations under the contract.

Full and Open Competition: All responsible sources are permitted to compete.

HRT or Administration: Hampton Roads Transit, the operating organization governed by the Transportation District Commission of Hampton Roads.

Independent Cost Estimate: HRT's internal estimate of the cost of the Scope of Work for a project or contract modification, which is derived separately from the contractor's pricing.

Industry Survey or Market Survey: The process for soliciting information from private industry regarding a contemplated procurement prior to issuance of a formal solicitation. This may involve requesting industry comments on a draft specification or scope of services, holding meetings with potential offerors, or requesting interested parties to submit their general qualifications in a particular area of expertise (Request for Expression of Interest or RFEI). An industry survey can be used to prepare an effective solicitation document capable of eliciting acceptable offers. Any industry survey should involve a wide enough audience to avoid any implication of favoritism or providing any potential offeror or group of offerors with an unfair competitive advantage.

Informality: A minor defect or variation of the bid or proposal from the exact requirements of the Invitation for Bids or the Request for Proposals, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured (*Code of Virginia*, § 2.2-4301).

Information Technology: Computers, computer hardware and accessories, software, and telecommunications devices used to retrieve, store, or transmit information. Information technology is comprised of any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, display, manipulation, movement, control, switching, interchange, transmission, or management of data or information. Electronic and information technology include the following:

- Computer hardware (such as workstations/desktop computers, laptops, notebooks, tablets, servers)
- Computer software
- Operating systems
- Telephones

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 24 of 339
--	--------------------------------------	-------------------------	-------------------------------

- Cellular phones and other telecommunications products
- Information kiosks
- Web-based applications and information
- Any type of technology as a service (i.e., Software as a Service “SaaS,” Platform as a Service “PaaS”) and/or licensing
- Office products such as multi-function devices, printers, photocopiers, plotters, scanners, and fax machines
- Fare equipment
- Digital cameras
- Video equipment and multimedia products

Invitation for Bid (IFB): A formal solicitation seeking offers to provide goods and services at a fixed price. In IFB procurements, an award is made on the basis of the lowest price offered in a responsive bid from a responsible bidder. The determination is based solely on price, with no consideration of a bid’s quality beyond meeting the minimum requirements established in the IFB.

Joint Procurement (sometimes called “cooperative procurement”): A method of contracting in which two (2) or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum.

Liquidated Damages: The pre-established amount the contractor will pay to HRT for each day, or other appropriate period designated by HRT, any portion of the work which remains incomplete after the contract completion term, or for each day that any designated milestone is not met, reflecting the additional estimated cost that HRT will incur because of the delay. Liquidated Damages do not include performance incentives and/or disincentives.

Master Agreement: The FTA document incorporated by reference and made part of the FTA’s standard grant agreements and cooperative agreements, which contains the standard terms and conditions governing the administration of a project supported with Federal assistance awarded by the FTA.

Micro-Purchases: An individual procurement transaction for supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of HRT’s small purchases using informal procurement methods as set forth in 2 CFR 200. For FTA funded projects, Micro-Purchases are exempt from FTA’s third-party contract clauses except: (1) construction contracts exceeding \$2,000 are subject to the wage provisions of the Davis-Bacon Act; and (2) the file must include a determination that the price is fair and reasonable, and the justification for that determination.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 25 of 339
--	--------------------------------------	-------------------------	-------------------------------

Micro-Purchase Threshold: The dollar amount at or below purchases of property or services utilizing micro-purchase procedures may be utilized.

Nonprofessional Services – All services not within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (*Code of Virginia*, § 2.2-4301).

Notice-of-Award (NOA): A written notice by HRT to the successful offeror that HRT will sign and issue a contract subject to the terms and conditions stated in the solicitation.

Notice-to-Proceed (NTP): A written notice by HRT to a contractor directing the start of work. Any work performed prior to the issuance of an NTP shall be at the contractor's own risk.

Offeror: An individual or entity submitting a formal response to a Request for Quote, Invitation for Bid, or Request for Proposal.

Office of Management and Budget (OMB): The Executive Office of the President, Office of Management and Budget.

Official Responsibility: As defined by the VPPA § 2.2-4368, official responsibility means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting therefrom.

Option: A unilateral right in the contract for HRT to extend the contract term, or purchase at a predetermined price, additional equipment, supplies, or services called for by the contract.

Owner: Hampton Roads Transit.

Plan Holder's List (Bidder's List): Known prospective offerors who have either downloaded a specified solicitation package from HRT's website or included by HRT for notification purposes.

Price Analysis: The process of examining and evaluating an offeror's proposed price, to determine its reasonableness, without consideration of the separate elements of labor, material, equipment, overhead, and profit. A price analysis is based on data that is verifiable independently from the offeror's data.

Procurement Lead Time (PLT): The time required to award a purchase order or contract. It usually begins with the submittal of a purchase requisition and ends with an award. Depending on the value and complexity, PLT activities may include submittal or development of the following: a purchase requisition, statement of work, independent cost estimate, price analysis, insurance requirements, DBE goal determination, contracting method, sole source justification, selection of solicitation and contract clauses, advertisement, issuance of solicitation, pre-bid/proposal conference, questions and responses to questions, bid opening/receipt of proposals, responsiveness and responsibility review, technical evaluation, negotiations, best and final offers, Operations and Oversight Committee presentation, Commission presentation and approval, and issuance of Notice-to-Proceed.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 26 of 339
--	--------------------------------------	-------------------------	-------------------------------

Product Data: Written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, drawings, or other information furnished by the contractor to describe materials to be used for some portion of the work.

Professional Services: Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.

Progress Payment: A partial payment request for acceptable work performed or materials received.

Progressive Design-Build (PDB): One of several Alternative Contracting Methods (ACMs) available for improving project delivery for use on Federal aid construction contracts. PDB uses a two-phased qualification-based selection process, requiring HRT and the PDB Team to progress the design together, toward a final scope, schedule, and budget (guaranteed maximum price or target maximum price). The method is best used for complex construction projects.

Project: The overall objective of the contract.

Project Closeout: The process by which the contractor documents fulfillment of all obligations under the contract. This process follows Substantial Completion and precedes Final Acceptance.

Project Manager (PM): HRT's designated technical point of contact for managing the project and coordinating with Procurement on a day-to-day basis. Coordination with Procurement includes entry of the purchase requisition, verification of funding, verification of receipt of goods and services, verification of receipt and accuracy of invoices, and payment.

Project Schedule: The schedule agreed to by the parties setting forth the logical sequence of activities required for the contractor's orderly performance and completion of the work in accordance with the contract, and specifically, to meet the specified milestone dates, including updates.

Property: Includes real property consisting of land and buildings, structures, or appurtenances on land, equipment, supplies, other expendable property, intellectual property, and intangible property.

Proposal: A formal plan for the provision of goods or services, tendered to HRT by an individual, firm, partnership, corporation, joint venture, or combination thereof. Proposals are evaluated on qualitative technical factors in addition to price. For Architecture and Engineering project proposals, price is not a competitive factor.

Protest: A written request, by an interested party, for specified relief from a procurement action or decision.

Purchase Order: A commercial document that is issued by HRT's Procurement Department when placing an order with its vendors or suppliers. The document indicates details on the items or services that are to be purchased, such as the types of goods, quantity, and price. In simple terms,

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 27 of 339
--	--------------------------------------	-------------------------	-------------------------------

it is the contract drafted by the Procurement Department when purchasing goods or services from a seller.

Request for Information (RFI): A written request by a vendor, supplier, consultant, or contractor requesting clarification or additional information concerning a solicitation and/or contract documents.

Request for Proposal (RFP): A solicitation for equipment, goods, or services on a competitive basis. An RFP is used where there is not a clear definition of the desired goods or services, or where different approaches to the work are possible, or where personal knowledge, experience, and skills are a determining factor; professional services are always procured by RFP. Award is made by evaluation of both technical merit and price and may not be based on price alone and is awarded based on best value.

Responsible Bidder or Proposer: A person or entity that possesses the ability, in all respects, to fully perform the contract requirements and the business integrity and reliability that will ensure good faith performance. Consideration is given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Responsive Bidder: A person or entity who has submitted a bid that conforms in all material respects to the Invitation for Bid.

Revenue Contract: A contract in which HRT provides access to public transportation assets for the primary purpose of either producing revenues in connection with a public transportation-related activity or creating business opportunities involving the use of FTA assisted property.

Rolling Stock: Vehicles used to transport passengers and include buses, vans, sedans, railcars, locomotives, trolley cars, ferry boats, and other vehicles used for guideways and inclined planes. Light duty vehicles such as vans, sedans, and pick-up trucks used for administrative and maintenance purposes are considered equipment. Light duty vehicles used to transport passengers are considered rolling stock.

Safety, Risk, and Emergency Management: The Safety, Risk, and Emergency Management Department is responsible for assisting all Departments in maintaining a safe environment for employees, passengers, and the community in which HRT operates. This is done by providing guidance in identifying and evaluating hazards and vulnerabilities and then minimizing the hazardous conditions and/or vulnerabilities to their lowest achievable level. In its effort to ensure that the procurement processes consider and evaluate the safety aspects of services, equipment, and other materials obtained, HRT includes safety requirements in technical specifications and contracts.

Safety Data Sheets (SDS): Provides safety information, identifying hazardous chemicals, health, physical hazards, exposure limits, and precautions needed to allow safe handling of products.

Security Services: The Department of Security Services is charged with the organization's

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 28 of 339
--	--------------------------------------	-------------------------	-------------------------------

physical security requirements and strives to create a secure and resilient system to execute HRT's mission. The department also provides guidance through the procurement process to ensure that the services, equipment, and other materials obtained meet security management requirements.

Simplified Acquisition Threshold: The dollar amount below which HRT may purchase property or services using small purchase methods (2 CFR § 200.320). The simplified acquisition threshold is set in the FAR at 48 CFR Part 2, Subpart 2.1. HRT is responsible for determining an appropriate simplified acquisition threshold, which is less than or equal to the dollar value established in the FAR, based on internal controls, an evaluation of risk, and its documented procurement procedures.

Single Source: A competitive procurement action where there is only one (1) offeror who is deemed responsive and responsible. Before an award is made based on a single source, the price must be negotiated and justified as reasonable.

Sole Source: A noncompetitive procurement action whereby there is only one (1) known source who can comply with the explicit requirements of a solicitation. A sole source is typically when the goods or services are proprietary to one (1) company and not easily obtained elsewhere. A sole source justification is required.

Sole Source Justification: Written justification for a procurement action, when full and open competition does not exist. The justification must document fully and adequately, the appropriateness of the decision to solicit an offer from only one (1) source. The justification must include documentation of a cost analysis to verify the proposed cost data and the evaluation of the cost and profit.

Solicitation: The document issued by HRT requesting Quotes (RFQ), Bids (IFB), or Proposals (RFP) for goods or services.

Special Provisions: Contractual terms which supplement or modify the General Conditions. Special Provisions take precedence over any General Condition modified by it.

Specialty Items: Materials which are of a special design, or which require special fabrication specifically for the contract.

Specifications: Contractual terms containing written directions and requirements for completing the work. Standards cited in the Specifications by reference have the same effect as if physically included in the contract.

State or Local Government Purchasing Schedule or Purchasing Contract: A procurement framework established by a State or local government with multiple vendors. Under this framework, vendors commit to providing an option for the State or local government, along with its subordinate entities and any other participants designated in its program, to procure specified goods or services in the future at pre-established prices. These frameworks bear resemblance to the GSA's Cooperative Purchasing Program but are specifically designed for State and local

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 29 of 339
--	--------------------------------------	-------------------------	-------------------------------

governments use. While ‘cooperative’ is sometimes used to describe these arrangements due to their similarities to the GSA’s Cooperative Purchasing Program, it is important to differentiate these from ‘Joint Procurement.’

Subcontract: An agreement, including purchase orders (other than one involving an employer/employee relationship), entered into between HRT’s contractor and a lower tier subcontractor calling for services, labor, equipment, and/or materials required for contract performance.

Subcontractor: An individual or entity at any tier, other than employees of the contractor, who contracts with the contractor or a subcontractor to furnish services, labor, equipment, and/or materials, or labor and materials, under the contract. The term subcontractor is considered to include the term supplier.

Substantial Completion: Completion of the work, or a designated portion of the work, to a point where HRT certifies that the work or the designated portions can be used for the purpose intended, whether or not minor portions of the work, or corrections to any portions of the work, remain to be completed. Substantial Completion does not relieve the contractor of its obligation to fully complete the work in a timely fashion. Items remaining to be completed after Substantial Completion are documented in a Punch List.

Supplier: A person or entity that provides supplies, materials, or equipment, but usually does not provide labor on HRT property other than delivery.

Supplies, material, and equipment: All items incorporated in the work or otherwise delivered to HRT.

Third-Party Contract: Refers to a contract with a vendor or contractor, including procurement by purchase order or purchase by credit card, which is financed with Federal assistance awarded by the FTA.

U.S.C.: United States Code.

Unsolicited Proposal: A proposal that is:

- Innovative and unique;
- Independently originated and developed by an offeror;
- Prepared without HRT’s supervision, endorsement, direction, or direct involvement;
- Sufficiently detailed that its benefits in support of HRT’s mission and responsibilities are apparent;
- Not an advance proposal for property or services that HRT could acquire through competitive methods; and
- Not an offer responding to HRT’s previously published expression of need or request for

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 30 of 339
--	--------------------------------------	-------------------------	-------------------------------

proposals.


Value Engineering: The systematic application of recognized techniques that identify the function of a product or service, establish a value for that function, and provide the necessary function reliably at the lowest overall cost. In all instances, the required function should be achieved at the lowest possible life cycle cost consistent with requirements for performance, maintainability, safety, security, and aesthetics.

Work: The furnishing of all supervision, labor, materials, equipment, services, and incidentals necessary to complete the contract, and the carrying out of any duties and obligations imposed on the contractor by the contract.

Working Drawings: The drawings prepared by the contractor which depict the sequence, methods, materials, details of construction, or procedures for accomplishing the work, including, but not necessarily limited to, false work, shoring, concrete formwork, and excavation plans.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 31 of 339
--	--------------------------------------	-------------------------	-------------------------------

This page intentionally left blank.

 <div>HAMPTON ROADS TRANSIT</div> <div>POLICY AND PROCEDURES MANUAL</div>	<div>NUMBER</div> <div>PRO-001</div> <div>Rev. 16</div>	<div>EFF. DATE</div> <div>5/1/2025</div>
	<div>SUPERSEDES</div> <div>PRO-001 Rev. 15 – November 8, 2024</div>	
<div>RESPONSIBLE DEPARTMENT</div> <div>Procurement</div>	<div>KEY SUBJECT</div> <div>Procurement, Contracts</div>	
<div>TITLE</div> <div>Procurement Policy and Procedures Manual</div>		
<div>APPLIES TO</div> <div>All Departments</div>	<div>APPROVAL(S)</div> <div>Luther / Burns / Harrell</div>	

Section I - Purpose

The overall purpose of the Procurement Policy and Procedures Manual is to:

- A. Establish the legal authority of the procurement function within the organization.
- B. Simplify, clarify, and reflect the laws governing procurement.
- C. Enable uniform procurement policies throughout the organization.
- D. Build public confidence in public procurement.
- E. Ensure the fair and equitable treatment of everyone who deals with the procurement system.
- F. Provide for increased efficiency, economy, and flexibility in public procurement activities.
- G. Foster effective broad-based competition from all segments of the supplier community.
- H. Safeguard the integrity of the procurement system and protect against corruption, waste, fraud, and abuse.
- I. Ensure appropriate public access to contracting information.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 33 of 339
--	--------------------------------------	-------------------------	-------------------------------

Section II – Applicability and Governance

The Commission must comply with applicable Federal laws and regulations, including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements.

- A. The government-wide regulations, 2 CFR Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” establish the comprehensive Federal requirements applicable to FTA’s assistance programs.
- B. The Commission’s procurement actions are primarily governed by the Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200 (2 CFR Part 200); 2 CFR Part 1201, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;” 2 CFR Part 180, “OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement);” 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs;” the Federal Transit Administration (FTA) Circular 4220.1G; FTA’s Master Agreement, and the Virginia Public Procurement Act (VPPA) Title 2.2, Chapter 43, *Code of Virginia*. The VPPA applies generally to every “public body” in the Commonwealth of Virginia, which § 2.2-4301 defines to include “any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty...” In all procurements utilizing any amount of Federal funds, State and Federal procurement law shall both apply to the extent practical. In the event of a conflict between explicit State and Federal procurement requirements, Federal law will generally supersede State law. Where no Federal funds are involved, procurement actions will be governed by applicable State law. A listing of significant laws and regulations governing and providing guidance for the Commission’s procurement actions is contained in Appendix D. References to statutes or regulations herein shall be deemed to refer to any subsequent revisions or amendments which may be enacted from time to time. It is the responsibility of the Director of Procurement, in coordination with the Commission’s legal counsel, when necessary, to update the General Conditions with the required clauses and their applicability.
- C. In accordance with 2 CFR § 200.317, when procuring property and services under a grant or cooperative agreement, the same procurement policies and procedures that it uses for acquisitions not financed with Federal assistance must be used. If such policies and procedures do not exist, the procurement standards in 2 CFR §§ 200.318 through 327 must be followed. 2 CFR § 200.323 (Procurement of Recovered Materials) and § 200.327 (Contract Provisions) of the Procurement Standards must also be complied with.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 34 of 339
--	--------------------------------------	-------------------------	-------------------------------

- D. The Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, generally does not apply to undertaking procurements with FTA financial assistance. There are specific instances where FAR principles, such as those outlined in FAR Part 31 Cost Principles, apply to audits of A&E services as specified under 49 U.S.C. 5325. The Uniform Administrative Requirements (2 CFR 200) also incorporate the simplified acquisition threshold and micro-purchase threshold established in the FAR. This threshold may be updated at 48 CFR Part 2. Even if the FAR may not be applicable to HRT's procurements, FAR provisions and clauses provide useful references, guidance, or models, provided they are compatible with Federal assistance requirements and HRT's circumstances.
- E. In addition to adhering to 2 CFR Part 200, the Commission must comply with other Federal transit laws and implementing regulations not covered by these uniform guidelines, as well as other cross-cutting Federal statutes and regulations. The most current edition of FTA's Master Agreement consolidates applicable Federal laws and regulations.
- F. Where the VPPA does not conform to a mandatory provision of Federal law, regulation, or other requirements, including but not limited to 2 CFR 200 and/or C4220.1G, HRT may comply with such federal requirements, notwithstanding the provisions of the VPPA, only upon the written determination of the Commission's President/Chief Executive Officer (CEO) that acceptance of the grant or contract funds under the applicable conditions are in the public interest.
- G. HRT personnel having "official responsibility" as defined in the *Code of Virginia* § 2.2-4368, for procurement must comply with Virginia Public Procurement Act.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 35 of 339
--	--------------------------------------	-------------------------	-------------------------------

Section III – Values and Guiding Principles of Public Procurement

HRT's Procurement Department has adopted the Values and Guiding Principles of Public Procurement, as created by NIGP: The Institute for Public Procurement, and adapted as follows:

A. Accountability

Taking ownership and being responsible to stakeholders for our actions, which is essential to preserve public trust and protect the public interest. Principles of accountability include the following:

1. Apply sound business judgment.
2. Be knowledgeable of and abide by all applicable laws and regulations.
3. Be responsible stewards of public funds.
4. Maximize competition to the greatest extent feasible.
5. Practice due diligence.
6. Promote effective, economic, and efficient acquisition.
7. Support economic, social, and sustainable communities.
8. Use procurement strategies to optimize value to stakeholders.

B. Ethics

Acting in a manner that is true to these values, which is essential to preserve the public's trust. Principles of ethics include the following:

1. Act and conduct business with honesty and integrity, avoiding even the appearance of impropriety.
2. Maintain consistency in all processes and actions.
3. Meet the ethical standards of the profession.

C. Impartiality

Unbiased decision-making and action, which is essential to ensure fairness for the public good. Principles of impartiality include the following:

1. Be open, fair, impartial, and non-discriminatory in all processes.
2. Treat suppliers equitably, without discrimination, and without imposing unnecessary constraints on the competitive market.
3. Use sound professional judgment within established legal frameworks to balance competing interests among stakeholders.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 36 of 339
--	--------------------------------------	-------------------------	-------------------------------

D. Professionalism

Upholding high standards of job performance and ethical behavior, which is essential to balance diverse public interests. Principles of professionalism include the following:

1. Be led by those with education and experience in public procurement.
2. Continually contribute value to the organization.
3. Continually develop as a profession through education, mentorship, innovation, and partnerships.
4. Develop, support, and promote the highest professional standards in order to serve the public good.
5. Seek continuous improvement through on-going training, education, and skill enhancement.

E. Service

Obligation to assist stakeholders, which is essential to support the public good. Principles of service include the following:

1. Be a crucial resource and strategic partner with the organization and the community.
2. Develop and maintain relationships with stakeholders.
3. Develop collaborative partnerships to meet public needs.
4. Maintain a customer service focus while meeting the needs and protecting the interests of the organization and the public.

F. Transparency

Easily accessible and understandable policies and processes, which are essential to demonstrate responsible use of public funds. Principles of transparency include the following:

1. Exercise discretion in the release of confidential information.
2. Maintain current and complete policies, procedures, and records.
3. Provide open access to competitive opportunities.
4. Provide timely access to procurement policies, procedures, and records.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 37 of 339
--	--------------------------------------	-------------------------	-------------------------------

Section IV – Standards of Conduct

The Commission shall maintain a written standard of conduct covering conflicts of interest and governing the performance of employees, officers, agents, and Commissioners related to the solicitation, award, and administration of contracts, conforming to applicable laws and regulations, in accordance with 2 CFR § 200.318, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), and the VPPA § 2.2-4367 – 2.2-4377, Article 6, Ethics in Public Contracting.

HRT maintains a written code of conduct as part of its Procurement Policy and Procedures Manual and Conflict of Interest Policy (PRO-002). This sets forth the required standards of conduct relating to all procurement activities. Additionally, procurement personnel and other employees with responsibility for procurement-related activities, their partners, and members of their immediate families are subject to these requirements.

The laws of this Commonwealth dictate a higher standard of conduct for procurement officials than for other employees generally because of the extraordinary trust and responsibility exercised by individuals conducting procurement transactions, and because of the legitimate expectation by the public that this trust and responsibility be exercised properly. Procurement officials and vendors must be cognizant of these laws which include the *VPPA*, the *State and Local Government Conflict of Interests Act*, and the *Governmental Frauds Act*. All HRT employees who have official responsibility for procurement transactions shall conduct business with vendors in a manner above reproach in every respect. Transactions relating to the expenditure of public funds require the highest degree of public trust.

- A. No HRT employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of HRT when the employee knows that:
 1. The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or,
 2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5%); or
 3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
 4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror, or contractor (*Code of Virginia*, § 2.2-4369).

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 38 of 339
--	--------------------------------------	-------------------------	-------------------------------

An immediate family member is defined as a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee. The Attorney General has advised that the definition of immediate family includes siblings not living in the same household as the employee (*Code of Virginia*, § 2.2-4368).

- B. No HRT employee having administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting there from:
 1. shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor, or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value present or promised, unless consideration of substantially equal or greater value is exchanged (*Code of Virginia*, § 2.2-4371);
 2. shall accept employment from any bidder, offeror, or contractor with whom the employee dealt in an official capacity concerning procurement transactions for a period of one (1) year from the cessation of employment by HRT unless the employee or former employee provides written notification to the Chief of Human Resources prior to commencement of employment by that bidder, offeror, or contractor (*Code of Virginia*, § 2.2-4370).
- C. In some situations, it may be necessary for personnel to make site visits in conjunction with a solicitation to evaluate vendor capability and equipment. If site visits are required for evaluation purposes, HRT, and not the vendors being evaluated, should pay for such visits.
- D. HRT employees who have official responsibility for procurement transactions may attend vendor-sponsored seminars or trade shows where they will benefit from receiving product information and learning of new techniques and product or service trends. Food, drinks, and give-away items offered to all participants at such functions may be accepted by HRT employees attending.
- E. All HRT personnel having official responsibility for procurement transactions shall be knowledgeable about the provisions of Article 6, *Code of Virginia*, §§ 2.2-4367 through 2.2-4377, entitled “Ethics in Public Contracting.” “No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry” (*Code of Virginia*, § 2.2-4376). “Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment” (*Code of Virginia*, § 2.2-4377).

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 39 of 339
--	--------------------------------------	-------------------------	-------------------------------

- F. Pursuant to *Code of Virginia*, § 2.2-3104.01 and § 2.2-4376.1, respectively, any person who violates the aforementioned code sections shall be subject to a civil penalty of \$500 or up to two (2) times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.
- G. Vendors and employees of HRT are prohibited from exchanging anything exceeding nominal value at expo events, which includes distributions by vendors at exhibit booths where the vendors are educating buyers about their products.

Personal Conflicts of Interest. No employee, officer, agent, or board member with a real or apparent conflict of interest, may participate in the selection, award, or administration of a contract supported by the federal award. A conflict of interest includes when the employee, officer, agent, or Commission member, any member of their immediate family, their partner, or an organization that employs, or is about to employ, any of the parties indicated herein, has a financial or other interest in, or a tangible personal benefit from, an entity considered for a contract.

A. Gifts

An employee, officer, agent, or board member may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors. HRT has set minimum rules for acceptance of gifts:

1. Acceptance of any gift. Acceptance of any gift, favor, or service from any individual(s) interested in any business relationship with HRT, which would cause a reasonable person to question the officer's or employee's impartiality in the matter, is considered to be a conflict of interest (except those donated for a specific activity or purpose sanctioned by HRT).
2. Acceptance of any personal gift. Acceptance of any personal gift, favor, service, or item, regardless of value, from an individual(s) for the employee's own economic benefit or as a trade for any HRT services (i.e., advertising space, etc.) is considered to be a conflict of interest.
3. Acceptance of gifts from any source so frequent as to raise an appearance of the use of the employee's position for private gain is considered to be a conflict of interest.

B. Violations

To the extent permitted by the Commonwealth of Virginia local law, or regulations, HRT's Standards of Conduct will provide for penalties, sanctions, or other disciplinary action for violation of these standards by HRT's officers, employees, agents, board members, or by contractors, up to and including termination.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 40 of 339
--	--------------------------------------	-------------------------	-------------------------------

C. Conflict of Interest Certification

On an annual basis, HRT requires that all employees and board members, who participate in the procurement process, sign a certification that they have read, understand, and will comply with HRT's Conflict of Interest Policy (PRO-002).

The Commission is also subject to applicable provisions of § 18.2-446 et seq. of the *Code of Virginia* dealing with bribery.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 41 of 339
--	--------------------------------------	-------------------------	-------------------------------

Section V – Contracting Authority

A. The Contracting Officer

The Commission's President and CEO is the Commission's Contracting Officer.

B. Delegation of Contracting Authority

The Commission's President and CEO may delegate contracting authority in whole or in part to the Director of Procurement or to other Directors or Officers of HRT within the general scope of their responsibility. This authority may be re-delegated, with approval from the President and CEO, in whole or in part to other staff possessing sufficient knowledge, experience, and background in procurement policies and procedures, and in administration of contracts for the scope of the delegation.

C. Legal Counsel

Legal counsel is responsible for providing advice to HRT staff on legal matters and review and approval of contracts prior to CEO execution. Outside legal counsel may only be involved in procurement issues with prior approval of the President and CEO or his or her designee.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 42 of 339
--	--------------------------------------	-------------------------	-------------------------------

Section VI – General Procurement Standards

A. Contract Oversight

The Commission must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of contracts and purchase orders. Performance oversight differs from oversight of the selection process, which is the purview of the Governing Board of the Commission for qualifying contracts.

B. Public Notice

1. Full and Open Competitive Procurements. Procurements expected to exceed \$100,000 require public notice, which is to be accomplished by posting on the HRT website for at least ten (10) days prior to receipt of offers. Additionally, notices may be published in general circulation newspaper(s) or other appropriate websites and offers may be solicited directly from potential contractors.
2. Noncompetitive Procurements. Noncompetitive contract awards exceeding \$100,000 are to be posted to the agency website. The procurement file must include documented justification for the lack of competition.

C. Competition

It is the policy of the Commission that all procurement transactions be conducted in a manner intended to maximize full and open competition. The Commission will only make awards to responsive offers from responsible offerors. A responsive offer is one that complies with all material requirements of the solicitation. A responsible offeror is one possessing the technical, physical, financial, and ethical capacity to successfully perform a specific contract.

In implementing this standard, procurement staff members are expected to be aggressive in identifying potential vendors for each procurement. At a minimum, each procurement expected to exceed the small purchase threshold shall be advertised in local, and, as appropriate, regional, national, and trade publications, and known vendors will be directly informed of the project and encouraged to respond to the solicitation. Additionally, each competitive procurement above the small purchase threshold shall be posted on HRT's procurement website for downloading. The notice shall provide the solicitation number and title, the date of any pre-bid or pre-proposal conference, and the date and time for receipt of responses to the solicitation. Advertisements and notices shall be issued at the beginning of the solicitation period, or as soon thereafter as practicable (e.g., to accommodate the advertising schedules of publications). For procurements below the small purchase threshold, formal advertising is not required but may be used if appropriate.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 43 of 339
--	--------------------------------------	-------------------------	-------------------------------

D. Public Access to Procurement Records

Records are open to the public in accordance with the *Virginia Freedom of Information Act*, subject to the following:

1. Cost estimates relating to a proposed procurement transaction prepared by or for HRT shall not be open to public inspection (*Code of Virginia*, § 2.2-4342B).
2. Subject to any applicable production costs, any bidder upon request, shall be given an opportunity to inspect bid records within a reasonable time after opening and evaluation of bids, but prior to award, except in the event the agency decides to reject all bids or offers and rebid (*Code of Virginia*, § 2.2-4342C). Information read aloud at a public bid opening will be furnished upon request.
3. Subject to any applicable production costs, any offeror who responds to an RFP, upon request shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are complete but prior to award, except in the event the Commission decides not to accept any of the proposals and to resolicit.
4. Bid and proposal records shall be open to the public only after award.
5. Any inspection of procurement records shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted for a procurement transaction shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protection of *Code of Virginia*, § 2.2-4342F, in writing, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. It is the Commission's responsibility to establish and enforce procedures to protect vendor proprietary information with the same degree of protection that would be provided for confidential information of the Commonwealth. The classification of an entire bid or proposal document, prequalification application, line-item prices, and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the bidder or offeror refuses to withdraw an entire classification designation, the bid will be considered non-responsive, or the proposal will be rejected.
6. To protect the Commission and its employees from possible claims for damages because of the improper release of information, the Commission shall not release any information that a bidder, offeror, or contractor has claimed to be a trade secret or proprietary information, unless ordered to do so by a court of competent jurisdiction. If a party seeking information disagrees with the designation of it as proprietary or a trade secret, upon concurrence of the Commission's legal counsel, the party seeking the information may be advised that they will have to obtain a court order and request to be named as a defendant

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 44 of 339
--	--------------------------------------	-------------------------	-------------------------------

in the suit involving the bidder, offeror, or contractor which designated the information as proprietary as well as the Commission.

7. Small Purchase Records. Subject to any applicable production costs, unsealed bids and unsealed proposal records shall be open to the inspection of any citizen, or any interested person, firm, or corporation in accordance with the Virginia Freedom of Information Act only after award of the contract.

E. Avoidance of Unnecessary or Duplicative Items

Proposed procurements will be reviewed to avoid unnecessary or duplicative items to the greatest extent feasible and consistent with good procurement practices. Procurement activity will be reviewed by the Director of Procurement from time to time to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Procurement transactions should avoid unnecessary or duplicative items to the greatest extent feasible and be consistent with good procurement practices. Where appropriate, analysis should be made between leasing and purchasing property or equipment to determine the most economical approach.

F. Specifications

All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be acquired. Whenever practical, requirements will be described in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications are to be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or approved equal” description may be used as a means to define the performance; however, when this method is used, the specification must set forth the salient characteristics that the product must meet, and vendors will be allowed to offer “equal” products meeting the salient characteristics. If only a “brand name” is specified, without the “or approved equal” provision, the procurement must be processed as a sole source, with the appropriate justifications completed and maintained as part of the official contract record. Specifications for bid solicitations, whether by small purchase or formal procurement, shall be sufficiently detailed to ensure that bidders may submit pricing on an “apples to apples” basis. Specifications or scopes of services for negotiated procurements may be more general and accommodate the possibility of alternative solutions or products.

G. Canceling a Solicitation

An Invitation for Bids, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. When canceling a written solicitation, the cancellation notice must be publicly posted. All vendors included on the Plan Holder’s List for the solicitation shall be notified. Other vendors may view the status of the solicitation on HRT’s website to see

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 45 of 339
--	--------------------------------------	-------------------------	-------------------------------

that the solicitation has been cancelled. The reason for cancellation shall be made a part of the contract file. HRT shall not cancel or reject an Invitation for Bids, a Request for Proposal, any other solicitation, bid or proposal solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror (*Code of Virginia*, § 2.2-4319). Personnel responsible for opening bids or proposals must be notified of the cancellation to prevent responses from being inadvertently opened. Return sealed bids or proposals on canceled solicitations unopened if hard copy bids or proposals were received. If a program is canceled after receipt and opening of bids or proposals, original documents will remain a part of the procurement transaction file. Bidders or Offerors should be notified in writing that the procurement has been canceled and that duplicate proposals, if provided, will be destroyed unless the Offeror requests their return.

H. Use of Value Engineering Clauses

Value engineering is a method of reviewing the specifications for a construction and other capital projects to identify opportunities for increased efficiency. Value engineering means analyzing each contract item or task to ensure the project is designed and constructed to perform its essential functions at the overall lowest cost. The process may include consideration of life cycle costing and intangible or indirect benefits such as sustainability. Value engineering may result in either an increase to, or a decrease in, the project price.

The Commission will utilize value-engineering clauses for construction and other capital projects of sufficient size to offer reasonable opportunity for cost reductions. Additionally, HRT encourages contractors to submit Value Engineering Change Proposals (VECPs) when they identify efficiencies or improvements which reduce the contract amount without impairing essential functions or characteristics of the work. The contractor and HRT will share any savings, at a pre-determined split. HRT retains the right to reject a VECP without review, and without recourse by the contractor, if the proposed change is unacceptable to HRT.

I. Procurement Records and Access

Under 2 CFR § 200.334 – 200.338 and the FTA Master Agreement § 9, HRT must prepare and maintain accessible records sufficient to detail the history of each procurement transaction. Records must be retained for three (3) years after final payment and closure of all pending matters. See Appendix C, Forms, for a complete listing of records to be maintained.

Beyond the record retention and access provisions in 2 CFR 200, 49 U.S.C. 5325(g) grants the FTA, DOT officials, and U.S. Comptroller General, and their representatives reserve the right to access and inspect all project-related documents, and papers, including contracts, funded with Federal assistance under 49 U.S.C. Chapter 53.

The Procurement Department shall maintain records detailing the history of each procurement transaction, in accordance with HRT's Records Retention Policy. In addition to any files maintained within the department, files must be submitted to the Document Control center as

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 46 of 339
--	--------------------------------------	-------------------------	-------------------------------

required. See Appendix B, Checklists, for details regarding records to be included in the contract file.

1. Procurement History. The Commission must maintain records sufficient to detail the history of each procurement and, upon request, make them available to the FTA. Under 2 CFR § 200.318(i), these records must include, at a minimum, the following:
 - i. *Procurement Method*. The rationale for the procurement method used for each contract. If the contract was awarded without competition, the record must document the circumstances that justified the noncompetitive award.
 - ii. *Contract Type*. Contract type rationale for selection of the contract type used (fixed price, cost reimbursement, and so forth).
 - iii. *Contractor Selection*. Justification for contractor selection or rejection, especially for noncompetitive awards. For procurements above \$100,000, a written responsibility determination for the chosen contractor should be included.
 - iv. *Cost or Price*. Evaluate and state the justification for the contract cost or price.
2. Reasonable Documentation. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. Procurements that are more substantial should require extensive documentation.
3. Constructive Changes. If constructive changes occur on a contract, the Contracting Officer should document these changes with the same level of detail and approval as formal change orders. In addition to supporting HRT's own contract management, documentation of constructive changes will demonstrate that the changed work is eligible and within the scope of the Federal award.
4. Access to Records. Beyond the record retention and access provisions in 2 CFR §§ 200.334 – 200.338, 49 U.S.C. § 5325(g) grants the FTA, DOT officials, the U.S. Comptroller General, and their representatives the right to access and inspect all project-related records, documents, and papers, including contracts, funded with Federal assistance under 49 U.S.C. Chapter 53.

J. Use of Technology/Electronic Commerce

Along with other technology the Commission may choose to employ, it may use a well-structured Electronic Commerce system to conduct third-party procurements. The Commission must ensure its system allows compliance with Federal requirements.

1. Sufficient System Capacity. The electronic system must have sufficient system capacity necessary to accommodate all Federal requirements, including applicable accessibility requirements, for full and open competition.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 47 of 339
--	--------------------------------------	-------------------------	-------------------------------

2. Written Procedures. Written procedures must be established before any solicitation takes place. The procedures must be sufficient to ensure that all the information the FTA requires for project administration is entered into the electronic system and can be made readily available to the FTA as needed.
3. Uses. HRT may undertake third-party procurements through Standard Bidding and Proposal Procedures. Standard procurement procedures may be implemented through an electronic medium or resource to the extent of the system's capacity.

K. Data Rights

1. Protection. When performance of a contract may include the collection of data from HRT, either incidentally or as a primary purpose of the procurement, HRT should include clear terms in its contract defining who owns the collected data (HRT or its contractor), and what, if anything, the contractor may do with the collected data.
2. Types of Data Rights. When negotiating data rights, HRT should ensure contracts secure adequate licenses for Federally funded data. HRT should clearly define proprietary data and negotiate access rights to fulfill Federal objectives. Additionally, HRT should ensure data rights clauses are flowed down to subcontractors who may receive access to the data.

L. Fraud

49 U.S.C. § 5323(l) extends the criminal fraud provisions of 18 U.S.C. § 1001 to all certificates, submissions, or statements made in connection with any program financed under the Federal transit program. In addition, the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to any false or fraudulent statement or claim made under the Federal transit program.

M. Settlement of Contractual and Administrative Issues

The Procurement Department, and HRT's Legal Counsel, are responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve HRT of any contractual responsibilities under its contracts. The Federal agency will not substitute its judgment for that of HRT's unless the matter is primarily a federal concern. HRT must report violations of law to the Federal, State, or local authority with proper jurisdiction.

N. Protests and Disputes

The Commission shall maintain written procedures that are consistent with the VPPA to consider and resolve protests relating to solicitations and shall comply with FTA requirements regarding notice of protests and notification of a protestor's right to appeal to the FTA as set forth in 2 CFR § 200.318(k) and C4220.1G. The Commission shall maintain written procedures that are consistent with the VPPA for processing and resolving contract claims and disputes in a fair and equitable manner.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 48 of 339
--	--------------------------------------	-------------------------	-------------------------------

The FTA is not a party to the Commission's third-party contracts and does not have any obligation to any participant in the Commission's third-party contracts. 2 CFR § 200.318(k) assigns responsibility to the Commission, in accordance with good administrative practice and sound business judgment, for resolving all contractual and administrative issues arising out of its third-party procurements, including source evaluation and selection, protests of awards, disputes, and claims. FTA will not substitute its judgment for that of the Commission unless the matter is primarily a federal concern. FTA also encourages the use of alternative dispute resolution procedures, to the extent appropriate. Neither FTA nor 2 CFR 200 relieves the Commission of any responsibilities under its contracts. Violations of law will be referred to the local, state, or Federal authority that has proper jurisdiction.

1. Policy. HRT policy requires that all prospective contractors be accorded fair and equal consideration in the solicitation and award of contracts. To that end, any bidder or offeror shall have the right to protest the award or decision to award a contract and to have its allegations considered and addressed.
2. Purpose and Scope. This Section establishes procedures for administrative resolution of protests by the Commission arising in the acquisition process and to implement applicable FTA and VPPA requirements.
 - i. The Director of Procurement is responsible for compliance with all provisions of the Commission's protest procedures. The Director of Procurement shall utilize all available resources in responding to such protest and shall obtain the advice and concurrence of the legal counsel;
 - ii. The FTA must be notified of all formal, written protests, when FTA funds are involved. The Director of Procurement must submit a copy of the original protest and the Commission's response to the FTA Regional Office; and
 - iii. Consistent with Section 2.2-4362 of the VPPA, the Commission need not delay an award for the period allowed a bidder or offeror to protest, but in the event of a timely protest, or the filing of a timely legal action, the Commission shall take no further action to award the contract unless the Director of Procurement determines in writing that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.
3. Definitions
 - i. The term "days" refers to calendar days.
 - ii. Other terms pertaining to protests shall be defined according to the VPPA.
4. Submittal Procedures. A protest by a bidder or offeror seeking to protest the award or decision to award a contract must be timely received by the Director of Procurement by certified mail or other delivery method by a nationally recognized commercial carrier from

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 49 of 339
--	--------------------------------------	-------------------------	-------------------------------

which receipt can be verified. Electronic submissions will not be accepted unless an original signed copy of the protest is received by the Director within twenty-four (24) hours (not including weekends and holidays) after receipt of the electronic copy. The Director may, however, permit the electronic provision of supplemental information after the initial protest submittal. The protest, in order to be considered, shall include, at a minimum, the following:

- i. The name and address of the protesting party and its relationship to the procurement sufficient to establish that the protest is being filed by an interested party.
- ii. Identity of the contact person for the protestor, including name, title, address, telephone, fax, and email addresses. If the contact point is a third-party representing the protester, the same information must be provided, plus a statement defining the relationship between the protester and the third-party.
- iii. Identification of the procurement, including solicitation or contract number.
- iv. A description of the nature of the protest, referencing the portion(s) of the solicitation or contract involved.
- v. Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based.
- vi. A complete discussion of the basis for the protest, including all supporting facts, documents, or data.
- vii. An explanation why the proposed award or the award is not (a) an honest exercise of discretion but rather is arbitrary or capricious or (b) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation for Bids or Request for Proposals.
- viii. Request for a ruling by the Commission.
- ix. A statement of the specific relief requested.
- x. Information establishing the timeliness of the protest.
- xi. A notarized affirmation by the protestor (if an individual) or by an owner or officer of the protestor (if not an individual) as to the truth and accuracy of the statements made in the protest submittal.

The protestor is solely responsible for the completeness and validity of the information provided. Any documents relevant to the protest should be attached to the written submission. Documents which are readily available on the Internet may be referenced to an appropriate link.

Protests shall be submitted in accordance with the requirements of this Section and any directions included in the solicitation and shall be addressed to the Director of

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 50 of 339
--	--------------------------------------	-------------------------	-------------------------------

Procurement. Unless otherwise specified in the solicitation, the written protest shall be accompanied by an electronic copy (CD or flash drive) in PDF format. In case of a variance in the content of the written and electronic submittals, the written version shall prevail.

The Director of Procurement may uphold or deny the protest solely upon the written submission, without requesting further submission(s) from the protestor. Thus, the protest submission should include all materials necessary to support the protester's position.

5. Time for Filing

i. *Protest Regarding Contract Award or Decision to Award.*

- a. Any protest regarding the award or decision to award a contract must be received no later than ten (10) days after the date of award or the announcement of the decision to award, whichever occurs first. Any protest filed after that date will not be considered by the Commission.
- b. Public notice of the award or the announcement of the decision to award shall be given by the Commission in the manner prescribed in the terms or conditions of the Invitation for Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten (10) days after posting or publication of the notice of such contract.
- c. The date of the Decision to Award will be the date of contract approval by HRT's Board of Commissioners at a properly noticed meeting. The date of any Decision to Award will be posted on HRT's website at <https://gohrt.com/procurements/closed-solicitations/> within twenty-four (24) hours of the same. The date of the Award announcement will correspond with the date a Notice to Proceed is sent to the successful offeror.
- d. If the protest of any bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under the VPPA § 2.2-4342, then the time within which the protest shall be submitted shall expire ten (10) days after those records are available for inspection by such bidder or offeror under VPPA § 2.2-4342, or at such later time as provided in this Section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.

- ii. *Untimely Protest.* Initial protest submissions received by the Commission after the time periods specified above shall be deemed by the Director of Procurement to be untimely and may be denied on that basis.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 51 of 339
--	--------------------------------------	-------------------------	-------------------------------

6. Review of Protests. The Commission need not delay award for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in VPPA § 2.2-4360, or the filing of a timely legal action as provided in VPPA § 2.2-4364, no further action to award the contract shall be taken unless the Director of Procurement makes a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.
 - i. *Response Time*. In accordance with VPPA § 2.2-4360, the Commission shall issue a decision in writing within ten (10) days stating the reasons for the action taken.
 - ii. *Release of Information*. The Director of Procurement shall redact from any submission under the protest process information which has been identified as proprietary, and which, in his/her judgment, is protected from disclosure under the Virginia Freedom of Information Act (*Code of Virginia*, § 2.2-3700 et seq.), prior to furnishing such submission to any other party in response to a written request for that information submitted pursuant to the Virginia Freedom of Information Act, unless the person furnishing the information consents, in writing, to distribution of the information to other interested parties.
 - iii. *Notification to FTA*. The Director of Procurement must notify the FTA of any protest of a procurement involving federal funds in excess of \$500,000 and advise the FTA of the status and the resolution thereof in accordance with the FTA Master Agreement § 16(w).
7. Response to Protests. The Director of Procurement will notify the protester upon timely receipt of a protest and may request additional information from the protestor. Additional or supplemental materials may only be submitted at the request of, or with permission of, the Director of Procurement. The Director of Procurement may, at their discretion, meet with the protestor or other interested parties to review the issue(s) raised in the protest.

Decision to Award and Award will be made public as specified above. Notice of contract award will be transmitted to each bidder/proposer at the address contained in its bid/proposal form. Transmittal may be by electronic means or by hardcopy.

Upon receipt of a timely protest, the Director of Procurement shall notify all offerors and any other known parties of the receipt and nature of the protest and request an extension of the validity of their offers, if appropriate. In the event of a timely protest, the Commission shall take no further action to award the contract unless the Director of Procurement determines in writing that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Commission shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 52 of 339
--	--------------------------------------	-------------------------	-------------------------------

an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Commission may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

Where the Commission, an official designated by the Commission, or an appeals board determines, after a hearing held following reasonable notice to all bidders/proposers, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of VPPA Article 6 (§ 2.2-4367 et seq.), the Commission may enjoin the award of the contract to a particular bidder.

8. Decisions by the Commission. Upon receipt and evaluation of all relevant information, including any pertinent law or regulations, the Director of Procurement shall prepare a decision. The decision will contain four (4) parts:
 - I. **SUMMARY** – Briefly describes the protesting party, the solicitation involved, the issues(s) raised, and the decision.
 - II. **BACKGROUND** – Describes in more detail the history of the solicitation and the procurement events leading to the protest, the date the protest was received, and the process by which it was evaluated.
 - III. **DISCUSSION** – Identifies the issue or issues raised by the protestor, and the factors considered in reaching a decision, and the rationale for the decision.
 - IV. **DETERMINATION** – States the decision and any remedy or subsequent action, e.g., cancellation of the procurement resulting from it.

Ordinarily, each issue raised in the protest will be discussed separately in Parts III and IV.

Decisions shall be signed and issued by the Director of Procurement. The full decision shall be issued to the protestor and the FTA. The Director of Procurement shall provide notice of the outcome of the protest to all parties to whom the Director provided notice of the protest. Where appropriate, transmittal may be electronic, followed by hard copy. The protest document, the decision, and all other documentation related to the decision shall be public record except as otherwise provided by the Code of Virginia or the Commission's regulations and policies. Requesters other than the protester and the FTA may seek the protest decision under applicable provisions of the Virginia Freedom of Information Act.

Decisions of the Director of Procurement shall be the final and conclusive action of the Commission, except for such remedies as state or federal law or regulation may provide.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 53 of 339
--	--------------------------------------	-------------------------	-------------------------------

9. Protest Record. The Contracting Officer shall establish a separate file in which a complete record of the protest shall be maintained. The file shall constitute a separate portion of the overall procurement file.

The procurement protest file shall include reasonable and adequate documentation of the protest and outcome of the protest. Protest file documentation should be proportional to the size and complexity of the protest.

The protest file should, at a minimum, include the following:

- i. The protest, including supporting documentation
- ii. Record of determination of protest timeliness
- iii. Record of internal distribution of protest
- iv. Record of notice to the FTA, if federal funds are involved
- v. Record of internal responses to protest
- vi. Record of legal review
- vii. Determination and findings, including supporting documentation
- viii. Protester response/appeal
- ix. Result of appeal
- x. Notice of cancellation of solicitation, if applicable

10. Commission Administration of Protests

- i. The Director of Procurement, or an assigned Contracting Officer, shall conduct the administrative processing of protests filed with the Commission or with the FTA. Assigned administrators shall: (a) assure distribution of protest submissions and responses to appropriate Commission personnel; (b) coordinate staff evaluation of the protest; and (c) comply with the time limits stated herein and maintain all documents related to the protest.
- ii. The Director of Procurement must request the legal counsel to review and to give advice concerning any legal issue involved in protests.
- iii. Unless otherwise directed by the Director of Procurement, the Contracting Officer assigned to conduct the administrative processing of a protest shall be the only person authorized to discuss the administrative processing of the protest with persons outside the Commission. Any oral or written inquiry received within the Commission should be immediately referred to the Director of Procurement who will ensure the appropriate response.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 54 of 339
--	--------------------------------------	-------------------------	-------------------------------

- iv. The Director of Procurement shall obtain concurrence from the legal counsel prior to release of any documents concerning the protest to any person outside the Commission.
- v. The Director of Procurement shall be responsible for overseeing the decision process and for the content of the decision. The Director shall ensure that all relevant parties within the Commission have been involved in the decision-making process and shall, as circumstances require, obtain the concurrence of the President/CEO or other Commission personnel in a decision prior to its issuance.

11. Notice of Protest Policy. Each solicitation above the small purchase threshold as defined herein shall contain, as part of the instructions to bidders/offerors, the following notice:

Commission policy and procedure for the administrative resolution of protests is set forth in Section VI(N) of the Procurement Policy and Procedures Manual (PPPM). The PPPM contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer will furnish a copy of this Section upon request. The Commission has, in this Section, defined matters which may be protested, the form of protest, and the time limits for submitting protests. Pursuant to Section 200.318(k) of Title 2, Code of Federal Regulations, protesters may raise with the FTA matters that are primarily a Federal concern. Only under extraordinary circumstances will FTA exercise its discretion to consider a federal matter prior to exhaustion of all administrative remedies with the Commission.

O. Alternative Dispute Resolution

As part of the underlying contract for goods and/or services or by separate agreement, HRT may agree to submit contractual disputes with a vendor to mediation, arbitration, and/or other alternative dispute resolution procedures. Unless otherwise specified, such alternative dispute resolution procedures shall be nonbinding.

P. Debarment

1. Policy. Debarment is an action taken by the Commission to exclude prospective contractors from contracting with the Commission for particular types of goods, services, supplies, insurance, or construction for specified periods of time. The Director of Procurement may debar a prospective contractor for cause by written notification, which shall include the reasons for debarment, and the period it remains in effect. Each violation of this section may result in debarment for up to three (3) years. In the event of multiple violations, debarment periods shall run consecutively. Debarment does not relieve a contractor of responsibility for any existing obligations.

Debarment of any bidder, offer, or contractor pursuant to this section shall be deemed to include the debarment of any successor corporation, partnership, firm, or other entity

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 55 of 339
--	--------------------------------------	-------------------------	-------------------------------

controlled or managed by any officer, director, partner, or controlling shareholder of the debarred bidder or contractor.

During any period of debarment, a contractor will not be eligible to receive solicitations, contract awards, or have contracts renewed or extended. It is the contractor's responsibility to request reinstatement at the end of the debarment period.

2. Purpose and Scope. The purpose of debarment is to protect the Commission from risks associated with awarding contracts to bidders, offerors, or contractors having exhibited an inability or unwillingness to fulfil contractual requirements, and to protect Commission interests and the integrity of the procurement process by preventing bidders, offerors, or contractors which have displayed improper conduct from participating in the Commission's business for specific periods of time.

This Section establishes procedures for debarment by the Commission arising for any of the following reasons:

- i. Breach (including anticipatory breach) of contract with the Commission.
- ii. Stating an unwillingness or inability to honor a binding bid. A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.
- iii. Asserting facts related to procurement matters without having reasonable grounds at the time of assertion to believe that the facts are true. Examples include, but are not limited to, falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation; or submitting any invoice, claim, protest, contract amendment, qualification application, or administrative or judicial appeal that the bidder, offeror, or contractor knew or should have known was inaccurate and/or not submitted in good faith. It is not necessary for the submission to actually affect a decision, and it is not a defense that the recipient of the communication knew or should have known the true facts.
- iv. Engaging in abusive, harassing, libelous, or slanderous conduct directed at the Commission, its officers, agents, employees, contractors, and/or subcontractors. A violation of this provision will contemplate the cumulative conduct of a bidder, offeror, or contractor, including the severity, nature, and frequency of the conduct and, when applicable, the continuation of the conduct. A violation is appropriate if a reasonable person would find such action or action(s) to be hostile, threatening, intimidating, and/or humiliating.
- v. Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of the Commission who exercises any "official responsibility" for a "procurement transaction" as those terms are defined in the *Code of Virginia*, § 2.2-4368. It is not necessary that the offer be accepted by the employee,

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 56 of 339
--	--------------------------------------	-------------------------	-------------------------------

or that the offer is made with intent to influence the employee is an official act. Extending to any Commission employee exercising official responsibility for a procurement transaction any discount or privilege is not available to all Commission employees is considered to be offering an advantage.

- vi. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor in a contract or purchase order awarded by the Commission (*Code of Virginia*, § 2.2-3106).
- vii. Any cause indicating that the individual or firm lacks the moral and business integrity and reliability that will assure good faith performance.
- viii. A determination by the Director of Procurement that a vendor has used abusive or obscene language or a threatening manner toward Commission purchasing personnel during the performance of their duties or as a result of the performance of their duties.
- ix. Sale, under nonemergency conditions, of building materials, supplies, or equipment for any building or structure constructed by or for the Commission by an independent contractor employed to furnish architectural or engineering services, but not construction for such building or structure or from any partnership, association, or corporation in which such architect or engineer has a personal interest (*Code of Virginia*, § 2.2-3101 and § 2.2-4374).
- x. Sale, under nonemergency conditions, of building materials, supplies, or equipment for any building or structure by or for the Commission by any person who has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the Commission to furnish architectural or engineering services in which such person has a personal interest as defined in *Code of Virginia*, § 2.2-3101.
- xi. Sale of goods or services to the Commission when such sale is prohibited by any debarment then in effect.
- xii. Consent of the firm or individual being debarred.
- xiii. Conviction of any criminal offense involving public contracting. Examples include, but are not limited to, bribery (*Code of Virginia*, § 18.2-447) and knowingly making a false statement in regard to collusion on a solicitation (*Code of Virginia*, § 18.2-498.4). Conviction for any of the above of any officer, director, owner, partner, agent, or related business entity of a vendor shall constitute grounds for the removal of the vendor.
- xiv. Court judgment finding a violation of either federal or state antitrust laws.
- xv. Conviction of any offenses indicating a lack of moral or business integrity.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 57 of 339
--	--------------------------------------	-------------------------	-------------------------------

- xvi. Failure to pay re-procurement costs pursuant to a contract termination for default.
- xvii. Failure to comply with the provisions of the E-Verify program (*Code of Virginia*, § 2.2-4308.2).
- xviii. Creating or using an entity for the purpose of circumventing a debarment decision against another individual or firm.
- xix. Engaging in any activities prohibited by the express terms/rules of the bid or proposal process.
- xx. Failure of an employer, or any officer or agent of the employer, to properly classify an individual as an employee in accordance with § 58.1-1900 of the *Code of Virginia*.
- xxi. Violation of contract provisions of a character which is regarded by the Director of Procurement to be so serious as to justify debarment action.
- xxii. Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- xxiii. Any other cause the Director of Procurement determines to be so serious and compelling as to affect responsibility as a contractor such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands.

It is not necessary that there be a judicial determination of violations for debarment to occur.

If the debarring official finds that the cause for debarment reflects on the contractor's traits or tendencies only with regard to certain goods or services, the debarment may apply only to such goods or services. Otherwise, the debarment shall apply to all goods and services within the purview of the Commission.

- 3. Ineligibility or Disqualification of Manufacturer. Should any manufacturer commit any of the acts described above, bids offering material, equipment, or supplies manufactured by that firm may be rejected even though the bid is submitted by a vendor in good standing.
- 4. Debarment Period. Debarment shall be for a period of ninety (90) days to three (3) years, at the discretion of the debarring official, except as follows. The debarment for subparagraphs (xiii), (xiv), and (xv) of Paragraph 2 shall be for a period of three (3) years. The debarment for subparagraph (xvi) of Paragraph 2 shall be for a period of one (1) year or until the re-procurement costs are paid or until the contract breach is resolved, whichever is longer. The debarment for subparagraph (xvii) of Paragraph 2 shall be for a period up to one (1) year; such debarment shall cease upon the employer's registration and participation

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 58 of 339
--	--------------------------------------	-------------------------	-------------------------------

in the E-Verify program (*Code of Virginia*, §2.2-4308.2). Debarment shall commence upon notification, or if later, upon expiration of any existing debarments.

Notwithstanding the prescribed duration of the debarment, solely at the discretion and at the instance of the Director of Procurement, a debarment may be lifted or suspended at any time if the Director of Procurement determines it is in the best interest of the Commission. The Director of Procurement may require a debarred individual or firm to provide information in writing regarding actions taken to remedy the reason for debarment or prevent recurrence of the situation that caused the debarment action to be taken and otherwise indicating that lifting or suspension of the debarment would be in the best interest of the Commission. Examples of actions that the Director may take into consideration include, but are not limited to:

- i. Repayment by a debarred contractor of additional costs resulting from a default action for which the contractor had previously failed to reimburse the Commission and was debarred.
 - ii. Disassociation with individuals or firms that were responsible for the debarment.
5. Debarment Notification and Appeal Procedure. Any bidder, offeror, or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Commission shall (i) notify the bidder, offeror, or contractor in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder, offeror, or contractor an opportunity to inspect any documents that relate to the determination, if so requested by the bidder, offeror, or contractor within three (3) business days after receipt of the notice. If supporting documents are requested by the bidder, offeror, or contractor and have not been previously produced by the Commission, such documents will be provided or made available for inspection within five (5) business days of the receipt of a timely request.

Within ten (10) business days after receipt of the notice, the bidder, offeror, or contractor may submit rebuttal information challenging the evaluation. The Commission shall promptly issue its written determination of disqualification or ineligibility based on all information in the possession of the Commission, including any rebuttal information. In the absence of a rebuttal by the bidder, offeror, or contractor, the notice will be deemed uncontested and all facts admitted for the purpose of the final determination of disqualification.

If the evaluation reveals that the bidder, offeror, or contractor should be allowed permission to participate in the contract, the Commission shall cancel the proposed disqualification action. If the evaluation reveals that the bidder, offeror, or contractor should be refused permission to participate, or disqualified from participation, in the contract, the Commission body shall so notify the bidder, offeror, or contractor. The notice shall state

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 59 of 339
--	--------------------------------------	-------------------------	-------------------------------

the basis for the determination, which shall be final unless the bidder, offeror, or contractor appeals the decision within ten (10) days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. The person or firm may not institute legal action until all statutory requirements, including but not limited to § 2.2-4357, have been met.

If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

Q. Examples of Labor and Employment Practices

The procurement standards in this subpart do not prohibit recipients or subrecipients from:

1. Using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements;
2. Requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative (see OMB Memorandum M-21-28), or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located. The hiring preferences or goals should be consistent with the policies and procedures of HRT, and must not prohibit interstate hiring;
3. Requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24)), including women and people from underserved communities as defined by Executive Order 14091;
4. Using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or
5. Offering employees of a predecessor contractor rights of first refusal under a new contract.

HRT may use the practices listed in paragraph (1) if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

R. Contract Period

All contracts must specify a contract period of performance, either in the form of delivery schedules for contract deliverables such as commodities, or a specific end date for service contracts.

1. Rolling Stock and Replacement Parts. The period of contract performance for rolling stock and replacement parts shall not exceed five (5) years, inclusive of options, extensions, or

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 60 of 339
--	--------------------------------------	-------------------------	-------------------------------

renewals, and seven (7) years for rail procurements, as defined in 49 U.S.C. § 5325(e) and C4220.1G. The five- and seven-year rules do not mean that delivery, acceptance, or even fabrication must be obtained within those timeframes; however, an exercise of option to acquire buses, rail, or replacement parts later than five (5) years (bus) or seven (7) years (rail) after the date of the original contract is prohibited.

2. Other than Rolling Stock. The length of all other contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by federal requirements restricting the maximum periods of performance; however, the duration of the other contracts must be reasonable, and shall be based upon sound business judgment, including consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with the Commission, and the relative benefit to the Commission of a longer or shorter contract term. Additionally, competition, pricing fairness, and public perception should be considered. The procurement file should document the rationale for determining the performance period designated for each contract.

S. Cost Principles

Contract costs must be eligible for FTA participation under the eligibilities of the FTA funding program the Commission's award is made under, and according to the Uniform Cost Principles of 2 CFR Part 200 Subpart E. Unless the FTA specifies otherwise in writing, the Commission must adhere to the cost principles in 2 CFR Part 200 Subpart E. FTA Master Agreement § 3(f) (May 2, 2024). The Uniform Cost Principles will be incorporated by reference in all contracts where allowable costs must be determined for payment (e.g., all cost reimbursement contracts), and for negotiating all fixed price contracts and modifications where costs are estimated by the contractor and then negotiated for purposes of establishing a contract price.

T. Contract Clauses

To the greatest extent possible, HRT will employ appropriate standard contract clauses for each type of procurement. Contract clauses are usually contained in a set of General Conditions, which are standard for all procurements of that type, and in a set of Special Provisions, which are customized to either add to, delete, or modify portions of the General Conditions. Each contract shall include all federally mandated clauses, in accordance with Appendix II of 2 CFR 200, C4220.1G, the FTA Master Agreement, in Appendix A to the FTA's Best Practices Procurement and Lessons Learned Manual, and the VPPA.

U. Authorization to Transact Business in the Commonwealth

1. In accordance with the *Code of Virginia*, § 2.2-4311.2, HRT shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 61 of 339
--	--------------------------------------	-------------------------	-------------------------------

liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

2. The *Code of Virginia*, § 2.2-4311.2 subsection B requires that “Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.” **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER** shall be included in all Invitations for Bids or Requests for Proposals.
3. Should a bidder/offeror omit including the SCC number or a statement describing why the bidder/offeror is not required to be so authorized on its bid/proposal, HRT, at its sole option, may allow the bidder/offeror additional time to provide the SCC Identification Number or a statement describing why the bidder/offeror is not required to be so authorized and continue the evaluation. HRT shall not award a contract to a bidder/offeror that fails to comply with § 2.2-4311.2 unless a waiver is granted by the Director of the Department of General Services or his designee.
4. For purposes of compliance with this section, HRT may rely on the accuracy of the bidder’s/offeror’s statement provided on the SCC Form describing why the bidder/offeror is not required to be so authorized per exclusions listed in Title 13.1 or Title 50 and are not required to validate. Any falsification or misrepresentation contained in the statement submitted by the bidder/offeror pursuant to Title 13.1 or Title 50 may be cause for debarment.
5. Any bidder or offeror described in *Code of Virginia* § 2.2-4311.2 subsection B that fails to provide the required information shall not receive an award unless a waiver is granted in accordance with *Code of Virginia* § 2.2-4311.2.

V. Nondiscrimination

In the solicitation, awarding or administration of contracts, HRT shall not discriminate against a bidder, offeror, or contractor because of the race, religion, color, sex, age, disability, national origin, sexual orientation, gender identity, political affiliation, or veteran status, or any other basis prohibited by state law relating to discrimination in employment (*Code of Virginia*, § 2.2-4310A; Executive Order 1 (2014)). HRT shall prominently display a nondiscrimination statement in all invitations to bid, requests for proposals, contracts, and purchase orders indicating that it does not

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 62 of 339
--	--------------------------------------	-------------------------	-------------------------------

discriminate against faith-based organizations (*Code of Virginia*, § 2.2-4343.1D). The following statement must be prominently displayed on the cover page of every IFB or RFP:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment.

W. Contract and Purchase Order Administration

The Commission will maintain a contract and purchase order administration system designed to ensure conformance by all parties with the terms, conditions, and specifications of their contracts or purchase orders.

Purchase orders (PO) are required to track and monitor spending, therefore, purchase orders must be processed and received prior to receipt of a vendor invoice. This is relevant for the purchase of goods and/or services and regardless of whether it is a contract or not.

1. A Notice-to-Proceed for contracts will not be issued until the Procurement Department can verify an approved requisition exists in its Financial System.
2. In order to pay an invoice, the agency requires a purchase order. Purchase orders will not be created to pay an invoice, which means the purchase order needs to be in the Financial System, and approved, prior to services being rendered or goods received.

All pay requests must have a PO number. Pay requests that do not have a PO number must have a written explanation. The following is a list of acceptable explanations:

1. Government mandated fees such as licensing or compliance testing
2. Payments to Local, State and Federal Agencies
3. Advertisements
4. Utilities
5. Professional association dues
6. Tuition reimbursement
7. Memorials for deceased employees and spouses
8. Payments to TDCHR Board members
9. Payments to Municipalities
10. Subscriptions
11. Travel expenses such as hotel reservations, registration fees, etc. (provide the proper documentation and approval is included)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 63 of 339
--	--------------------------------------	-------------------------	-------------------------------

12. Bookings for meeting rooms/public meetings
13. Meals/food/refreshments for meetings
14. Rentals for tables, chairs, tablecloths, etc. (provided the total cost is less than \$500)
15. Postage
16. Translation services
17. Training (provided the training has been pre-approved)
18. Property leases

X. Domestic Preference

HRT should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

For purposes of this section:

1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

Y. Procurement of Recovered Materials

A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 64 of 339
--	--------------------------------------	-------------------------	-------------------------------

The Commission should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 65 of 339
--	--------------------------------------	-------------------------	-------------------------------

Section VII – Full and Open Competition (Solicitation Requirements and Restrictions)

All procurement transactions totaling \$50,000 or higher will be conducted, to the greatest extent practicable, in a manner that provides full and open competition and is consistent with this section and 2 CFR § 200.319.

A. Written Procurement Procedures

HRT must have written procedures for procurement transactions. These procedures must ensure that all solicitations are made in accordance with 2 CFR § 200.319(d)(2) and apply the following standards:

1. Clear Descriptions: Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
2. Nonrestrictive Specifications: In competitive procurements, the description may not contain features that unduly restrict competition and may not use exclusionary or discriminatory specifications.
3. Quality Requirements: A description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy HRT's intended use.
4. Preference for Performance Specifications: Focus should be on the functions to be performed, or the performance required, including acceptable characteristic or minimum standards. This approach is preferred over detailed product specifications to foster broader competition.
5. Brand Name or Equal: When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met of "an equal" proposal must be clearly stated.
6. Necessity: The need for the property or services.
7. Lease versus Purchase: The use of lease or purchase alternatives to achieve an economical and practical procurement.
8. Environmental and Energy Efficiency Preferences: A preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 66 of 339
--	--------------------------------------	-------------------------	-------------------------------

9. Procurement Methods: Procurement methods that may be used.
10. Legal Restrictions: Any Federal, State, or local restrictions on acquisitions.
11. Third-Party Contract Provisions: Specific third-party contract provisions required for such a contract, including which requirements must extend to subcontractors.
12. Sources: The availability and use of various sources of property and services.
13. Resolution of Third-Party Contracting Issues: Procedures to resolve third part contracting issues.

In general, prequalification of suppliers is to be avoided, except in situations where the product or service involves an undefined market, or where market identification is necessary to effectively develop a marketable scope or specification. Any prequalified list of persons, firms, or products used in procurement transactions must be current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, objective factors that evaluate price and cost to maximize competition must be considered. Potential bidders must not be precluded from qualifying during the solicitation period.

The Commission is not prohibited from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. HRT may make inquiries of bidders about these subjects and assess responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of any Federal award.

B. Full and Open Competition

The Commission is prohibited by 49 U.S.C. 5325(h) from using an exclusionary or discriminatory specification in its procurements. Under 2 CFR § 200.319, solicitation requirements are prohibited from containing features that unduly restrict competition. Some situations considered to be impermissibly restrictive of competition include, but are not limited to, the following, all of which are identified in 2 CFR § 200.319 and 200.320:

1. Excessive Qualifications. Placing unreasonable requirements on firms for them to qualify to do business.
2. Unnecessary Experience. Requiring unnecessary experience.
3. Self-Dealing and Bid Rigging. Noncompetitive pricing practices between firms or between affiliated companies.
4. Improper Prequalification. Using prequalification procedures that conflict with the prequalification standards described in 2 CFR § 200.319(e).

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 67 of 339
--	--------------------------------------	-------------------------	-------------------------------

5. Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract if that award is not for the property or services specified for delivery under the retainer contract.
6. Excessive Bonding. FTA does not require bonding requirements on third-party contractors other than construction bonding specified by 2 CFR § 200.326 and Circular 4220.1G for construction, and to secure advance or progress payments made to a contractor. Requiring unnecessary bonding increases the cost of doing business and restricts competition accordingly, particularly among new, small, or disadvantaged business enterprises. If bid, performance, or payment bonds are desirable, and because bonding requirements can limit contractor participation, bonding requirements should be reasonable and not unduly restrictive. FTA generally will not challenge State or local bonding requirements as unreasonably restrictive of competition, even where they exceed Federal requirements. However, if the bonding policy results in such “excessive bonding” that would violate 2 CFR § 200.319 as restrictive of competition, FTA may withhold Federal assistance from those procurements.
7. Brand Name Only. Specifying only a “brand name” product without allowing offers of “an equal” product or allowing “an equal” product without listing the salient characteristics that the product must meet to be acceptable for award. When it is determined to be impractical to develop a generic specification, a brand name may be used to convey the general style, type, character, and quality of the article desired. Unless otherwise provided in the solicitation, the name of a certain brand, make, or manufacturer does not restrict offerors to the specific brand or manufacturer named. Any article which HRT, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted (*Code of Virginia*, § 2.2-4315).
8. Geographic Restrictions. Geographical restrictions may or may not be permitted based on the type of procurement.
 - i. *Bus Procurements*. No state law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant from FTA under 49 U.S.C. 5325(i).
 - ii. *Construction Projects*. Section 25019 of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, authorizes the Commission to implement local or other geographical or economic hiring preference relating to the use of labor for construction of a project, including pre-hire agreements, subject to any applicable State and local laws, policies, and procedures. IIJA Section 25019 supersedes any Federal agency regulation to the extent such regulation is inconsistent with the statute. This includes, for example, 23 CFR § 635.117(b) or 636.107.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 68 of 339
--	--------------------------------------	-------------------------	-------------------------------

- iii. *Architectural and Engineering Services*. Geographic location may be used as a selection criterion if it complies with state law and an adequate number of qualified firms are eligible to compete for the contract, considering the nature and size of the project.
 - iv. *Licensing*. States may enforce licensing requirements, provided they do not conflict with Federal law or regulations.
 - v. *Major Disaster or Emergency Relief*. Federal assistance awarded under the Stafford Act, to support contracts or agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities requires a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency as included under 42 U.S.C. 5150.
9. Organizational Conflicts of Interest. Engaging in practices that result in organizational conflicts of interest.
 - i. *The Commission's Conflicts*. The Commission may have an organizational conflict if it has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, and it is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
 - ii. *Contractor's Conflicts*. A contractor or offeror may have an organizational conflict of interest when any of the following circumstances arise:
 - Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
 - Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitation for bids must be excluded from competing on those procurements. 2 CFR § 200.319(b) and *Code of Virginia*, § 2.2-4373.
 - iii. *Remedies*. The Commission should analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 69 of 339
--	--------------------------------------	-------------------------	-------------------------------

acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

An organizational conflict of interest exists where other activities, relationships, or contracts of a contractor inhibit, affect, or prevent the contractor from rendering impartial assistance or advice to HRT; a contractor's objectivity in performing the contract work is or might be otherwise impaired (e.g., a contractor assisting with a design might have a financial interest in a product or system that could be utilized in implementing that design); or a contractor has an unfair competitive advantage which might be gained through its involvement in writing or reviewing the solicitation and contract documents, including the scope or specification except as part of a general industry review.

There are a variety of ways in which conflicts of interest can be prevented or mitigated. One of the most important being disclosure. Contracts should include the organizational conflict of interest clause, to require that offerors disclose when they believe there may be a conflict. This gives HRT the opportunity to make the determination and take the necessary action to avoid the conflict. Additionally, conflicts of interest can be avoided by thoroughly researching potential vendors, employees, and contractors. Any connections should be investigated so as to prevent conflict. HRT's conflict of interest policy requires that employees refrain from engaging in any activity, practice, or act which conflicts with or appears in conflict with the interest of HRT, its customers, or vendors. Compliance with this policy significantly reduces the chance of a conflict of interest. Examples of conflict include the following:

- i. The employee being also employed by a bidder, offeror, or contractor involved in the procurement transaction.
- ii. The employee, or any member of the employee's immediate family, holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner, or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5%).
- iii. The employee, or any member of the employee's immediate family has a financial interest arising from the procurement transaction; or the employee, or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror, or contractor.

Once a conflict of interest has already occurred, it is still possible to avoid the consequences related to it. Removal of the HRT employee from the position causing the conflict is a mitigating action. Also, a recusal may be obtained, allowing the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 70 of 339
--	--------------------------------------	-------------------------	-------------------------------

employee facing the conflict to abstain from participating in the procurement action causing the conflict.

If a recusal is not conducive to the circumstances, a third-party may become involved to regulate between the HRT employee and the company affected. This may be necessary when an offeror submits an offer that is in some way influenced by those making the award decision. In this situation, a third party may be brought in to make the necessary decision impartially. By implementing these methods, the consequences associated with conflicts of interest may be mitigated.

10. Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

11. Arbitrary Action. Any arbitrary action in the procurement process.

C. Unsolicited Proposals

The Commission may enter into a third-party contract based on an unsolicited proposal, as defined in FTA's C4220.1G, Chapter I, when authorized by applicable State or local law or regulation. Receipt of an unsolicited proposal does not, by itself, justify a contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance (i.e., the transaction can only be fulfilled by a single source), HRT must seek competition. To satisfy the requirement for full and open competition, HRT will take the following actions before entering into a contract resulting from an unsolicited proposal:

1. Receipt. HRT shall publicize its receipt of the unsolicited proposal on its website;
2. Adequate Description. An adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the offeror's product or method of delivery shall be publicized;
3. Interest in the Property or Services. Publicize HRT's interest in acquiring the property or services described in the proposal;
4. Adequate Opportunity to Compete. Provide an adequate opportunity for interested parties to comment or submit competing proposals. HRT does not need to conduct a full request for proposals. The purpose should be to receive sufficient information to determine whether the offeror's capability is in fact unique, and whether other firms may be able to deliver the same benefits through other means; and

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 71 of 339
--	--------------------------------------	-------------------------	-------------------------------

5. Contract Award Based on Proposals Received. Publicize HRT's intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication. A sole source award may not be based solely on the unique capability of the offeror to provide the specific property, or services proposed, as other offerors may be able to achieve the same benefits through other means.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 72 of 339
--	--------------------------------------	-------------------------	-------------------------------

Section VIII – Procurement Methods

A. General Standards

There are three (3) types of procurement methods described in this section: informal procurement methods (for micro-purchases and simplified acquisitions); formal procurement methods (through sealed bids or proposals); and noncompetitive procurement methods. Every reasonable effort should be made to encourage the maximum number of responses. Pre-qualification or other methods of restricting responses shall not be utilized unless required for security or public safety reasons or by law.

HRT shall adhere to the following standards:

1. Every reasonable effort to inform potential vendors of the business opportunity must be made. Each solicitation exceeding \$100,000 shall be published in local news media designed to reach the target vendor pool and shall be posted on the procurement page of the Commission's website at least ten (10) days prior to the due date. If the size or nature of the solicitation suggests that there is an appropriate vendor pool outside the Commission service area, the solicitation shall be advertised in appropriate regional, national, and trade media.
2. Where feasible, potential vendors should be identified before the solicitation is issued, drawing on prior solicitations for similar goods or services, experience of Commission personnel, and public sources such as trade journals, contractor directories, and the internet. Such potential vendors should receive direct notification of the solicitation.
3. Every reasonable effort should be made to encourage the maximum number of responses. Prequalification or other methods of restricting responses shall not ordinarily be used unless required for security or public safety reasons or by law. If vendors are to be prequalified for a specific procurement, the following requirements apply:
 - i. The qualification standards must be limited to those essential for the procurement;
 - ii. Any prequalification list utilized is current;
 - iii. The prequalification process must include enough qualified sources to provide maximum full and open competition;
 - iv. Potential bidders or offerors must be permitted to qualify during the solicitation period (from the issuance of the solicitation to its closing date); however, a particular solicitation need not be held open to accommodate a potential supplier that applies for approval before or during that solicitation, nor must prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period be expedited or shortened to conform to the solicitation period; and

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 73 of 339
--	--------------------------------------	-------------------------	-------------------------------

- v. Any prequalification testing, or testing of potential approved equal products must consider the following:
 - a. The frequency of solicitations for an item; if an item is solicited on a regular basis, the testing may allow the provider to participate in future solicitations; if the solicitation is unique or rare, more consideration should be given the allowing completion of the testing process for that procurement;
 - b. The length of time required to reasonably test the item to verify acceptability; and
 - c. The cost to HRT of conducting a testing process.
- 4. The solicitation document shall contain, at a minimum, the following:
 - i. Instructions on how the response is to be prepared and submitted;
 - ii. The deadline for submittals and other key dates in the process (such as the date and time of a pre-bid or pre-proposal conference);
 - iii. The basis upon which an award will be made;
 - iv. A statement reserving to the Commission the right to reject any and all offers and the right to award to other than the offer containing the lowest price;
 - v. A clear and comprehensive statement of the Commission's needs and the technical requirements to be met by the successful offeror;
 - vi. A set of terms and conditions intended to be used for any resulting contract; and
 - vii. Representations and certifications as required by law or regulation or deemed necessary by the Commission.
- 5. The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to the Commission's needs. The minimum solicitation period for competitive procurements will normally be thirty (30) days, except in cases of urgency when a shorter time may be specified. In the event of a re-solicitation, a shorter period may also be appropriate if the changes to the solicitation are not substantial. Whenever a period shorter than thirty (30) days is considered necessary, every effort will be made to contact prospective bidders or offerors to ensure they can submit bids or proposals in the desired response time.
- 6. Responses to any questions from prospective sources, or any amendments to the solicitation, shall be distributed to all parties known to have received the solicitation, and posted on the HRT website. Should the amendment substantially change the terms of the solicitation, the period for receipt of offers shall be extended to allow offerors to revise their submittals accordingly.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 74 of 339
--	--------------------------------------	-------------------------	-------------------------------

7. If a question concerning a potential organizational conflict of interest arises, the Contracting Officer shall consider the impact of the conflict upon free and open competition and consider methods of mitigating the conflict. For example, if a conflict exists as the result of knowledge obtained by the contractor under previous contracts, it may be possible to publish that knowledge to all potential vendors. The solicitation document should make it the affirmative duty of the conflicted firm to identify the conflict and propose mitigation measures, as early in the solicitation process as possible. Potential sanctions for a firm not notifying the Contracting Officer of a potential conflict should include the rejection of an offer or termination of a contract if the conflict is discovered after award. A conflict involving a contractor which has assisted in the preparation of a specification or scope of services cannot be mitigated, and the contractor must be prohibited from participating in the procurement. Any solicitation and resultant contract whose scope includes the preparation of a design or specification for a follow-on procurement must include a notification to this effect.
8. After receipt of responses to a solicitation, the Contracting Officer shall make a determination that:
 - i. The apparently successful offer is responsive (i.e., complies with all material elements of the solicitation);
 - ii. The offeror is responsible (i.e., possesses the technical and financial resources to successfully perform the contract, has a satisfactory record of past performance, compliance with public policy, and integrity); and
 - iii. The offeror is not excluded on the U.S. Government's System for Award Management (SAM) or otherwise barred from public contracting by the U.S. Government or the Commonwealth of Virginia. The Contracting Officer shall also determine that the price(s) offered are fair and reasonable.

B. Informal Procurement Methods for Small Purchases

These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold (SAT), as defined in 2 CFR § 200.1, or as set forth by the Commission (currently \$100,000). Informal procurement methods include:

1. Micro-Purchases

- i. *When Appropriate.* Micro-purchases are those purchases in which the aggregate dollar amount of the procurement transaction does not exceed \$50,000 without obtaining competitive quotations if the price is determined reasonable based on research, experience, purchase history, or other information, there are no significant differences in quality or price among available vendors, and maintains documents to

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 75 of 339
--	--------------------------------------	-------------------------	-------------------------------

support this conclusion; however, competition shall be utilized whenever practicable. Typically, this would involve items sold “off-the-shelf” to the general public or a specific market. The Davis Bacon Act (40 U.S.C. § 3141 *et seq.*) applies to construction micro-purchases in excess of \$2,000.

ii. *Procedures.* The following procedures apply to micro-purchases:

- a. Distribution. Under 2 CFR § 200.320(a)(1), to the extent practicable, micro-purchases should be distributed equitably among qualified suppliers.
- b. Prohibited Divisions. Purchases may not be divided or reduced in size merely to come within the micro-purchase limit.
- c. Documentation. Documents must be maintained to support consideration that the micro-purchase price is reasonable based on research, experience, purchase history, or other information, as required under 2 CFR § 200.320(a)(1)(ii). The procurement method used, the section of contract type, and reasons for contractor selection or rejection do not need to be justified. The documentation includes a statement that the price paid for items are determined to be fair and reasonable, based on one (1) or more of the following: adequate competition (two or more quotes received, and award made to lowest); current price lists or off-the-shelf pricing; catalog price; prices found reasonable on recent previous purchases; advertisements; similar items in a related industry; independent price estimate (attach documentation); or other (cite basis).

iii. *Exemption.* Micro-purchases are exempt from Buy America requirements. Requirements may not be split to avoid a competitive solicitation process.

2. Simplified Acquisitions. Small purchases are relatively simple and informal solicitations for services, supplies, or other property in which the aggregated dollar amount is more than \$50,000 but does not exceed the small purchase limits established by HRT’s Procurement Policy and Procedures (currently \$100,000), state law, and/or the Federal Simplified Acquisition Threshold, whichever is lowest.

- i. *When Appropriate.* 2 CFR § 320(a)(2) authorizes simplified acquisition procedures when the aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold as defined in 2 CFR § 200.1; 48 CFR § 2.101 and does not exceed the limits currently described in § 2.2-4303G of the VPPA, as follows:
 - a. Goods and services other than professional services and non-transportation related construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000, and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$300,000; and

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 76 of 339
--	--------------------------------------	-------------------------	-------------------------------

- b. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000; and
 - c. Professional services provided the aggregate sum of all phases is not expected to exceed \$80,000; or
 - d. As otherwise defined by the Commission (\$100,000 for goods and services other than professional services and \$30,000 for professional services).
- ii. *Procedures.* When using simplified acquisition procedures:
 - a. Competition. Price or rate quotations from an adequate number of qualified sources must be obtained. Judgment may be exercised in determining what number is adequate. The number of sources will depend upon the availability of qualified sources, but the objective should ordinarily be to provide competition to the maximum feasible degree, and to obtain written price or rate quotations from at least four (4) vendors. If fewer than four (4) quotes are received, the file should be documented as to the reasons.
 - b. Prohibited Divisions. Procurements may not be divided or reduced to avoid the additional procurement requirements applicable to larger acquisitions.
 - c. Documentation. Records to support the decision to use the simplified acquisition procedure, the selection of contract type, the sources solicited, and the reasons for contractor selection or rejection must be maintained. Both the solicitation and quotes should be written in either electronic or hard copy form. Generally, the contract will be in the form of a purchase order, although the nature of the procurement (e.g., for services) may require additional terms and conditions.

Small purchase construction contracts over \$2,000 in value are subject to the Davis-Bacon Act.

In no case shall small purchase procedures be used for procurements above the Federal simplified acquisition threshold as set by 48 CFR Part 2, Subpart 2.1 and in accordance with 41 U.S.C 1908, currently \$250,000.

C. Formal Procurement Methods

Formal procurement methods are required when the value of the procurement transaction under a federal award exceeds the simplified acquisition threshold. Formal procurement methods are competitive and require public notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined HRT:

1. Sealed Bids (Formal Advertising). 2 CFR § 200.320(b)(1) and VPPA § 2.2-4302.1. This is a procurement method in which bids expected to exceed \$100,000, are publicly solicited, and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 77 of 339
--	--------------------------------------	-------------------------	-------------------------------

whose bid, conforming to all the material terms and conditions of the invitation for bids, and is lowest in prices.

- i. *When Appropriate.* Sealed bidding is the preferred method of solicitation, and justification for any other method of procurement must be documented as part of the procurement record. 2 CFR § 200.320(b)(1) states that the sealed bids are the preferred procurement method for procuring construction services. Additionally, sealed bidding is the appropriate method for acquiring property, construction, and other services when the following circumstances are present:
 - a. *Precise Specifications.* A complete, adequate, precise, and realistic specification or purchase description is available. IFBs must define the items or services with specific information, including any required specifications.
 - b. *Adequate Sources.* Two (2) or more responsible bidders are willing and able to compete effectively for the business, providing them with sufficient time to respond prior to the date set for opening the bids.
 - c. *Fixed Price Contract.* The procurement lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on price and price-related factors alone.
 - d. *Discussions Unnecessary.* Discussions with one (1) or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made principally based on price, other than clarifications regarding issues of responsibility or matters not affecting price, schedule, or quality. This contrasts with Competitive Proposal procedures in which discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a pre-bid conference with prospective bidders before bids have been received can be useful.
 - e. *Construction.* Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the instances listed in § 2.2-4303D of the VPPA, upon a determination made in advance by the Commission that competitive sealed bidding is not in the best interests of the Commission.
- ii. *Procurement Procedures.* The following procedures apply to sealed bid procurements:
 - a. *Solicitation.* Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. The Contracting Officer may exercise judgment in determining what number is adequate. Additionally, the invitation for bids must be publicly advertised. Public notice of the IFB shall be posted to HRT's

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 78 of 339
--	--------------------------------------	-------------------------	-------------------------------

website at least ten (10) days prior to the date set for the bid opening. Bids may also be solicited directly from potential contractors.

- b. **Prequalification of Bidders.** Unless HRT has provided for prequalification of bidders, the IFB shall include a statement of any requisite qualifications of potential contracts. HRT may include criteria to be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a qualified bidder pursuant to § 2.2-4301. Such criteria may include a history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) completion by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws. No IFB for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. An experience modification factor means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913. When it is impractical to initially prepare a purchase description to support on award based on prices, and IFB may be issued requesting the submission of unpriced offers to be followed by an IFB limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- c. **Adequate Specifications.** The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail so that a prospective bidder will be able to submit a proper bid.
- d. **Options/Alternatives.** If the IFB includes pricing for any options or alternatives, the solicitation must define whether or not they will be considered in determining the low bid, and, in the event of multiple options, the basis for and order in which they will be accepted. In order to exercise contract options after award and also consider them as part of the original competitive pricing for the options must have been considered during the award of the base contract.
- e. **Subsequent/Additional Bid.** Submission of a subsequent bid, unless specifically identified as an amendment to a previously submitted bid, shall constitute an additional bid submitted by the same bidder on the same solicitation. (See below for information on withdrawing bids and *Code of Virginia*, § 2.2-4330 C. for Withdrawal of bid due to error.) The latest date/time stamped bid will be the only accepted bid for the solicitation.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 79 of 339
--	--------------------------------------	-------------------------	-------------------------------

- f. Opening. All bids will be opened at the time and place prescribed in the invitation for bids. The bids must be opened publicly. The method of opening should ensure that all bids are treated equitably and that the process is transparent to all participants. Bidders will be afforded a suitable opportunity to examine all bids received after they are opened.
- g. Evaluation of Bids. Evaluation shall be based upon the requirements set forth in the IFB, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.
- h. Fixed Price Contract Award. A firm fixed price contract is awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the invitation for bids, factors such as transportation costs and life cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the Contracting Officer determines they are a valid factor based on prior experience. A fixed price contract type does not preclude consideration of the use of price-varying provisions such as escalation or incentives/disincentives, if suitable for the circumstances.
- i. Award. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one (1) bidder.
- j. Rejection of Bids. The Contracting Officer must document and provide a justification for all bids it rejects. Any and all bids may be rejected if there is a sound, documented business reason.
- k. Materially Unbalanced. The price reasonableness analysis shall consider whether bids are materially unbalanced.
- l. Tied Bids. In the event of a tie, where two (2) bidders are determined to be the lowest responsive and responsible bidders, when the contract can only be awarded to one (1) bidder, the Director of Procurement will perform a coin toss to determine the successful bidder.
- m. Single Bid. In the event that a single responsive bid is received from a responsible bidder, the Commission may negotiate with the bidder to ensure that a fair and reasonable price is obtained. If the responsive bid from the lowest responsible bidder exceeds available funds, the Commission may negotiate with the apparent low bidder to obtain a contract price within available funds,

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 80 of 339
--	--------------------------------------	-------------------------	-------------------------------

provided that the Commission has established, in writing, conditions and procedures for such negotiations prior to issuance of the IFB and summarized them therein. The Commission may not, as part of a negotiation process, modify or alter the scope and specification defined in the IFB in a manner which might have attracted additional bidders if incorporated in the solicitation.

- n. Responsiveness. As soon as practical after the receipt and opening of bids, the Contracting Officer will examine all bids timely received to determine if they are responsive. A responsive bid is one that is timely received, complies with all requirements of the solicitation, and represents a clear and unequivocal offer to provide the good(s) or services specified at a stated price or prices. Exceptions to the specification or contractual terms, or ambiguous or conditional pricing, will render a bid non-responsive. However, if the terms of the solicitation permit, the Contracting Officer may waive minor informalities, defined as matters not affecting the price, schedule, or quality of the bid.
- o. Responsibility. The Contracting Officer, in consultation with other departments involved in the procurement, will then determine if the lowest responsive bid was submitted by a responsible bidder. This evaluation considers whether the bidder has, in all aspects, the ability to successfully perform the contract, including the necessary technical and financial resources; the prior experience and integrity; and capability of providing the specified insurance, bonding, and DBE participation. Price reasonableness is also evaluated in the process. The Contracting Officer will obtain approval from HRT's Risk Department to ensure that the bidder's insurance meets the insurance requirements identified in the IFB. The Contracting Officer will also review the most current version of the SAM published by the U.S. Government. If this evaluation raises concerns regarding the bidder's capability in any of these areas, the bidder should be given a reasonable opportunity to show why it should not be found non-responsive, which may include a qualification hearing with the bidder. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder shall be notified in writing (*Code of Virginia* § 2.2-4359).
- p. Bid Withdrawal. A bidder for a construction contract may withdraw its bid from consideration if the bid price was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers,

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 81 of 339
--	--------------------------------------	-------------------------	-------------------------------

documents, and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw its bid from consideration if the bid price would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn.

The bidder shall give notice in writing of its claim or right to withdraw its bid within two (2) business days after bid opening and shall submit original work papers with such notice. For construction type contracts, this must be stated in the advertisement for bids.

If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

Verification of the mistake(s) will be completed, and HRT will notify the bidder in writing within five (5) business days of its decision regarding the bidder's request to withdraw its bid. If HRT denies the withdrawal of a bid, the notice will state the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

2. Competitive Proposals (Request for Proposals). The competitive negotiation process is conducted through a formal Request for Proposals (RFP). 2 CFR § 200.320(b)(2) and VPPA § 2.2-4302.2 defines this as a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract. RFPs may be used for acquisition of supplies or services only if the Contracting Officer determines, in advance, that competitive sealed bidding is not practicable and documents the file accordingly.
 - i. *When Appropriate*. Competitive proposals should be used any time conditions are not appropriate for using sealed bids, for example, when any of the following circumstances are present:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 82 of 339
--	--------------------------------------	-------------------------	-------------------------------

- a. Type of Specifications. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
 - b. Uncertain Number of Sources. Uncertainty about whether more than one (1) bid will be submitted in response to an invitation for bids.
 - c. Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.
 - d. Discussions Expected. Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals. This contrasts with sealed bidding procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made principally based on price.
- ii. Procurement Procedures. The following procedures apply to procurements by competitive proposals:
 - a. Notice. Requests for proposals require public notice. Public notice of the RFP shall be posted to HRT's website or other appropriate websites at least ten (10) days prior to the date set for receipt of proposals. HRT may also publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Additionally, proposals may be solicited directly from potential contractors. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.
 - b. Written Procedures. HRT must have written procedures for conducting technical evaluations and making sections.
 - c. Price and Other Factors. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to HRT considering price and other factors.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 83 of 339
--	--------------------------------------	-------------------------	-------------------------------

HRT may award the contract to the offeror whose proposal provides the greatest value to HRT. To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be specified. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. Determination should be based on which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors. The FTA does not require any specific factors or analytic process.

- d. Subsequent/Additional Proposal. Submission of a subsequent proposal, unless specifically identified as an amendment to a previously submitted proposal, shall constitute an additional proposal submitted by the same offeror on the same solicitation. The latest date/time stamped proposal will be the only accepted proposal for the solicitation.

iii. *Procurement Process*

- a. Each RFP will include a description of the factors, other than price, by which proposals will be evaluated. Evaluation factors and sub-factors will be listed in order of their relative importance. For RFPs other than small purchases, technical and pricing proposals are to be submitted in separate volumes.
- b. The Director of Procurement, in consultation with the Project Manager, will appoint a minimum of three (3) HRT employees who have knowledge of the procurement’s subject matter/technology to participate in the Technical Evaluation Panel (TEP). To the extent feasible, the panel members shall represent different departments within HRT and shall not directly report to the same individual. The presence of individuals and their direct supervisor on the same panel is to be avoided to the greatest extent possible. Due to the confidential nature of the evaluation process, and in order to ensure that evaluations are conducted in a fair and impartial manner without bias, impropriety, or appearance of impropriety, no one other than HRT employees and/or contractors hired by HRT will be permitted to serve on a TEP in any capacity. This prohibition against third-party TEP participation includes, but is not limited to, HRT Commissioners, HRT Committee Members, Council Members or political appointees from Member Cities, any person employed or otherwise compensated directly or indirectly by a Member City, any person

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 84 of 339
--	--------------------------------------	-------------------------	-------------------------------

appointed to an outside public agency, and/or any person employed by or otherwise compensated directly or indirectly by an outside public agency.

- c. Each panel member will be required to disclose any potential conflict of interest and may be excluded by the Director of Procurement on that basis. The evaluation process will be confidential, and each participant is required to sign a confidentiality agreement prior to distribution of the proposals. The Contracting Officer will chair the TEP but will not vote, except in the event of an unbreakable deadlock. The evaluation process is flexible, depending upon the complexity of the procurement, the number and quality of proposals, and the dollar values involved. The process described below is for a complex, high-value procurement with a substantial number of proposers, to be awarded on a “best value” basis.
- d. The Contracting Officer will determine the method to be used to score technical proposals. The most common methods are adjectival ratings and numerical points. Adjectival ratings typically include “Substantially Exceeds Expectations,” “Exceeds Expectations,” “Acceptable,” “Marginal,” and “Unacceptable.” Numerical scores are typically from 5 to 1, with five (5) representing the highest possible rating. The evaluation criteria identified in the RFP are evaluated and scored separately. Each score must be supported by a written narrative defining the strengths and weaknesses of that aspect of the proposal. Scoring is to be done on the basis of each individual proposal, and not on a comparative basis. TEP members will not have access to pricing proposals (except for small purchases), to ensure that the judgment is made solely on a technical basis. The initial evaluation and scoring should be completed independently, without discussion with other TEP members and prior to the first TEP meeting.
- e. The TEP will review the technical evaluation factors and their relative importance as included in the RFP. In the event of any concerns, the RFP may be amended accordingly. Price will be assigned a weight as an evaluation factor and incorporated into the total evaluation scoring by the Contracting Officer. DBE participation will not be assigned a weight as an evaluation factor but will be considered as separate factors along with the weighted technical and price factors for award of the contract.
- f. The RFP shall advise proposers whether the award will be made on the basis of “best value” or “technically acceptable, lowest price.” When the Scope of Work or product specification is not precise and allows for a range of quality or performance characteristics in the proposals, the RFP will advise proposers that the award will be made on the basis of the best overall value, defined as the best

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 85 of 339
--	--------------------------------------	-------------------------	-------------------------------

combination of price and technical performance, not necessarily the lowest price or the highest technical rating. When the Scope of Work or product specification is sufficiently precise, award may be made to the technically acceptable proposal offering the lowest price.

- g. The TEP will first evaluate technical proposals in accordance with the technical evaluation factors in the RFP and score the proposals in accordance with the scoring method chosen. Scoring will include a description of the strengths and weaknesses of each proposal identified for each factor.
- h. The TEP will meet and review the scoring and discuss the technical strengths, weaknesses, performance risks (if any), and ambiguities in the proposals, and identify any questions or clarifications desired from the proposers.
- i. Concurrently with the technical evaluation, the Contracting Officer will evaluate the price proposals, with assistance from other HRT departments as appropriate, and prepare a spreadsheet of the prices for the items and services being procured, showing the comparative prices being proposed by line item if applicable.
- j. At the end of the initial evaluation process, and based upon the results of the scoring, the panel may:
 - Eliminate some of the remaining proposals and conduct further discussions with the rest;
 - Determine that all firms are still in the competitive range but that additional discussions are necessary; or
 - Determine that further discussions will not significantly affect the outcome of this procurement.
- k. The TEP will, in consultation with the Contracting Officer, identify those proposers whose technical scores gives them a reasonable chance of obtaining the award, eliminating those firms whose proposals are either technically deficient or unreasonably priced. These firms will be notified by the Contracting Officer that they are no longer under consideration. Any firm so rejected cannot be further considered for award. The number of remaining firms can vary depending upon the competitiveness of the proposals; while a group of three (3) to five (5) proposals is considered ideal, care should be taken not to eliminate any proposal otherwise qualified for the sake of an arbitrary number.
- l. The remaining firms are considered to be in the “competitive range.” The TEP will determine the need and methods of further exploring the quality on the proposals. The intent of this process is to ensure that each firm’s proposal is

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 86 of 339
--	--------------------------------------	-------------------------	-------------------------------

revised to conform, to the greatest extent possible, to the needs of the Commission in the solicitation. These methods may include written questions and answers, and discussions either by telephone or in person. Site visits may also be conducted, if appropriate. Questions and discussions need not be identical for each proposer but should be geared to address the perceived weaknesses of each. In this process, however, care must be taken to avoid giving one (1) proposer information from another proposal, which might give the proposer a competitive advantage.

- m. If technical interviews are held with the proposers considered in the competitive range, the TEP will conduct a second round of evaluation scoring, which is based upon both the proposal and any clarifications provided by the proposer during the technical interview. Only once all technical evaluations have been completed will the pricing be reviewed with the TEP.
- n. If the procurement is based on “best value,” as part of this process, price negotiations may be conducted with firms in the competitive range. For goods, nonprofessional services, and insurance, selection shall be made of two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the RFP, including price if so stated in the RFP. Negotiations shall then be conducted with each of the offerors selected. In negotiating prices, the Contracting Officer will lead the discussions, supported by members of the TEP as well as any other resources necessary. Price negotiations cannot be separated from revisions to the technical scope and proposals; as the discussion process refines the scope and each proposer’s approach, the price, and other elements such as schedule and DBE participation may be affected. Exceptions to the contractual terms or conditions, which were included in the offerors’ submitted proposals, shall be considered during negotiation but shall not be used as a basis for scoring or evaluating which offerors are selected for negotiations. Price shall be considered but need not be the sole or primary determining factor.
- o. Because the object of negotiations is to reach an agreement, concessions and/or compromises may be appropriate. Concessions should not be treated as giveaways. These are points to be earned by both parties and relinquishment will be made after thorough consideration. It is particularly important that the negotiator takes stock of the strong and weak issues to be presented; and the important and irrelevant, and the major and minor points to concede. “Issues” as used herein, means to recognize how types, quantities, and costs of material, labor, overhead, and other factors were developed and to attempt to reconcile the proposal elements with the prospective contract requirements.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 87 of 339
--	--------------------------------------	-------------------------	-------------------------------

- p. The negotiator should recognize that concessions do not necessarily mean HRT's or the contractor's integrity, or intelligence, is being challenged. To the contrary, neither party's position is infallible. If possible, give the contractor a way out (preferably your way). Here is where the total price approach will permit the contractor to concede to a crucial point without loss of dignity.
- q. If award is being considered without conducting negotiations, the contract file must document that all costs and profit have been analyzed, and the price is considered fair and reasonable.
- r. When the TEP reaches a determination that further discussions are not likely to significantly affect the outcome of the procurement, the Contracting Officer will request each remaining proposer submit a Best and Final Offer (BAFO), incorporating all revisions developed during the evaluation process. BAFOs may involve a complete resubmittal of both the technical and pricing proposals, suitably revised, or resubmittal of certain sections. When the intent is to incorporate the BAFO into the final contract, a complete resubmittal should be required. BAFOs must be submitted on an equal basis, giving each proposer the same amount of time to prepare, and with a common date and time for receipt. Failure to submit a BAFO by the time identified shall render a proposal non-responsive unless it is the only BAFO submitted.
- s. Following receipt of the BAFOs, the TEP will conduct a final scoring and determine the firm to be recommended for award, ensuring that the BAFO is in all respects acceptable. In rare instances, the TEP may ask the Contracting Officer to request revisions to the BAFO. The TEP will recommend the "best value" offer (that proposal which offers the best combination of technical merit/performance and pricing).
- t. The TEP will submit its recommendation to the Contracting Officer, who shall either accept it or return it to the TEP if it is considered inadequate or not in accordance with the processes and outcome of the solicitation.
- u. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one (1) offeror. Should the TEP determine, in writing and in its sole discretion, that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.
- v. For negotiated procurements awarded on a "technically acceptable, lowest price" basis, the technical evaluation only identifies those firms whose technical proposals, after discussions, meet the requirements of the solicitation. The award is made to the firm whose technically acceptable proposal is offered at the lowest price.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 88 of 339
--	--------------------------------------	-------------------------	-------------------------------

- w. HRT is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D).
- x. The Contracting Officer will prepare a summary of the solicitation process, including a record of the negotiation process. This document, together with a copy of all proposals and related documentation, is to be kept in the official contract file.

The process for procuring professional services in excess of \$80,000 varies and is described below. This method cannot be used for the acquisition of construction services except under very limited instances defined in VPPA § 2.2-4303D, and with a written determination made in advance by the Commission.

3. Two-Step Procurement Procedures. If permitted by State and local law, HRT may use two-step procurement procedures. A typical two-step procurement combines elements of sealed bidding and competitive proposals, through having offerors participate in a technical phase followed by a price phase.

The Two-Step process is appropriate when all of the following conditions exist:

- i. Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation and any necessary discussion of the technical aspects of the requirement to ensure mutual understanding between each source and the Commission;
- ii. Definite criteria exist for evaluating technical proposals;
- iii. More than one (1) technically qualified source is expected to be available, and more than one (1) technical solution is considered possible;
- iv. Sufficient time will be available for use of the two-step method; and
- v. A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

None of the following precludes the use of two-step sealed bidding:

- i. Multi-year contracting.
- ii. Commission-owned facilities or special tooling to be made available to the successful bidder.
- iii. A first or subsequent production quantity is being acquired under a performance specification.

The Contracting Officer will prescribe procedures for solicitation, evaluation, and award of contracts under this method of procurement.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 89 of 339
--	--------------------------------------	-------------------------	-------------------------------

The following is a summary of a typical two-step procedure.

- i. *Review of Technical Qualifications and Approach.* The first step is a review of the prospective contractors' technical approach to the request and technical qualifications to carry out that approach without pricing. This is generally conducted under the procedures for competitively negotiated procurements. In addition to the normal requirements for an IFB, the solicitation requires that:
 - a. Unpriced technical offers are requested;
 - b. The procurement is a two-step procurement and pricing will be considered in the second step and only from those offerors whose unpriced technical offers are found to be acceptable in the first step;
 - c. Criteria to be used in evaluating the unpriced technical offers;
 - d. Potential to conduct oral or written discussions regarding the technical offers, to the extent determined to be necessary;
 - e. Statement that offerors should submit proposals that are acceptable without additional explanation or information and that HRT may make a final determination regarding the acceptability of the proposals based solely on the basis of the proposals submitted and may proceed with the second step without requesting further information;
 - f. Offers may designate those portions of the technical offers which contain trade secrets or other proprietary data which are to remain confidential; and
 - g. The item being procured will be furnished generally in accordance with the offeror's technical offer as found to be technically acceptable and will meet the requirements of the solicitation.

Discussions may be conducted with the proposers and asked for clarification or supplemental information. The competitive range may then be narrowed down to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.

Any amendments issued prior to the receipt of the technical offers are completed as with a "normal" IFB or RFP; however, amendments issued following the receipt of the technical offers are issued only to those offerors who submitted technical offers.

- ii. *Review of Bids and Proposals Submitted by Qualified Prospective Contractors.* The second step consists of soliciting pricing from the offerors whose technical approaches were deemed acceptable in the first phase and reviewing complete bids or proposals including price. Bid or proposals should be solicited from at least three (3) qualified prospective contractors. Unlike qualifications-based procurement procedures required for A&E services, conducting a two-step procurement considers

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 90 of 339
--	--------------------------------------	-------------------------	-------------------------------

all bid or proposal prices submitted as well as other technical factors, rather than limiting review to the most qualified bidder or offeror.

Unpriced technical offers are not publicly opened, unless required by state or local law and are typically opened in front of two (2) or more authorized HRT employees as witnesses. Offers will not be disclosed to unauthorized persons.

Proposals are evaluated for technical merit including, if appropriate, discussions with offerors and requests for revised proposals. The objective of the process is to negotiate one (1) or more technical solutions acceptable to the Commission. As part of this process, the Contracting Officer will conduct a responsibility review of each offeror and resolve any concerns in this area. At the end of this step, the providers of acceptable technical solutions will have been identified, and the proposed solutions negotiated to provide a definition of each which meets the requirements for a sealed-bid specification, although in this case, the specification for each will be different, reflecting the offeror's technical approach. Any offeror whose technical proposal is determined to be unacceptable to HRT will be notified of that fact and will not be afforded the opportunity to submit supplemental information to amend its proposal.

Based upon the results of Step One, the technical specification (minimum technical requirements in Step Two may be revised; however, it may not conflict with the final unpriced proposals. Each offeror whose technical proposal as negotiated has been found acceptable is invited to submit a sealed bid to provide the goods or services defined in its negotiated technical proposal. The award is based upon the lowest responsive price from a responsible offeror.

4. Architectural, Engineering, and Professional Services

Architectural and Engineering Services

Except to the extent that the Commonwealth of Virginia adopted by statute prior to August 10, 2005, a formal procedure for the procurement of these services, the Commission will use qualification-based competitive proposal procedures based on the Brooks Act, 40 U.S.C Chapter 11, and 49 U.S.C. § 5325(b), when contracting for architectural and engineering (A&E) related services, which are defined in the Brooks Act and FTA C4220.1G, to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

The Brooks Act requires that:

- i. An offeror's technical qualifications be evaluated;
- ii. Price be excluded as an evaluation factor;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 91 of 339
--	--------------------------------------	-------------------------	-------------------------------

- iii. A pricing proposal be requested from, and negotiations be conducted only with the most qualified offeror;
- iv. Failing agreement on price, the proposal must be rejected, and negotiations conducted with the next most qualified offeror, until a contract award can be made to the most qualified Offeror whose price is fair and reasonable; and
- v. If the pool of qualified offerors is exhausted without an agreement, the solicitation must be canceled.

This “qualifications-based” procurement method can only be used for the procurement of A&E services where any amount of Federal funds is utilized. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

When no Federal funds are involved in funding a procurement for professional services as defined in the VPPA, the Commission will comply with the requirements of §§ 2.2-4301 and 2.2-4303.1 of the VPPA, which defines a process similar to the Brooks Act to be used for all professional service procurements.

No building materials, supplies, or equipment for any building or structure constructed by or for HRT shall be sold by or purchased from any person employed as an independent contractor by HRT to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in *Code of Virginia*, § 2.2-3101 and § 2.2-4374A.

No building materials, supplies, or equipment for any building or structure constructed by or for HRT shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by HRT to furnish architectural or engineering services in which such person has a personal interest as defined in *Code of Virginia*, § 2.2-3101 and § 2.2-4374B.

The provisions of the above shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation.

These provisions do not apply to persons supplying architectural or engineering services under design/build contracts (*Code of Virginia*, § 2.2-4306).

Professional Services

For professional services, the Commission shall engage in individual discussions with two (2) or more offerors deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 92 of 339
--	--------------------------------------	-------------------------	-------------------------------

proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the Commission in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Commission may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with the *Code of Virginia*, § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the Commission shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Commission shall select in the order of preference two (2) or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Commission can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the Commission, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, the Commission may award contracts to more than one (1) offeror.

Should the Commission determine in writing and in its sole discretion that only one (1) offeror is fully qualified or that one (1) offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

5. Mixed Architectural and Engineering Contracts

- i. *Alternative Contracting Methods.* In a traditional design-bid-build delivery method, the Commission procures design services and construction services through separate procurements. Alternative contracting methods (ACM) can combine these services in different ways. Design-build, construction manager/general contractor, and progressive design-build are three (3) examples.
- ii. *Procurement Method.* Generally, an ACM contract that combines design and construction services should be procured using the method that aligns with the predominant costs of the contract. The Contracting Officer should separate the various contract activities to be undertaken and classify them as design or construction and then estimate the total value of each. If the project's construction costs will predominate over its design costs, the Contracting Officer should procure

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 93 of 339
--	--------------------------------------	-------------------------	-------------------------------

the contract by sealed bidding or competitive proposals. If the costs of design and other A&E services are expected to exceed the construction costs, the Contracting Officer should use qualifications-based selection procedures.

Depending on the ACM, the above guidance may not always be appropriate. For example, in a progressive design-build contract, even though construction costs may eventually exceed design costs, the Commission and contractor have opportunities to negotiate construction price later in the project. Therefore, it may be appropriate for the Commission to select a progressive design-build contractor using qualifications-based selection procedures.

The Contracting Officer should use its judgement selecting and procuring an ACM. If the Contracting Officer uses an innovative procurement method not already addressed in FTA's guidance, the Commission should coordinate with the FTA early in the process to ensure eligibility.

- iii. *Construction Management or Design-Build.* Design-build contract refers to a procurement for design and construction simultaneously with contract award to a single contractor, which may be a joint venture that will be responsible for both the project's design and construction. Construction management contract refers to a contract in which a contractor is retained by the Commission to coordinate and administer contracts for construction services for the benefit of the Commission, and may also include, if provided in the contract, the furnishing of construction services. A complex project is a construction project that includes one (1) or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes the design-bid-build project delivery method not practical. The Commission shall, unless otherwise required by Commonwealth law (§ 2.2-4380 of the VPPA), procure design-build and construction management services as follows:
 - a. Fixed price of not-to-exceed price basis, provided that the Commission complies with the VPPA, and the procedures adopted by the Secretary of Administration for using construction management or design-build contracts.
 - b. Procedures shall include the following requirements.
 - A written determination shall be made in advance that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to use construction management or design-build. The determination shall be included in the Request for Qualifications and maintained in the procurement file.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 94 of 339
--	--------------------------------------	-------------------------	-------------------------------

- Prior to making a determination for the use of construction management or design-build for a specific construction project, the Commission shall have, either employed or under contract, a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the Commission regarding the use of construction management or design-build for that project and (ii) assist the Commission with the preparation of the Request for Proposal and the evaluation of such proposals.
 - Public notice of the Request for Qualifications shall be posted to HRT's website, at least thirty (30) days prior to the date set for receipt of qualification proposals.
 - For construction management contracts, the contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions.
 - Prior construction management or design-build experience or previous experience with the Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the Commission may consider the experience of each contractor on comparable projects.
 - Construction management contracts shall require that (i) no more than ten percent (10%) of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining ninety percent (90%) of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable.
 - The procedures allow for a two-step competitive negotiation process.
- c. The Commission, subject to the provisions of this section, shall report no later than November 1 of each year to the Director of the Department of General Services on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, (vi) if such project was a construction management or design-build project, the qualifications that made the project complex, and (vii) any post-project issues.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 95 of 339
--	--------------------------------------	-------------------------	-------------------------------

D. Other Than Full and Open Competition

1. When Authorized. A recipient may conduct procurements without providing for full and open competition only if one of the following circumstances applies. 2 CFR § 200.320(c).
 - i. *Micro-Purchase*. When the aggregate amount of the procurement transaction does not exceed the micro-purchase threshold, HRT may use micro-purchase procedures that do not require competition. HRT may not divide a known requirement into smaller purchases for the purpose of avoiding competition requirements.
 - ii. *Sole Source*. When HRT's requirement can only be fulfilled from one (1) source, HRT may make a noncompetitive award. The following examples may give rise to sole-source procurements.
 - a. *Unsolicited Proposal*. HRT may negotiate a sole-source award with an offeror that presents an unsolicited proposal that provides a unique and innovative idea or approach. Commercial products or commercial services cannot be the basis of an unsolicited proposal. The offeror should demonstrate a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to HRT only from one (1) source and has not in the past been available from another source.
 - b. *Patents or Restricted Data Rights*. Patent or data rights restrictions may preclude competition. However, the mere existence of such rights does not by itself justify a noncompetitive award.
 - c. *Substantial Duplication Costs*. In the case of a follow-on contract for the continued development or production of highly specialized equipment or major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - d. *Unacceptable Delay*. In the case of a follow-on contract for the continued development or production of highly specialized equipment or major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the Commission's needs.
 - iii. *Exigency or Emergency*. When a public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation, or where an unusual and compelling urgency means the Commission would be seriously injured unless it were permitted to limit the solicitation, the Commission may make a noncompetitive award. When HRT is procuring goods or

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 96 of 339
--	--------------------------------------	-------------------------	-------------------------------

services to respond to an emergency, it should limit its contract only to the quantities or period of performance necessary to see it through the emergency.

- iv. *Adequate Competition.* If after soliciting several sources, competition is determined to be inadequate, the Commission may make a noncompetitive award. If the Commission receives inadequate competition in response to its solicitation, it should review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. A contractor survey should be sent out to all individuals that registered online to receive the bid or proposal package, and to all contractors directly sent the solicitation package, to inquire as to the reason for not submitting an offer. After the Commission determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the Commission may make a noncompetitive award.
- v. *As Authorized by FTA.* 2 CFR § 200.320(c)(4) permits the Commission to request FTA's approval to use a noncompetitive procurement method. Under this authority, FTA has made the following determinations:
 - a. *Team, Consortium, Joint Venture, or Partnership.* When FTA awards a grant agreement or enters into a cooperative agreement with a team, consortium, joint venture, or partnership, or provides FTA assistance for a research project in which the FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. Typically, this occurs in the FTA's discretionary funding programs. In such cases, the Commission must adhere to competition requirements to select other contractors. The Commission should be explicit in its application whether it is applying as part of a team, the members of the team, their commitment to the project, and each member's role. Because the FTA awards funding to such applications based on the strength of the team, the withdrawal of a team member may be cause for FTA to terminate the award.
 - b. *Federal Standards.* To ensure that the Commission has flexibility equal to that of Federal contracting officers, the FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in 2 CFR § 200.320(c), the FAR authorizes less than full and open competitive procurements in the following circumstances:
 - *Statutory Authorization or Requirement.* To comply with DOT appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 97 of 339
--	--------------------------------------	-------------------------	-------------------------------

- National Emergency. To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.
 - Research. To establish or maintain an educational or other non-profit institution or a Federally funded research and development center that has or will have an essential engineering, research, or development capability.
 - Protests, Disputes, Claims, Litigation. To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.
 - International Arrangements. When precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or when prohibited by the written directions of a foreign government reimbursing the Commission for the cost of the acquisition of the supplies or services for that government.
 - National Security. When the disclosure of the Commission's needs would compromise the national security.
 - Public Interest. When the Commission determines that full and open competition in connection with a particular acquisition is not in the public interest.
2. When Prohibited. Less than full and open competition is not justified based on:
- i. *Failure to Plan*. The Commission's lack of advance planning, or
 - ii. *Limited Availability of Federal Assistance*. Concerns about the amount of Federal assistance available to support the procurement (for example, due to the expiration of Federal assistance available for award).
3. Procurement Procedures. When less than full and open competition is available to the Commission, the following procedures apply:
- i. *Potential Sources*. In all situations, the Contracting Officer or Buyer should solicit offers from as many potential sources as is practicable under the circumstances.
 - ii. *Justification*. If the Contracting Officer decides to make a noncompetitive award, the decision must be justified in its records for the procurement as included under 2 CFR § 200.318(i).
 - iii. *Cost or Price Analysis*. If the procurement will exceed the simplified acquisition threshold, the Contracting Officer must perform a cost or price analysis consistent

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 98 of 339
--	--------------------------------------	-------------------------	-------------------------------

with 2 CFR § 200.324. Sole source solicitations for materials and equipment should contain a solicitation clause and a contractual requirement that the contractor certify that the prices offered are no higher than those charged other customers for items of similar quality and quantity.

A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this section.

Receipt of a single responsive and responsible bid or proposal is not, by itself, conclusive evidence that competition was inadequate; the Contracting Officer must determine if there was a perception of competition which would affect the bid or proposal. Under these circumstances, award is not considered a sole source. The Contracting Officer, however, must investigate the reason no other bids or proposals were received; verify that the specification was not unduly restrictive, and that the solicitation cannot be modified in a manner that would result in greater competition; and document the file accordingly.

The contract file must include a sole source justification, with a final determination signed by the Director of Procurement explaining the reasons for the award on a non-competitive basis. This determination must include a full description of the circumstances, including documentation of efforts to obtain competition, where appropriate.

The Commission may establish and maintain a listing of sole source items not requiring justification for each purchase, providing (i) that written verification is obtained from the supplier or other authoritative source not less frequently than annually; and (ii) such list is published in a manner readily available to industry suppliers not less frequently than annually, with an invitation for prospective suppliers of competing items to notify the Commission of their availability.

For each sole source award above the small purchase limit, HRT shall, pursuant to § 2.2-4303E of the VPPA, issue a written notice stating that only one (1) source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the HRT website, when the Commission awards or announces its decision to award the contract, whichever occurs first. Notice may also be published in a newspaper of general circulation or published on the Department of General Services' central electronic procurement website and other appropriate websites. Publication does not apply to non-competitive contract change orders or modifications.

E. Emergency Procurements

1. General Authority. The President/CEO may authorize emergency procurements for which a public exigency or emergency will not permit the time required to obtain competition and may authorize the award of contracts or contract modifications exceeding the threshold for Commission approval. A procurement may be conducted on an emergency basis if the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 99 of 339
--	--------------------------------------	-------------------------	-------------------------------

procurement is essential to a Commission requirement to deal with an existing “emergency condition.” Emergency procurements may be negotiated on a sole source basis or limited competition basis depending on the circumstances as described in Section XIV below.

2. Existence of Emergency Conditions. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would threaten either the health or safety of any person, the preservation or protection of property, or the continuation of necessary Commission functions. For example:
 - i. When emergency action is required to prevent loss of life, damage to property, a threat to public safety or the environment, or the disruption of transit service or other essential functions of the Commission.
 - ii. Where an emergency has been declared by local, state, or national officials affecting the Commission’s service area, directly or indirectly, or a request for waiver of regulatory requirements has been entered on the FTA’s Emergency Docket.
 - iii. In cases where a delay in approving a contract modification will cause the Commission to incur substantial additional costs (by delaying a contractor, for example) or potential liabilities.
3. Notification of Emergency. In such cases, the individual identifying the emergency shall notify the President/CEO and the Commission, with a copy to the Director of Procurement, as soon as possible. The Director of Procurement shall notify the President/CEO whether there is any active contract under which the work might be performed, or whether the Commission has had previous satisfactory experience with one (1) or more contractors capable of performing the work. At the direction of the President/CEO, the Director of Procurement, in consultation with the Project Manager for the emergency, shall issue a Notice to Proceed to the appropriate contract on a not-to-exceed price basis, and will solicit quotes, proposals, or bids to complete the work at the earliest feasible time.
4. Public Notification. The Contracting Officer shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the day HRT awards, or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.
5. Source Selection Method. The procedure used will be selected to ensure that the required goods, services, or construction are procured in time to meet the emergency. Any procurement conducted will provide for full and open competition. The Contracting Officer will attempt to solicit bids or proposals from as many potential contractors as possible under the emergency condition.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 100 of 339
--	--------------------------------------	-------------------------	--------------------------------

6. Scope of Emergency Procurements. The emergency procurement of goods or services shall be limited to quantities or time periods sufficient to meet the immediate condition and shall not be used to meet long-term requirements. Long-term requirements for the same goods, services, or construction shall be requested separately, to initiate a separate non-emergency procurement action concurrent with the emergency procurement.
7. Request for Proposals. The Contracting Officer may use either a written or a verbal request to solicit proposals for an emergency procurement. Written requests will be clear and concise, and only contain the data and information necessary for providing a proposal.
8. Negotiation Procedures. The Contracting Officer will comply with the applicable negotiation procedures contained herein.
9. Contract Requirements. The Contracting Officer will ensure that each emergency procurement contract contains the required clauses and representations and certifications, in accordance with the requirements of these procedures.
10. Record of Procurement. The Contracting Officer will ensure that proper records of emergency procurements are maintained.
11. Modification Restriction. A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless additional time or a limited number of additional supplies, services, or other items are needed to fill an ongoing emergency requirement until regular procurement action procedures can be completed, not to exceed three (3) months.

Any action under this section will be supported by written documentation identifying the reasons for the action and the measures taken and will be subject to confirmation by the Board of Commissioners at its next meeting. Wherever possible, at least two (2) bids will be solicited when emergencies preclude more extensive competition.

F. Options

An option is a unilateral right in a contract by which, for a specified time, HRT may elect to purchase additional equipment, supplies, or services called for by the solicitation and/or contract or may elect to extend the term of the contract. The use of options must be limited to quantities of goods or services that are reasonably anticipated to be required by the Commission during the term of the contract; options may not be included solely with the intent of assigning them to another entity in the future; however, contracts may include a provision allowing assignment to other agencies in the event of a change in the Commission's anticipated requirements, in accordance with FTA regulations and guidance.

The option quantities or periods must be defined in the solicitation; contained in the offer upon which a contract is awarded; and evaluated as part of the initial award process (i.e., the options must be evaluated in combination with bid prices for the base quantity to determine the low

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 101 of 339
--	--------------------------------------	-------------------------	--------------------------------

bidder). When an option has not been evaluated as part of the award, the exercise of the option will be considered a sole source procurement and must be justified as such.

The exercise of an option must be in accordance with the terms and conditions of the option as stated in the initial contract, and an option may not be exercised unless it is determined and documented that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised, cost and other factors considered. In limited circumstances, the Commission may agree to obtain the contractor's consent before exercising an option.

If sequential options (e.g., a series of one-year extensions) exist, the failure to timely and properly exercise any option will void all subsequent options.

The Commission may not exercise an option in contracts of other public agencies ("piggybacking") unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous, in accordance with FTA regulations and guidance. Use of such options is considered sole source actions and must be documented accordingly. This process requires the following to be maintained in the official contract file:

1. A documented determination that the contract prices remain fair and reasonable at the time the piggybacking takes place.
2. A documented verification that the contract containing the option was procured in accordance with all FTA requirements, including obtaining copies of the relevant documents from the procuring agency.

Where purchases are made from state or local purchasing scheduled or contracts which do not include all FTA requirements, the necessary contract terms and representations and certifications may be added by agreement of the parties. Likewise, any contract terms may be modified to reflect Virginia law or the Commission's requirements. However, the contract may not be modified to substantively change the product or services being acquired.

G. Time and Material Contracts

A Time and Material contract, or change order, is one in which a clear scope cannot be defined, due to unknown conditions or circumstances affecting the work. Typically, this will involve an emergency situation. Time and Materials type contract means a contract whose cost is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since such contracts provide no incentive for the contractor to work efficiently, or in a cost-effective manner, their use is restricted to situations in which no other type of contract is suitable. Before entering into such a contract, the Contracting Officer must prepare a written justification/documented determination that no other type of contract is feasible. Such contracts will specify a not-to-exceed ceiling price (a limitation of funding) that the contractor shall not exceed, except at its own risk, to control cost liability.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 102 of 339
--	--------------------------------------	-------------------------	--------------------------------

Because this formula generates an open-ended contract price, time and material contracts provide no positive incentive to the contractor for cost control or labor efficiency. The Contracting Officer must verify that the contractor's accounting system is adequate to properly segregate and bill costs. Utilization of time and material contracts require a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. The Project Manager is required to provide thorough oversight to verify the amount of work performed and material used. The official contract file must also include documented price negotiations, which is to formulize the negotiated price, by change order to the time and material award. Every effort should be made to limit the scope of a Time and Material contract or change order until another type of contract or change order can be established.

H. Cost Reimbursement Contracts

There are two (2) types of cost-reimbursement contracts: Cost-Plus Fixed Fee and Cost-Plus Percentage of Costs. The second of these is prohibited by Federal regulation.

Prior to the use of a cost-type contract, the Contracting Officer will make a determination that the contractor's accounting system is adequate to properly segregate and bill costs, and also adequate to allocate indirect costs in accordance with generally accepted accounting principles. In no event should fixed indirect cost rates that are not subject to audit and adjustment be used in a cost-type contract. Provisional indirect billing rates may be used but must be subject to later audit and adjustment.

1. A Cost-Plus Fixed Fee Contract provides that the contractor will be reimbursed for its labor and material costs and for its direct expenses, plus a fixed fee for profit that is paid regardless of any overrun or underrun of the total costs established at the time of contract award. The intent is to provide the contractor with an incentive to work as efficiently as possible in order that the fee will represent a higher percentage of its costs. This type of contract may also provide for other types of fees as incentives for improved performance.
2. Cost Plus Percentage of Cost Contracts are structured with payment provisions based on the incurrence and payment of actual costs, such as direct labor, with a fixed mark-up on the actual costs incurred for profit, indirect costs, or both, and are prohibited by Federal statute and will not be used.

I. Construction Contracts for Publicly Funded Buildings

All construction contracts, defined as contracts for building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading, or similar work upon real property must be obtained by sealed bidding, except as provided in § 2.2-4403D of the VPPA.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 103 of 339
--	--------------------------------------	-------------------------	--------------------------------

J. Information Technology Procurements

Information Technology refers to all items referenced in the aforementioned definition of Information Technology to include, but not limited to, the following:

1. Computers
2. Computer hardware and accessories
3. Software
4. Digital equipment/media
5. Telecommunication devices used to retrieve, store, digitize, or transmit information

All Information Technology procurements are to be requisitioned, approved, and maintained by the Technology department. All procurements that contain Information Technology components must be reviewed by the Technology Department's Chief Technology Officer (CTO)/Chief Information Officer (CIO) or designee.

K. Safety, Risk, and Emergency Management Related Procurements

The Safety, Risk, and Emergency Management Department performs reviews of procurement specifications, design for facilities, equipment, or systems, which may affect the safety of employees and customers of the HRT system. The review is performed to assure the incorporation of all safety requirements, specifications, codes/standards, and design reviews into contract specifications and designs, and to assess compliance with safety requirements through the testing and/or inspection of the facility, equipment, or systems. All procurements that contain safety or security related requirements must be reviewed by the Chief Safety Officer or designee.

L. Security Related Procurements

Staff assigned to the Department of Security Services will perform security reviews of procurement specifications, design for facilities, equipment, or systems, which may affect the security of employees and customers of the HRT system. The review is performed to assure the incorporation of all necessary requirements, specifications, codes/standards, and design reviews into contract specifications and designs, and to access compliance with requirements through the testing and/or inspection of the facility, equipment, or systems. All procurements that contain security related requirements must be reviewed by the respective Chief Transit Operations Officer or designee.

M. Rolling Stock Procurements

The FTA permits the use of the following procurement methods as permitted by state and local laws for acquiring rolling stock.

1. Open Market. Most rolling stock is acquired through procurements in the open market that involve the typical standard bidding and proposal procedures. HRT may only issue

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 104 of 339
--	--------------------------------------	-------------------------	--------------------------------

solicitations for its current and reasonably expected rolling stock needs. Under no circumstances will HRT add quantities or options to rolling stock contracts solely for the purpose of permitting assignment to another party at a later date.

HRT may enter into a multi-year contract to procure revenue rolling stock with a period of performance not exceeding five (5) years for bus procurements (inclusive of options, extensions, or renewals) and seven (7) years for rail procurements. The option(s) must be exercised no later than five (5) or seven (7) years after the date of the original contract.

2. State Cooperative Procurement. Section 3019(b) of the FAST Act authorizes a State government to enter into a contract with one (1) or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants. For purposes of section 3019(b) of the FAST Act, “related equipment” means equipment that is necessary for the operation of the vehicle (e.g., power sources, or external charging equipment) and not accessories like fareboxes.

HRT may purchase from such a cooperative procurement contract without regard to whether HRT is located in the same State as the parties to the contract. Section 3019(b) of the FAST Act authorizes such cooperative procurement contracts only for rolling stock and related equipment.

State cooperative purchasing contracts or state schedules are subject to federal requirements, including, but not limited to, full and open competition, no geographic preferences, Buy America, and bus testing, and must include all FTA required clauses and certifications with its purchase orders issued under the State Contract.

When procuring rolling stock or related equipment using funds awarded under the Formula Grants for Buses and Bus Facilities Program (49 U.S.C. 5339(a)) or the Buses and Bus Facilities Competitive Grants Program (49 U.S.C. 5339(b)), HRT should, to the extent practicable, seek to use the procurement tools authorized by section 3019 of the FAST Act. If, under either of those programs, HRT purchases fewer than five (5) buses through a standalone procurement, HRT must provide the FTA with an explanation regarding why it did not use a procurement tool authorized by section 3019 of the FAST Act.

3. Joint Procurement Clearinghouse. The purpose of the Joint Procurement Clearinghouse is to establish an online tool to allow grantees to work together to purchase rolling stock, created by the FTA. Establishing the Clearinghouse was required by the FAST Act [Section 3019(b)(4)].

The Joint Procurement Clearinghouse, developed with input from the transit industry, is available to transit agency procurement staff through the TriAD platform.

Transit procurement staff from throughout the country can use the site to post information about potential opportunities for joint procurement of rolling stock, including buses, railcars, and ferries.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 105 of 339
--	--------------------------------------	-------------------------	--------------------------------

The Clearinghouse includes fields for procurement officers to list information such as bus size, engine type, and other features. The tool includes filters and search fields to help users find specific joint procurements.

4. Capital Lease

- i. *In General.* In this Subsection, the term “capital lease” means any agreement under which HRT acquires the right to use rolling stock or related equipment for a specified period of time, in exchange for a periodic payment.
- ii. *Maintenance.* A capital lease may require that HRT provide maintenance of the rolling stock or related equipment covered by the lease.
- iii. *Program to Support Innovative Leasing Arrangements*
 - a. Authority. HRT may use assistance provided under 49 U.S.C. Chapter 53 to enter into a capital lease if the rolling stock or related equipment covered under the lease is eligible for capital assistance under such chapter; and there is or will be no Federal interest in the rolling stock or related equipment covered under the lease as of the date on which the lease takes effect.
 - b. Requirements. HRT shall maintain an inventory of the rolling stock or related equipment acquired under the lease; and maintain accounting records of liability under the lease.
 - c. Eligible lease costs. The costs for which HRT may use assistance under 49 U.S.C. Chapter 53 with respect to a capital lease, include the cost of the rolling stock or related equipment; associated financing costs, including interest, legal fees, and financial advisor fees; ancillary costs such as delivery and installation charges; and maintenance costs.
 - d. Terms. HRT shall negotiate the terms of any lease agreement it enters into.
 - e. Applicability of procurement requirements.
 - Lease requirements. 49 CFR Part 639, or any successor regulation, and implementing guidance applicable to leasing shall not apply to a capital lease.
 - Buy America. The requirements under 49 U.S.C. § 5323(j) shall apply to a capital lease.

5. Joint Procurements. HRT is “encouraged to enter into state and local intergovernmental agreements or inter-entity agreements, where appropriate, for procurement or use of common or shared goods and services,” in accordance with CFR § 200.318(e). The FTA encourages joint procurements in which two (2) or more grantees issue a single solicitation document and enter into a single contract with a vendor or vendors for rolling stock in a

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 106 of 339
--	--------------------------------------	-------------------------	--------------------------------

fixed quantity, which may be expressed with both a total minimum and total maximum. Unlike a State or nonprofit cooperative procurement contract, a joint procurement does not permit non-parties to participate in the contract except through the assignment of options. Joint procurements offer the advantage of obtaining goods and services that better meet the needs of each participating recipient than those goods and services likely to be available through an assignment of another recipient's contract rights.

Joint procurements must be tailored to the specific quantities that the participants anticipate needing and may not inflate the maximum quantity of vehicles so that others may "piggyback" on the contract later.

As stated in FTA C4220.1G, "Participation in a joint procurement, however, does not relieve any participating recipient from the requirements and responsibilities it would have if it were procuring the property or services itself, and does not relieve any participating recipient from the requirements and responsibilities it would have if it were procuring the property or services by itself, and does not relieve any recipient of its responsibilities under Federal procurement rules (e.g., recordkeeping) because the primary administrative responsibility for a particular action resides in an entity other than in itself."

Purchasers in a joint procurement may award individual contracts for their particular needs as long as those contracts reflect the terms and conditions in the joint procurement competitive solicitation and the proposal that was submitted by the winning contractor.

6. Exercise of Options. HRT may use its own contract options with the following limitations:
 - i. *Consistency with the Underlying Contract*. The terms and conditions of the option must be substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
 - ii. *Price*. HRT may not exercise an option unless the Contracting Officer has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous than what can be obtained in the open market.
 - iii. *Awards Treated as Sole Source Procurements*. Some actions, as described in Section VII (D), Noncompetitive Procurements, constitute sole source awards, and the Contracting Officer must be able to justify the use of a noncompetitive award (i.e., a sole source procurement) before it enters into a contract.
7. Acquisition Through Assigned Contract Rights/Piggybacking. It may be useful to acquire contract options through assignment by another recipient. This practice is commonly referred to as "piggybacking." HRT may use the contractual rights through assignment after determining:
 - i. That the original contract price remains fair and reasonable;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 107 of 339
--	--------------------------------------	-------------------------	--------------------------------

- ii. That the original contract provisions comply with all applicable Federal requirements; and
- iii. That the assigning recipient originally procured quantities necessary for their needs (i.e., they did not procure unreasonably large quantities).

Prior to proceeding with the assignment, HRT must review the original contract to ensure that the quantities the assigning recipient acquired, together with the quantities that HRT is seeking, does not exceed the amounts available under the assigning recipient's contract. It is not necessary for HRT to perform a second price analysis if one was performed for the original contract; however, HRT must determine whether the contract price or prices that were established under the original agreement are still fair and reasonable. Additionally, HRT is responsible for ensuring that the contractor complies with FTA's Buy America requirements for the assigned quantities.

8. Special Contract Provisions for Rolling Stock. The following requirements may affect rolling stock procurements:

- i. *Accessibility*. Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint Access Board/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.
- ii. *Transit Vehicle Manufacturer Compliance with DBE Requirements*. Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR § 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements. The FTA's website contains a list of current certified TVMs, and it is a best practice to confirm a TVMs certification with this list. If a TVM is not on the FTA list, the Contracting Officer should contact the civil rights officer in their region before awarding the contract.
- iii. *Minimum Useful Life*. The FTA requires HRT to maintain satisfactory continuing control of FTA assisted property. For buses and certain other vehicles, the FTA has established minimum service life policies that may affect the quantity of vehicles that HRT may acquire. See the most recent version of FTA Circular 5010.1, "Grant Management Requirements," which addresses minimum useful life for vehicles.
- iv. *Spare Ratios*. The Commission may not acquire unnecessary or duplicative items. 2 CFR § 200.318(d). To ensure the Commission does not acquire an excessive number of spare vehicles not regularly used in public transportation services, FTA has a spare-ratio policy that determines the maximum number of vehicles the Commission may acquire as a ratio of the number of vehicles it operates during peak service. Additional requirements and guidance are included in Circular 5010.1F Award

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 108 of 339
--	--------------------------------------	-------------------------	--------------------------------

Management, and FTA Circular 9050.1A, Urbanized Areas Formula Grant Programs Guidance.

- v. *Air Pollution and Fuel Economy.* Each contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86; and EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.
- vi. *Bus Testing.* Each contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of 49 U.S.C. § 5318, and FTA regulations, “Bus Testing,” 49 CFR Part 665. Buses must meet performance standards for maintainability, reliability, performance (including brake performance), structural integrity, fuel economy, emissions, and noise.
- vii. *In-State Dealers.* Irrespective of any State law, HRT may not limit its bus procurements to its in-State dealers under 49 U.S.C. § 5325(i).
- viii. *Basis for Contract Award.* As permitted by 49 U.S.C. § 5325(f), HRT may award a contract for rolling stock based on initial capital costs, or based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.
- ix. *Time Limits for Options on Rolling Stock Contracts.* Under 49 U.S.C. § 5325(e), HRT may enter into a multiyear contract to acquire rolling stock and replacement parts which have an option to buy additional rolling stock or replacement parts for (A) not more than five (5) years after the date of the original contract for bus procurements; and (B) not more than seven (7) years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock. The FTA interprets these five (5) and seven (7) year periods as covering HRT’s “material requirements” for rolling stock and replacement needs from the first day the contract becomes effective to the end of the fifth or seventh year, as applicable. In the case of rolling stock, which frequently cannot be delivered expeditiously, the FTA recognizes that HRT’s “material requirements” for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement parts than HRT’s material requirements for the applicable five- or seven-year period. This does not mean HRT must obtain delivery, acceptance, or even fabrication in five (5) or seven (7) years. Instead, it means that the FTA limits a contract to purchasing no more than HRT’s material requirements

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 109 of 339
--	--------------------------------------	-------------------------	--------------------------------

for rolling stock or replacement parts for five (5) or seven (7) years based on the effective date of the contract. However, rolling stock options must be exercised within the original contract term.

- x. *Buy America*. When procuring rolling stock, HRT must ensure that the cost of the components and subcomponents produced in the United States meets the current Buy America threshold requirement of more than 70% of the cost of all components of the rolling stock. Additionally, final assembly of the rolling stock must occur in the United States. See 49 U.S.C. § 5323(j)(2)(C).
 - xi. *Pre-Award and Post Delivery Review*. The FTA requires that HRT’s purchase of revenue passenger rolling stock undertake reviews of the rolling stock before award of the bid, during manufacture, and following delivery of the rolling stock. HRT must certify that the contractor will comply with FTA’s pre-award and post-delivery review requirements. See 49 U.S.C. § 5323(m) and FTA regulation, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 CFR Part 663.
9. Non-Revenue Rolling Stock. Light duty vehicles such as vans, sedans, and pick-up trucks used for administrative and maintenance purposes are considered equipment. As such, the Buy America requirements for a pre-award review and post-delivery audit contained in 49 CFR Part 663 do not apply. While the requirements of 49 CFR Part 663 do not apply, 49 CFR Part 661.12 requires a certification that the vehicle meets minimum domestic content and U.S. final assembly requirements. Buy America requires seventy percent (70%), by cost, of U.S. components and subcomponents. The National Highway Traffic Safety Administration provides information regarding the U.S. content (by value) of the equipment (parts) used to assemble passenger motor vehicles (<https://www.nhtsa.gov/part-583-american-automobile-labeling-act-reports>). A Purchaser’s Requirements Certification as described in 49 CFR § 663.27 and the manufacturer’s Federal Motor Vehicle Safety Standards (FMVSS) certification as described in 49 CFR § 663.41 or § 663.43 are required.

N. Procurement Arrangements Using Strategic Sourcing

1. State or Local Government Purchasing Schedules or Purchasing Contracts. “State or local government purchasing schedule” means an arrangement that the State or local government has established with one (1) or more vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. If the State or local government wishes to permit others to use its schedules, the State or local government might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules, or it may permit the vendor to determine whether or not it wishes to do so.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 110 of 339
--	--------------------------------------	-------------------------	--------------------------------

- i. *State or Local Government Permission Required.* If permitted by State or local authorities, HRT may also use State and local sources of property and services.
 - ii. *Interstate Purchasing of Rolling Stock and Related Equipment.* Under section 3019(b) of the FAST Act, HRT may purchase rolling stock and related equipment from any state's cooperative or schedule contract. The purchase must otherwise be permitted by HRT's local rules and the state holding the contract. When procuring rolling stock or related equipment using funds awarded under the Formula Grants for Buses and Bus Facilities Program (49 U.S.C. 5339(a)) or the Buses and Bus Facilities Competitive Grants Program (49 U.S.C. 5339(b)), HRT should, to the extent practicable, seek to use the procurement tools authorized by section 3019 of the FAST Act. If fewer than five (5) buses are purchased through a standalone procurement, HRT must provide the FTA with an explanation regarding why it did not use a procurement tool authorized by section 3019 of the FAST Act.
 - iii. *All FTA and Federal Requirements Apply.* When obtaining property or services in this manner, the Contracting Officer must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master contract or in HRT's purchase document. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that affects the procurement. When buying from these schedules, the Contracting Officer should obtain a Buy America certification before entering into the purchase order.
 - iv. *Interstate Purchasing Schedules Restricted.* A single State or local government's purchasing schedule is not considered an intergovernmental agreement where multiple governments cooperate on purchasing, even if other government entities are permitted to order from the purchasing schedule. Notwithstanding the endorsement of purchasing schedules and intergovernmental agreements, FTA does not authorize HRT to use interstate purchasing schedules (where multiple States together create a schedule of contracts for ordering), because this practice curtails opportunities for competitive procurements. An exception to this general restriction on interstate schedule ordering exists for cooperative procurements of rolling stock and related equipment authorized by section 3019(b) of the FAST Act. The FAST Act authorizes interstate ordering from cooperative procurements only for rolling stock and related equipment.
2. Intergovernmental Agreements. 2 CFR § 200.318 encourages entering into State and local intergovernmental agreements for procurements or use of common or shared goods and services.
 - i. *Permitted.* Intergovernmental agreements where multiple entities (e.g., governments or agencies) collaborate to procure goods or services under a single contract - without

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 111 of 339
--	--------------------------------------	-------------------------	--------------------------------

each entity having to negotiate terms individually - are acceptable and encouraged. These agreements must follow FTA's procurement standards and ensure competition and compliance with applicable regulations.

- ii. *Interstate Purchasing Schedules Restricted.* Interstate purchasing schedules (where multiple States together create a schedule of contracts for ordering), except in the case of a cooperative procurement of rolling stock and related equipment authorized by section 3019(b) of the FAST Act.
3. Information Technology. 40 U.S.C. 502(c)(1), authorizes State and local governments to acquire IT of various types through GSA's Cooperative Purchasing Program, Federal Supply Schedule 70 and 2 CFR 200.216.
 - i. *Major Disaster or Emergency Recovery.* 40 U.S.C. 502(d) authorizes State and local government entities to use any GSA Federal Supply Schedule to acquire property and services in advance of a major disaster declared by the President of the United States, as well as in the aftermath of an emergency event. The State or local government is then responsible for ensuring that the property or services acquired will be used for recovery.
 - ii. *Preparedness and Response.* 40 U.S.C. 502(c) authorizes State and local governments to acquire alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services contained on GSA's Cooperative Purchasing Program Federal Supply Schedule 84 or any amended or later version of that Federal supply classification group.
4. Competition and Price Reasonableness. When using GSA schedules to acquire property or services, HRT will have fulfilled the competition requirements under 2 CFR Part 200 if it abides by GSA ordering procedures. If using a price published on a GSA schedule, HRT must nonetheless perform a cost or price analysis before undertaking any procurement in excess of the simplified acquisition threshold established under 2 CFR § 200.324 and must consider whether the GSA price is reasonable. HRT may also seek a lower price than that published on the GSA schedules.
5. Existing Contracts (Assignments). HRT may receive an assignment of contract rights from another recipient if the assignor-recipient unintentionally acquired more than was needed for its own needs.
 - i. *Excessive Acquisitions Prohibited.* Under 2 CFR § 200.318(d), the recipient must limit its procurements to the amount of property and services required to meet its reasonably expected needs. The recipient must have written statements of its anticipated material requirements in the contract file to justify the quantities it procures. If the supplies or services were solicited, competed, and awarded through

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 112 of 339
--	--------------------------------------	-------------------------	--------------------------------

the use of an indefinite-quantity contract, the solicitation and also the contract award should contain both a minimum and maximum quantity that represent the recipient's reasonably foreseeable needs. When a contract is structured with a base order and options for some additional quantity (common in rolling stock acquisitions), the number of options acquired must not exceed the recipient's reasonably foreseeable needs during the period options may be exercised. If the recipient intentionally acquires more contract rights than its own reasonably foreseeable needs, with the intention of assigning those rights to another recipient later, it is inconsistent with the procurement standards of Part 200 and undermines competition in the Federal transit program. If FTA determines the recipient has intentionally acquired excessive quantities, FTA may disallow the excessive quantities for the original recipient and any assignees who may have acquired the excessive quantities from the original recipient.

- ii. *Assignment Permitted.* When a recipient finds it has unintentionally acquired contract rights, including unexercised options, in excess of its needs, other recipients may make use of the unneeded contract rights via assignment. This practice is sometimes referred to as the assignee-recipient "piggybacking" on the assignor-recipient's contract. See FTA's "Best Practices Procurement & Lessons Learned Manual" for further information about procurements through assignment of another's contract rights.
- iii. *Assignee-Recipient's Responsibilities.* HRT should assure itself that the assignment is permitted under its local rules and the terms of the underlying contract and will not be resisted by the contractor. HRT should look for terms in the underlying contract explicitly permitting for assignment. HRT may reduce its risk in this regard by obtaining the contractor's consent on the assignment.
 - a. Reasonableness. The Contracting Officer need not perform a second price analysis if a price analysis was performed for the original contract. However, the Contracting Officer should determine whether the contract prices originally established are still fair and reasonable before using those rights. The Contracting Officer should not exercise an option unless they have determined that the option price is better than prices available in the market or is otherwise more advantageous.
 - b. Federal Requirements Apply. The Contracting Officer is responsible for determining whether the underlying contract complies with all Federal requirements. In particular, before accepting or exercising assigned contract rights for steel, iron, manufactured products, or construction materials, the Contracting Officer should assure itself of the contractor's compliance with Buy America, and the appropriate Buy America certifications were completed

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 113 of 339
--	--------------------------------------	-------------------------	--------------------------------

and submitted to the assignor-recipient. If the contract is for rolling stock, the Contracting Officer should review the pre-award and all post-delivery reviews to confirm the contractor's Buy America compliance.

iv. *Impermissible Actions*

- a. **Improper Contract Expansion.** A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond what was provided for in the original contract. If such an expansion occurs in the course of an assignment, the Contracting Officer effectively has awarded a new, noncompetitive contract to the contractor, which it may not do absent one of the circumstances described under 2 CFR § 200.320(c).
- b. **Improper Cardinal Changes.** A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, may be described as a cardinal change. Such practices are sometimes informally referred to as "tag-ons." A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a "tag-on" or cardinal change.

When a cardinal change occurs in the course of an assignment, the Contracting Officer effectively has awarded a new, noncompetitive contract to the contractor, which it may not do absent one of the circumstances described under 2 CFR § 200.320(c).

In-scope changes as part of a contract assignment may be entirely proper and necessary. Before attempting to change the terms of its assigned contract, the Contracting Officer should review the contract's provisions to ensure that the contract permits the change sought. It also may consult with the FTA regional office responsible for administering its award before undertaking any potentially unallowed contract action.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 114 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section IX – Receipt and Evaluation of Bids and Proposals

A. General

When evaluating bids or proposals submitted, the Contacting Officer shall consider all evaluation factors specified in its solicitation documents and evaluate the bids or offers only on the evaluation factors included in those solicitation documents. The Contracting Officer should not modify its evaluation factors after bids or proposals have been submitted without re-opening the solicitation.

B. Sealed Bids

Sealed bids must be received prior to the exact time specified in the IFB. Late bids are not acceptable and should be returned to the bidder unopened. Prior to the time set for receipt of bids, the Contracting Officer should check the mailroom and storeroom to ensure that no bids have been delivered there and should be at the place designated for receipt of bids (usually the building lobby), not less than five (5) minutes prior to the deadline. The envelope of each bid received should be stamped with the date and time of receipt, to verify timeliness. Bids shall be publicly opened, and the bid prices read. Each bid should be recorded in writing, including the name of the bidder and the bid price. Bid opening results shall be maintained in the official solicitation/contract file. Bids are public documents and bidders have the right to examine the bids of other parties after the bid opening. This should be done in a controlled environment, and not in the place of bid opening.

C. Competitive Proposals

Proposals must be received prior to the exact time specified in the RFP, and the Contracting Officer should follow the same procedure as for sealed bids prior to the deadline for receipt. However, proposals are not publicly opened. A list of proposals shall be made, including the name of the proposer and the number of copies received. Proposals shall be maintained in the official solicitation file.

D. Responsiveness

Both bids and proposals are subject to requirements of responsiveness. This review is conducted by the Contracting Officer. Usually, the requirement of responsiveness for a bid is more complex than for a proposal. This is because a bid is “locked in” at the time of receipt, and proposals are subject to discussions and negotiations. As a result, many items required with a sealed bid need not be submitted with a proposal. Responsiveness looks at the submittal as of the time it was received, and an offeror cannot later correct a deficiency. Any defect in an area of responsiveness requires the rejection of the bid or proposal. As a result, the Contracting Officer should ensure that only items essential to the award be specified as matters of responsibility. The submittal of product samples, for example, is usually better treated as a matter of responsibility. The most usual matters of responsiveness include timeliness of receipt, proper signatures for a commitment by the offeror

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 115 of 339
--	--------------------------------------	-------------------------	--------------------------------

to provide the items solicited, required DBE submittals, and where required, bid bonds. Proper completion of the pricing form is a matter of responsiveness for sealed bids; any exception to the terms and conditions of an IFB renders a bid non-responsive.

E. Responsibility

A contractor's responsibility involves an evaluation of its ability to perform the specified work, in all respects. Items that must be considered include contractor integrity, public policy compliance, proper classification of employees, past performance record, and financial and technical resources when conducting a procurement transaction. This evaluation considers the following:

1. Technical Capacity. The contractor should have the necessary organization, experience, accounting, and operational controls, and technical skills or the ability to obtain them in order to perform the project successfully within the allocated time. This evaluation looks at the contractor's staffing, management systems, equipment, and ability to accurately track costs and submit proper invoices. Additionally, this may require the contractor to have personnel with adequate experience, a parent firm with adequate resources, or subcontractors. Possession of any required licenses should also be verified.
2. Financial Resources. The contractor should have the necessary capital to finance the contract performance. This evaluation looks at the contractor's financial statements, banking relationships, and financial and credit history. Prior financial difficulties or even bankruptcies do not necessarily render a contractor non-responsible, but to require a deeper look at its current financial situation.
3. Past Performance. The contractor should have a satisfactory performance history, with a record of satisfactory performance on prior contracts of a similar size and nature. Past performance may include work performed as a predecessor entity, if relevant to the present contractor. The contractor's past performance should demonstrate experience that would successfully enable it to perform the present contract, with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations. References should be checked, and owners on contracts not listed as references contacted if available. Any prior default or other failure to complete a contract should be investigated. Any prior material default of a previous contract with HRT may result in the elimination of the offeror from further consideration.
4. Integrity and Ethics. The contractor should have a satisfactory record of integrity and business ethics. Compliance with applicable laws and regulations, including affirmative action and DBE requirements, and other public policies. Any debarment or suspension at the federal or state level should be investigated; HRT will not award a contract to a firm currently debarred or suspended by the federal government or the Commonwealth of Virginia. The file for every procurement above \$25,000 will include documentation that the awardee is not listed on the U.S. Government's SAM or the Virginia Division of

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 116 of 339
--	--------------------------------------	-------------------------	--------------------------------

Purchases and Supplies Debarment and Prohibited List as of a date not more than two (2) weeks prior to the award recommendation decision.

5. Debarment and Suspension. HRT must not allow the award of any contract or subcontract at any tier exceeding \$25,000 to a person excluded under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under FAR at 48 CFR Part 9, subpart 9.4.
6. Public Policy. The contractor should have a satisfactory history of compliance with the public policies of the Federal Government or State or local government. This may include, for example, compliance with policies related to Buy America or U.S.DOT’s DBE program, or local licensing requirement.
7. Tax Liability and Felony Convictions. Under the FTA Master Agreement, the contractor must certify that it does not have any unpaid Federal tax liability, and it has not been convicted of any Federal felony within the preceding twenty-four (24) months. FTA Master Agreement § 4(g) (May 2, 2024).
8. Fair Labor Standards Act. The contractor should have a satisfactory history of proper classification of employees under the FLSA.

Assessing an offeror’s responsibility may require judgment on the part of the Contracting Officer (except for clear disqualifications like suspension and debarment and tax liability and felony convictions). The Contracting Officer may determine an offeror is not responsible if the offeror has deficiencies in one (1) or more of the above considerations. Additionally, the seriousness of the deficiency, the circumstances of the deficiency, and the degree to which the deficiency was under the offeror’s control, the number of the offeror’s past contracts involved, and whether the contractor has taken corrective and/or remedial actions to mitigate the deficiency to prevent recurrence should also be considered.

The responsibility review for an RFP is usually part of the proposal evaluation process. The review of a sealed bid usually requires involvement by other HRT functions, often including the Project Manager, Risk Management, DBE, and Finance. Responsibility must be determined affirmatively; if there is a reasonable doubt, the contractor should be found non-responsible. Responsibility involves subjective judgment and the evaluation of past events; therefore, the contractor should be afforded an opportunity to refute any potential non-responsibility issues or to explain corrective actions it has taken. The final determination of responsibility is made by the Contracting Officer.

F. Determination of Non-Responsibility

1. Following public opening and announcement of bids received on an Invitation to Bid, HRT shall evaluate the bids based upon the requirements set forth in the IFB, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability (*Code of Virginia*, §

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 117 of 339
--	--------------------------------------	-------------------------	--------------------------------

2.2-4301, Definition of Competitive sealed bidding, Element 4). At the same time, HRT shall determine whether the apparent low bidder is responsible. If HRT so determines, then it may proceed with an award to the lowest responsive and responsible bidder (*Code of Virginia*, § 2.2-4301, Definition of Competitive sealed bidding, Element 5). If HRT determines that the apparent low bidder is not responsible, it shall proceed as follows:

- i. Prior to the issuance of a written determination of non-responsibility, HRT shall (a) notify the apparent low bidder in writing of the results of the evaluation, (b) disclose the factual support for the determination, and (c) allow the apparent low bidder an opportunity to inspect any documents which relate to the determination, if so requested by the bidder within five (5) business days after receipt of the notice.
 - ii. Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. HRT shall issue its written determination of responsibility based on all information in its possession, including any rebuttal information, within (5) five business days of the date HRT received such rebuttal information. At the same time, HRT shall notify, with return receipt requested, the bidder in writing of its determination.
 - iii. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days after the receipt of the notice, by invoking administrative procedures meeting the standards of the *Code of Virginia*, § 2.2-4365, if available, or in the alternative by instituting legal action as provided in the *Code of Virginia*, § 2.2-4364.
 - iv. The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.
2. If, upon appeal pursuant to the *Code of Virginia*, § 2.2-4364 or § 2.2-4365, it is determined that the decision of HRT was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation for Bids, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of HRT was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation for Bids, and the award of the contract has been made, the relief shall be as set forth in § 2.2-4360B of the *Code of Virginia*.
 3. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section and may not protest the award or proposed award under § 2.2-4360 of the *Code of Virginia*.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 118 of 339
--	--------------------------------------	-------------------------	--------------------------------

4. Nothing contained in this section shall be construed to require HRT, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

G. Debarment and Suspension

1. DOT Debarment and Suspension Regulations. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200, applies to each contract at any tier expected to be \$25,000 or more; to each contract at any tier for a Federally required audit (irrespective of the contract amount); and to each contract at any tier that must be approved by an FTA official (irrespective of the contract amount). The Contracting Officer must ensure that no such contract at any tier is awarded to any person that is excluded or disqualified under the Governmentwide suspension and debarment system.
2. System for Award Management (SAM). While the Contracting Officer may satisfy a prospective contractor’s suspension or debarment status by requiring a certification from the prospective contractor or including relevant clauses in contracts requiring disclosure (2 CFR § 180.300), FTA strongly recommends recipients verify the status of entities directly through the System for Award Management (SAM) (www.sam.gov). This platform identifies parties excluded from receiving Federal contracts, certain subcontracts, and various types of Federal financial and non-financial assistance and benefits. SAM provides an up-to-date resource for checking administrative and statutory exclusions across the entire Federal Government. (Note that contractors not seeking business with the Federal Government may not be required to register in SAM, and may not appear in a search of SAM.)
3. State and Local Debarment and Suspension Lists. The Contracting Officer shall also treat any prospective contractor or subcontractor listed on a State or local government exclusion list as non-responsible and ineligible for contract award.

H. Options

When the Contracting Officer determines there is a reasonable likelihood that options will be exercised included in the bid or proposal, the total price of exercising the options together with the price of the basic contract should be evaluated.

The Contracting Officer may not need to evaluate bids or offers for options when it is determined that evaluation would not be in the Commission’s best interests. An example of a circumstance that may support a determination not to evaluate bids or offers for options is when the Contracting Officer is reasonably certain that funds will not be available to permit an exercise of option.

I. Evaluators

In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 119 of 339
--	--------------------------------------	-------------------------	--------------------------------

Contracting Officer determines whether it would be necessary or helpful. If the Commission lacks qualified personnel within the organization, it may contract for the evaluation services it needs. If evaluation services are contracted, the procurement standards described in this the FTA's C4220.1G will apply to those contracts and to those contractors selected to perform procurement evaluation functions. The Commission should especially guard against a contracted evaluator's potential conflicts of interest.

J. File Content

The solicitation (RFPs/IFBs) file will include reasonable and adequate documentation of the procurement. File documentation should be proportional to the size and complexity of the procurement. See the Procurement Checklist (Appendix B) for a listing of required file contents.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 120 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section X – Contract Cost and Price Analysis

The Commission must perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold (\$100,000). The method and degree of analysis conducted depend on the facts and circumstances surrounding the particular procurement transaction. However, as a starting point, the Commission must make independent estimates before receiving bids or proposals.

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred, or cost estimates included in negotiated prices would be allowable for the Commission under 2 CFR 200 subpart E. The Commission may reference its own cost principles as long as they comply with subpart E.

The Commission must not use the “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting.

A. Independent Estimate

Any cost or price analysis must be based on an independent estimate, which should be developed before a solicitation is issued, but in no event after the receipt of bids or proposals. For contract modifications, the independent cost estimate must be prepared without knowledge of the contractor’s proposed pricing. See the Independent Cost Estimate Form in Appendix C for detailed guidance on developing the independent cost estimate.

B. Cost and Price Analysis

2 CFR § 200.314 requires a cost analysis or price analysis be performed in connection with every procurement action, including contract modifications and exercise of options, in excess of the simplified acquisition threshold. The method and degree of analysis depend on the facts and circumstances surrounding each procurement. For example, potential workforce impacts may be considered in the analysis if the procurement transaction will displace public sector employees. However, as a starting point, independent estimates should be created prior to receiving bids or proposals.

The objective of the cost or price analysis should be to ensure that the final contract price is fair and reasonable. A cost analysis examines the reasonableness of the contractor’s proposed costs to deliver the contract. A price analysis considers the overall price of the contract. One or the other may be more appropriate in different circumstances.

1. Cost Analysis. The Contracting Officer should perform a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract price. A cost analysis is used when the offeror submits cost elements (e.g., labor hours, overhead, materials) in its proposal. The *FTA Pricing Guide for Grantees* also discusses the steps that must be taken to perform a cost analysis and provides

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 121 of 339
--	--------------------------------------	-------------------------	--------------------------------

guidance as to when to use the cost versus price analysis method. A cost analysis should be performed when price competition is inadequate, e.g., when only a single source is available, or when performing a contract modification. A cost analysis may not need to be performed if the price reasonableness of the proposed contract can be analyzed based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and, in all cases, where a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the among of subcontracting, and industry profit rates in the surrounding geographical area for similar work. Costs or prices based on estimated costs for contracts will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with Federal cost principles.

2. Price Analysis. If the Contracting Officer determines that competition was adequate, a price analysis may be performed instead of a cost analysis. HRT's Price Analysis Checklist and/or the Price Reasonableness Determination Checklist is used to record the price analysis. The *FTA Pricing Guide for FTA Grantees* is a valuable tool for the performance of price analysis to determine the reasonableness and the realism of prices offered by vendors, contractors, etc. The Guide describes six (6) price analysis techniques that may be utilized depending on the circumstances of the particular procurement. The accepted forms of price analysis techniques are described below.
 - i. *Adequate Price Competition*. In order to have adequate price competition, the following conditions must be present:
 - a. At least two (2) responsible offerors respond to a solicitation;
 - b. Each offeror is able to satisfy the requirements of the solicitation;
 - c. The offerors independently contend for the contract that is to be awarded to the responsive and responsible offeror submitting the lowest evaluated price; and
 - d. Each offeror must submit priced offers responsive to the express requirements of the solicitation.

If the four (4) conditions above are met, price competition is adequate unless one of the following is present:

- a. The solicitation was made under conditions that unreasonably deny one or more known and qualified offers an opportunity to compete;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 122 of 339
--	--------------------------------------	-------------------------	--------------------------------

- b. The low competitor has such an advantage over other competitors that it is practically immune to the stimulus of competition; or
 - c. The lowest final price is not reasonable, and this finding can be supported by facts.
- ii. *Prices Set by Law or Regulation are Fair and Reasonable.* A copy of the rate schedules set by the applicable law or regulation should be acquired. Once these schedules are obtained, they must be verified that the schedules apply to the situation and that it reflects the correct price.
- iii. *Established Catalog Prices.* The idea behind catalog prices is that commercial demand exists, and suppliers have been developed to meet that demand. The goal is to ensure that the Commission is getting at least the same price as other buyers in the market for these items and ensure that the catalog is not simply an internal pricing document. A copy of the document, or at least the page on which the price appears, should be requested. Established catalog prices require the following conditions to be present:
 - a. Established catalog prices exist.;
 - b. The items are commercial in nature;
 - c. They are sold in substantial quantities; and
 - d. They are sold to the general public.
- iv. *Established Market Prices.* Established market prices are based on the same principle as catalog prices except there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the offeror. If the names of other commercial buyers and sellers are unknown, it may obtain this information from the offeror.
- v. *Comparison to Previous Purchases.* Changes in quantity, quality, delivery schedules, the economy, and inclusion of non-recurring costs such as design, capital equipment, etc. can cause price variations. Each differing situation must be analyzed and ensured that the previous price was fair and reasonable. This determination will be based upon a physical review of the documentation contained in the previous files.
- vi. *Comparison to a Valid Independent Cost Estimate.* The facts, assumptions, and judgments used by the estimator must be verified. The estimator should provide the method and data used in developing the independent cost estimate. For example: Did prices come from current catalogs or industry standards? The

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 123 of 339
--	--------------------------------------	-------------------------	--------------------------------

Contracting Officer should feel comfortable with the estimate before relying on it as a basis for determining the price to be fair and reasonable.

- vii. *Value Analysis*. This method requires the Contracting Officer to look at the item and the function it performs so the worth can be determined. The decision of price reasonableness remains with the Contracting Officer; however, parties requiring value-added activity should be consulted for their expertise, and they should participate in making the decision.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 124 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XI – Bonding Requirements

A. Construction

The Commission shall require bid, performance, and payment bonds in compliance with the following:

1. Requirements for construction-related procurements as defined in 2 CFR § 200.326 if federal funds are involved, or
2. Sections 2.2-4336 through 2.2-4339 of the VPPA if Commonwealth of Virginia funds are involved.

The Federal agency may accept the Commission's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. Before doing so, the Federal agency must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

1. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified timeframe.
2. A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.
3. A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

The VPPA indicates that, except in cases of emergency, all bids or proposals for non-transportation-related construction contracts in excess of \$500,000 or for transportation-related projects authorized under the *Code of Virginia* § 33.1-12 that are in excess of \$350,000 and partially or wholly funded by the Commonwealth of Virginia shall be accomplished by a bid bond from a surety company selected by the bidder that is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work specified in the bid. The VPPA has the same bond value requirement for bid bonds and performance and payment bonds (*Code of Virginia* § 2.2-4336 – 2.2-4337).

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 125 of 339
--	--------------------------------------	-------------------------	--------------------------------

A certified check, a cashier's check, or cash escrow may be accepted in lieu of a bid, payment, or performance bond. (*Code of Virginia*, § 2.2-4338).

Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract (*Code of Virginia*, § 2.2-4337).

B. Non-Construction

For non-construction contracts, bonding requirements are discouraged except where applicable law or regulation provides for such bonding, or the Commission determines that such a requirement is necessary as part of the overall risk management plan for a project. The types and amounts of bonds should be determined by agreement among the Contracting Officer, the Project Manager, and the Risk Manager. In making such a determination, consideration should be given to the additional project costs to be expected, and the potential effect of limiting the vendor pool.

C. General Provisions

To the extent permitted by applicable law and regulation, the Commission may permit substitution of a letter of credit, cashier's check, or other form of irrevocable security in lieu of a bond.

No bond may be required unless the requirement is specifically identified in the solicitation document.

A claimant who has a direct contractual relationship with a contractor and has performed labor or furnished material in accordance with the contract documents but has not been paid in full before ninety (90) days after performing the work may bring an action on the payment bond to recover any amount due him for labor or material.

A claimant who has a direct contractual relationship with a subcontractor but has no contractual relationship with the contractor may bring an action on the contractor's payment bond only if he has given written notice to the contractor within ninety (90) days from the day the claimant.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 126 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XII – Payment Provisions

The conditions FTA applies to advance and progress payments vary depending on the timing of the payments and whether FTA has made an award for the project, or the recipient is relying on pre-award authority. (5010.1F for a detailed discussion of pre-award authority.)

A. Advance Payments

Advance payments (sometimes called mobilization payments) are payments made to a contract before the contractor incurs contract costs. Non-federal funds may be used for advance payments before a grant is received from the FTA. However, if there is no automatic pre-award authority for a project, then to maintain eligibility for FTA reimbursement after grant award, a letter of no prejudice or other pre-award authority from the FTA must be obtained prior to incurring costs.

After the award is made, advance payments may be used before the contract has incurred costs if the Commission has received FTA's advance written concurrence before making advance payments to a contractor using FTA financial assistance.

In some industries, advance payments are more or less customary or required to secure service. FTA's prior concurrence is required only if advance payments will exceed \$100,000 in contracts for public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference or convention registrations. Even in cases where FTA's prior concurrence is not required, the Commission makes advance payments at its risk, and FTA strongly encourages obtaining security for any payment.

1. Sound Business Reasons. The Commission should have sound business reasons for making the advance payment, such as a reduction in the cost of the contract as a result of the advance payment.
2. Adequate Security for Advance Payments. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of advance payments. Adequate security may take different forms depending on the industry and the nature of the goods or services to be delivered under the contract. Adequate security may include, for example, performance bonds, letters of credit, liens, or insurance. FTA will require minimum security in the amount of the Federal share of the advance payment. A performance bond or letter of credit for the full contract is not a federal requirement.

B. Progress Payments

Progress payments (sometimes called milestone payments) are payments made to the contractor prior to the completion of all contract work. The Commission may use FTA

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 127 of 339
--	--------------------------------------	-------------------------	--------------------------------

assistance to make progress payments provided it obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is made.

1. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or performance bond or taking equivalent measures to protect the Commission's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. Taking title to work in progress may not be desirable in some circumstances. The Commission should consider the costs associated with providing security and the impact of those costs on the contract price, as well as the consequences of incomplete performance.
2. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made. The Commission should be as specific as possible in its contract when describing the activities or milestones for which progress payments will be made.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 128 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XIII – Liquidated Damages

A. Risk Management

HRT shall determine whether to use, or not to use, a liquidated damages provision for a specific procurement, as part of an overall risk management program. The primary consideration in this determination is whether or not the Commission will incur a calculable economic loss should the work not be timely completed. HRT may use reasonable liquidated damages and if HRT reasonably expects to suffer damages through delayed contract performance, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult to determine. A measurement other than a day or another period of time may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase.

B. Calculation

The amount of liquidated damages must be reasonably calculated to reflect the anticipated economic damages the Commission might suffer should the standards not be met or as the result of an inadequacy or delay in contract performance and must be specified in the solicitation and contract. Such damages must be of a type that would not be readily calculated in advance of the solicitation, or which cannot be addressed by other reasonable risk management measures. In determining the amount of liquidated damages, consideration must be given to the potential cost impact on the procurement, and on the potential for limiting competition.

C. Measurement

Liquidated damages may be imposed for an entire contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate.

D. Solicitation Requirements

If it is determined that a liquidated damages provision will be included, the solicitation shall identify, with specificity, the circumstances in which the liquidated damages will be imposed and the rate to be charged. The file shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary or punitive.

E. Disposition of Recovered Amounts

All liquidated damage recovered under an FTA funded contract will be credited to the project unless the FTA agrees otherwise. Liquidated damages on a non-FTA-funded project may be applied as the Commission may determine it to be in its best interests.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 129 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XIV – Contract Approval Requirements

A. Commission Approval

No contract for goods and non-professional services in excess of \$100,000, and for professional services in excess of \$30,000, may be awarded without the advance written approval of the HRT Board of Commissioners. The Commission may, where circumstances are appropriate, make such authorization in advance of a procurement, provided that a maximum dollar value is specified.

B. President/CEO Approval

All contracts for goods or non-professional services in excess of \$50,000 must be approved by the President/CEO in writing or their designee prior to award.

C. Director of Procurement Approval

All contracts beneath the levels stated above, and above the limit of \$10,000, shall be approved by the Director of Procurement or their designee.

D. Micro-Purchases

Micro-purchases, up to \$50,000, are generally awarded via system generated purchase orders, and shall be awarded in accordance with procurement policy and procedures. Departmental and budget approvals for micro-purchases are electronic through the financial software system. After completion of the system approvals, purchase orders shall be signed by the Buyer prior to issuance for purchase orders under \$10,000.

E. Capital Design and Construction Delegations

For contracts related to capital design and construction projects, with a value in excess of one million dollars (\$1,000,000), the President and CEO may establish procedures for internal re-delegation of approval authority for contract modifications not requiring Commission approval.

F. Other Delegations

The authorizations specified above may be delegated in whole or in part, by written direction of the holder of the authority.

Designated Project Managers/Contract Administrators shall be provided with their authority in writing with each assigned contract.

G. Execution

1. All contracts, contract modifications, and other documents binding or committing the Commission in relation to a contractual action (binding documents) shall be signed by the contractor prior to execution by HRT, unless specifically approved by the President/CEO.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 130 of 339
--	--------------------------------------	-------------------------	--------------------------------

2. All contracts, modifications, change orders, termination notices, claim settlements, and other binding documents relating to a contract other than notices to proceed with a value in excess of \$100,000 or otherwise requiring approval by the Board of Commissioners shall be signed by the President and CEO, or his/her designee as described below, after such preliminary approvals as he or she may direct.
3. All binding documents with a value of \$50,000 or less and not requiring approval by the Board of Commissioners, except as otherwise specified herein, may be signed by the Director of Procurement. The President/CEO shall have the right to require that he or she sign such documents when appropriate or required to make the document legally binding.
4. Signatures on all documents shall be manual, in ink.

H. Contract Modifications

The above authorizations apply to both new procurements and to contract modifications (change orders), except as provided in the Procurement Policy. These provisions include the following:

1. Pursuant to § 2.2-4309A of the VPPA, no fixed-price contract may be increased by more than twenty-five percent (25%) of the original amount of the contract or \$50,000, whichever is greater, without the approval of the Board of Commissioners.
2. The President/CEO may delegate the approval of modifications not requiring Commission approval to capital design- and construction-related contracts valued in excess of \$1 million by written direction.
3. The President/CEO may delegate the approval of modifications not requiring Commission approval for all other contract types to the Director of Procurement.

I. Emergency Authorizations

The President and CEO may authorize contracts or contract modifications beyond the above limit of their authority in emergency situations.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 131 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XV – Contract Award

A. Award Only to a Responsible Bidder or Offeror

Under 49 U.S.C. § 5324(j) and 2 CFR § 200.318(h), contracts must only be awarded to “responsible” contractors possessing the ability to successfully perform under the terms and conditions of the contract.

Responsibility is a procurement issue that is determined by the Contracting Officer after receiving bids or proposals and before making contract award. If an offeror identifies subcontractors it will use to perform the contract should it receive an award, the Contracting Officer should consider the responsibility of the proposed subcontractors. The formality of a responsibility determination should vary according to the size, complexity, and nature of a potential contract. For orders over the simplified acquisition threshold, the documentation for the procurement should demonstrate clearly that the Contracting Officer considered the contractor’s responsibility before making an award. Details regarding determining responsibility may be found in Section IX, Receipt and Evaluation of Bids and Proposals.

B. Award to Other than the Lowest Bidder or Offeror

Federal transit law at 49 U.S.C. 5325(c) authorizes the award of a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. Additionally, contract award may be made to other than the offeror whose proposal is lowest, when based on the evaluation factors of the solicitation. In both cases, a statement in the solicitation document reserving the right to award the contract to other than the low bidder or offeror should be included.

C. Extent and Limits of Contract Award

A selection of a contractor to participate in one (1) aspect of a project does not, by itself, constitute a noncompetitive selection of the contractor’s wholly owned affiliates to perform other work in connection with the project.

D. Contract Announcement

The announcement of contract awards utilizing Federal funds will be made in accordance with FTA requirements. Award notifications will also be posted to HRT’s webpage in accordance with VPPA requirements.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 132 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XVI – Sound and Complete Agreement

All contracts shall include provisions adequate to form a sound and complete agreement. Critical elements resulting in a contract that is a sound and complete agreement include:

- A. Delivery dates.
- B. Labor rates that match between contract line items and exhibit items.
- C. Liquidated damages that include a date certain for application and dollar damages stated.
- D. Option year quantities and pricing.
- E. Performance period for services (that does not conflict).
- F. Time period or mechanics for exercising options.
- G. A reasonable review to limit ambiguities between contract terms and conditions and a contractual means to resolve the ambiguities.
- H. Payment provisions or progress payment provisions, including title to property.
- I. Basis for annual price adjustments.
- J. Coherent start dates throughout the document.
- K. Provisions for implementation or price adjustment for “unforeseen conditions” in fixed price contracts.
- L. Clear, accurate, and complete contract specifications or statements of work.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 133 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XVII – Contract Provisions

The FTA Master Agreement, 2 CFR § 200.327, and Appendix II to 2 CFR Part 200 identify specific required clauses in all FTA funded contracts.

All third-party contracts shall include provisions adequate to form a sound and complete agreement. Compliance with Federal laws and regulations results in the addition of many other contract provisions to ensure compliance with those laws and regulations.

Not all clauses apply to every contract. The applicability of clauses depends on the size and type of contract. Contracts or purchase orders should be tailored and only the clauses applicable to the specific procurement should be included. Including clauses not applicable to the procurement may restrict competition or result in higher contract pricing than necessary. Contracts must include all applicable clauses, including, but not limited to, remedies for breach, termination, equal employment opportunity, Davis-Bacon Act, Contract Work Hours and Safety Standards Act, rights to inventions made under a contract or agreement, Clean Air Act and Federal Water Pollution Control Act, debarment and suspension, Byrd Anti-Lobbying Amendment, procurement of recovered materials, prohibition on certain telecommunications and video surveillance services or equipment, and domestic preferences for procurement.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 134 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XVIII – Contracts Outside the Scope of this Policy

A. Other Acquisitions

This policy will not apply to transactions involving the purchase, sale, lease, or other transactions for real property; for joint development projects; for purchases from government-regulated entities such as public utilities which are granted market exclusivity by the regulating agency; for purchases of professional subscriptions, memberships, seminars, and expenses in connection with industry meetings and conferences; for travel and living expenses on Commission business; and other similar expenditures incidental to the routine conduct of the Commission's business. Purchases on behalf of a member jurisdiction of the Commission, utilizing funds of that jurisdiction, are excluded from this policy. However, contracts in support of such transactions (real estate consultants, for example) are subject to this policy.

B. Revenue Contracts

Contracts whose principal purpose is to generate revenue for the Commission are not subject to this policy. However, where feasible, a competitive process suitable to the type and scope of the activity involved and the availability of competition should be conducted. This policy may apply in some circumstances involving a revenue-producing activity (e.g., the employment of a contractor to produce revenue).

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 135 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XIX – Small Businesses

A. Disadvantaged Business Enterprises

It is the policy of the Commission that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have an opportunity to participate in awards of its contracts and subcontracts. The Commission shall take positive actions to ensure utilization of DBEs through its DBE Program. A review of DBE subcontracting opportunities shall be conducted for each U.S. Department of Transportation (DOT) funded solicitation over \$25,000 and a percentage goal for DBE participation established where appropriate subcontracting opportunities exist.

B. Contracting with Small Businesses, Minority Businesses, Women’s Business Enterprises, Veteran-Owned Businesses, and Labor Surplus Area Firms

When possible, the Commission should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below. Such consideration means:

1. These business types are included on solicitation lists;
2. These business types are solicited whenever they are deemed eligible as potential sources;
3. Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
4. Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
5. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring a contractor under a Federal award to apply this section to subcontracts.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 136 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XX – Procurement Planning

Project Managers should perform procurement planning and conduct market research for all procurements. The complexity, urgency, and dollar amount of the procurement should determine the extent of the planning required. The planning should integrate the efforts of all stakeholders responsible for the significant aspects of the procurement. The purpose of this planning is to ensure the Project Manager meets the needs in the most effective, economical, and timely manner.

A. Applicability

Procurement planning is required for every procurement action above the micro-purchase level. At a minimum, an independent cost estimate, budgeting, identification of potential vendors, and a date the product or services are needed is required. Procurement planning is a multi-departmental process involving, at a minimum, the initiating department, technology, safety, security, procurement, and budget. For purchases above the small purchase limit, other functions, such as risk management and the DBE office, should be involved.

See Appendix B, Checklists, Procurement Planning Milestone Chart for assistance in the development of the Procurement Plan and Scheduling.

B. Determining Needs

To support a third-party contract with Federal assistance awarded by the FTA, the Commission is required to adopt adequate procedures for determining the type and amount of property and services it needs to acquire under 2 CFR § 200.318(d).

1. Eligibility. The property and services to be acquired must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. If FTA assistance will be used to finance the cost of property or services, the property or services must be within the scope of the specific award from which that FTA assistance will be derived.
2. Necessity. The Commission must establish procedures that avoid the acquisition of unnecessary or duplicative items under 2 CFR § 200.318(d). Procedures and determinations must be based on reasonable expectations at the time of the contract, with an emphasis on achieving the broad outcomes targeted by Federal investments.
 - i. *Unnecessary Reserves and Spare Ratios*. Procedures to avoid the purchase of unnecessary property and services (including duplicative items and quantities or options not intended to be used or are unlikely under 2 CFR § 200.318(d) must be developed. For instance, the FTA seeks information about the Commission's fleet to ensure that it does not acquire more vehicles than it needs for public transportation service in its service area. Further guidance on spare ratios is contained in the most recent versions of FTA Circular 5010.1F, Award

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 137 of 339
--	--------------------------------------	-------------------------	--------------------------------

Management Requirements; FTA Circular 9050.1A, Urbanized Areas Formula Grant Programs Guidance; and FTA Circular 9300.1B, Capital Investment Program Guidance and Application Instructions.

- ii. *Acquisition for Assignment Purposes.* The Commission must contract only for its current and reasonably expected public transportation needs and must not add quantities or options to contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude:
 - a. Changes in the Commission's Needs. The quantity of property or services that it reasonably believes may be needed at the time of contract award may be different from what it actually needs during contract performance. The Commission's later needs might decrease due to changed circumstances or honest mistakes. In those situations, the Commission may assign its unneeded contract authority to another entity that would like to acquire the property or services. (Chapter V of C4220.1G, Chapter V provides information of assignments for contract rights between FTA recipients.)
 - b. Joint Procurements. These are encouraged as a strategic approach to achieving cost-effective and efficient Federal procurements and standardization in requirements. Two (2) or more recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements, as discussed more fully in C4220.1G, Chapter V, Section 3.
 - c. State or Local Government Purchasing Schedules or Purchasing Contracts. These should be utilized in a manner that supports transparency, competition, and the achievement of broader Federal and local infrastructure goals.
- iii. *Procurement Size.* The Commission should consider whether to consolidate or break out the procurement to obtain a more economical purchase.
 - a. Joint Procurements. It may be economically advantageous to enter into a joint procurement with others that have similar needs. Participants in a joint procurement may assign administrative responsibilities among themselves and may assign a lead recipient to undertake primary responsibility for the procurement. If the Commission is responsible for undertaking the joint procurement, it may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services. Participation in a joint procurement, however, does not relieve any participating recipient from the requirements and responsibilities it would have if it were procuring the property or services by itself, and does not relieve any recipient of its responsibilities under

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 138 of 339
--	--------------------------------------	-------------------------	--------------------------------

Federal procurement rules (e.g., recordkeeping) because the primary administrative responsibility for a particular action resides in an entity other than in itself.

- b. **Small Procurements.** In other circumstances, breaking out procurements may provide greater opportunities for DBEs, small and minority firms, women-owned small business enterprises, veteran-owned businesses, and businesses committed to environmental sustainability to participate. See 2 CFR §200.321(b)(3) (when possible, procurements should be divided into smaller purchases to maximize participation by these business entities) and U.S. DOT’s DBE regulation 49 CFR Pt. 26, App. A (good faith efforts to achieve DBE participation may include “breaking out contract work items into economically feasible units (for example, smaller tasks or quantities)”). However, the Commission may not split a large procurement merely to take advantage of the informal procurement methods available for procurements below the simplified acquisition threshold or micro-purchase threshold.
- iv. *Options.* Contracts may include options to ensure the future availability of property or services, so long as the Commission is able to justify those options as needed for its public transportation or project purposes.
- v. *Lease versus Purchase.* To secure the best value, the Commission should evaluate both lease and purchase options for acquiring property under 2 CFR § 200.318(d). All relevant factors should be considered, including market conditions and the expected useful life of the asset in the decision-making process.
 - a. **Leases of rolling stock and related equipment.** Section 3019(c) of the Fixing America’s Surface Transportation (FAST) Act introduced new leasing flexibilities specifically for rolling stock and related equipment. Under section 3019(c) of the FAST Act, FTA capital funds are available to pay for a lease of rolling stock or related equipment if (i) the rolling stock or related equipment covered under the lease is otherwise eligible for FTA capital assistance; and (ii) there is or will be no Federal interest in the rolling stock or related equipment covered under the lease as of the date on which the lease takes effect. This is irrespective of other FTA policies related to the eligibility of capital or operating leases. (See Circular 5010.1F, Chapter IV, regarding the eligibility of leases for other than rolling stock or related equipment.) Eligible lease costs include the cost of rolling stock or related equipment; associated financing costs, including interest, legal fees, and financial advisor fees; ancillary costs such as delivery and installation charges; and maintenance costs. For purposes of section 3019(c) of the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 139 of 339
--	--------------------------------------	-------------------------	--------------------------------

FAST Act, “related equipment” means equipment that is necessary for the operation of the vehicle (e.g., power sources, or external charging equipment) and not accessories like fareboxes.

- b. Leases of removable power sources. Under section 3019(c) of the FAST Act, the Commission may lease a removable power source of a zero-emission vehicle separately from the acquisition of the rest of the vehicle. A removable power source may include a battery, fuel cell, ultra-capacitor, or other advanced power source used in a zero-emission vehicle.
- c. Maximizing Use of Funds. When procuring rolling stock or related equipment using funds awarded under the Formula Grants for Buses and Bus Facilities Program (49 U.S.C. 5339(a)) or the Buses and Bus Facilities Competitive Grants Program (49 U.S.C. 5339(b)) the Commission should, to the extent practicable, seek to use the procurement tools authorized by section 3019 of the FAST Act. If the Commission, under either of those programs purchases fewer than five (5) buses through a standalone procurement, the FTA must be provided with an explanation regarding why a procurement tool authorized by section 3019 of the FAST Act was not utilized.
- d. Reporting required. When entering into a lease using section 3019(c) of the FAST Act, the Commission must report within three (3) years of entering the lease an evaluation of the overall costs and benefits of leasing rolling stock or related equipment and a comparison of the expected short-term and long-term maintenance costs of leasing versus buying rolling stock.
- vi. *Specifications*. Specifications that are exclusionary or discriminatory may not be used. 49 U.S.C. 5325(h). Specifications should clearly describe the property or services to be procured and state how the bids or proposals will be evaluated.

C. User Department Responsibilities

1. Procurement Background and Objectives. The planning process usually starts with the user department identifying a need, and either identifying a funding source or initiating a budgeting process, including, if applicable, a grant application. At this stage, Procurement’s only involvement is as a resource if asked about potential markets and possible pricing. The cost identified at this point tends to be an order of magnitude estimate. Items to be identified at this stage are as follows:
 - i. *Statement of Need*
 - a. Introduce the plan with a brief statement of need.
 - b. Summarize the technical and contractual history of the procurement.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 140 of 339
--	--------------------------------------	-------------------------	--------------------------------

- c. Discuss feasible procurement alternatives, the impact of prior procurements on those alternatives, and any related in-house efforts, including the feasibility of performing the work internally.
 - ii. *Applicable Conditions.* State all significant conditions affecting the acquisition such as requirements for compatibility with existing or future systems and programs and any known cost, schedule, and capability or performance constraints.
 - iii. *Costs.* Set forth the established cost goals for the acquisition and rational supporting them. At this time, the estimated cost will be a budget figure, not an “independent cost estimate (ICE).” The ICE would be developed after the final statement of work has been completed and approved.
 - iv. *Capability or Performance.* Specify the required capabilities or performance characteristics of the supplies or performance standards of the services being acquired and state how they are related to the need.
 - v. *Delivery or Performance Period Requirements.* Describe the basis for establishing delivery or performance-period requirements. Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.
 - vi. *Trade-Offs.* Discuss the expected consequences of trade-offs among the various costs, capability or performance, and schedule goals.
 - vii. *Risks.* Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effect on cost and schedule risks.
 - viii. *Industry Early Participation.* If the user department elects to involve industry in the early planning stages of the procurement, make sure all interested parties are provided with an equal opportunity to participate. Some methods of early participation including using draft solicitations, pre-solicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of the contract requirements.
2. Plan of Action. Once the procurement background and objectives are identified, the user department should work with procurement to aid in creating a plan of action, to include the following:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 141 of 339
--	--------------------------------------	-------------------------	--------------------------------

- i. *Sources*. Indicate the prospective sources of supplies or services that can meet the need. (A good market survey should provide you with this information.)
 - ii. *Competition*. Describe how competition will be sought, promoted, and sustained throughout the course of the procurement. If full and open competition is not contemplated, cite the justification and who has the authority to approve the justification. Describe how competition will be sought, promoted, and sustained for spares and repair parts.
 - iii. *Identify Key Logistic Milestones*. Identify the key logistic milestones, such as technical data, delivery, schedule, and software technical codes. Identify any known barriers to full and open competition and the effect to overcome these barriers.
3. Project Manager Identification. Once funding is secured, the user department needs to identify a schedule, based on the initial date the product or service is required, and appoint a Project Manager.

D. Project Manager Responsibilities

1. Scope or Specification. The Project Manager will be responsible for preparing an appropriate scope or specification, submitting the procurement request, and entering a purchase requisition into the financial system. The scope/specification should be transmitted to the Contracting Officer for review when the purchase request is initiated.
2. Source-Selection Procedures. Determine the source selection procedures for the procurement; considerations should include the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the procurement objectives.
3. Procurement Considerations. Contract type selection, including options, or other special contracting methods, any special clauses, special solicitation provisions, or FTA directions received, and if sealed bidding or negotiation will be used are considerations that should be communicated to the Procurement Department.
4. Budget and Funding. Include any budget estimates, with explanations as to how they were derived and discuss the schedule for obtaining adequate funds, (i.e., FTA, state, local) and the time they are required.
5. Product or Service Description. The choice of product or service description type or specifications to be used in the procurement (i.e., Functional, Performance, or Design).
6. Management Information Required. Discuss, as appropriate, what management system will be used by the Project Manager to monitor the contractor's efforts.
7. Test and Evaluation. To the extent applicable, describe the test program of the contractor and the Project Manager. Describe the test program for each major phase of

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 142 of 339
--	--------------------------------------	-------------------------	--------------------------------

the system procurement (i.e., bus purchase, rail system, and major construction contracts).

8. Logistic Considerations. Describe the assumptions to determine contractor or Project Manager support, both initially and over the life of the procurement, including consideration of the contractor or Project Manager maintenance and servicing ability. Consider the reliability, maintainability, and quality assurance requirements, including any planned use of warranties. Describe the requirement for contractor data and data rights, their estimated costs, and the use to be made of the data.
9. HRT-Furnished Property. Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or schedule for its acquisition.
10. HRT-Furnished Information. Discuss any HRT information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors. Indicate which information requires additional controls to monitor access and distribution.
11. Environmental and Energy Conservation Objectives. Discuss all applicable environmental and energy conservation objectives associated with the procurement. Discuss the applicability of an environmental assessment or environmental impact statement, the proposed resolution of environmental issues, and any environmental related requirements to be included in solicitations and contracts.
12. Contract Administration. Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced.
13. Milestones for the Procurement Cycle. Address the following steps and any other appropriate areas.
 - i. *Procurement Plan Approval*. The procurement plan is generally concurred by all personnel that contributed to the building of the plan before approval by the Department Chief or other appropriate approving official.
 - ii. *Statement of Work*. Discuss the statement of work preparation and the estimated date of its completion.
 - iii. *Specifications*. The specification preparations for major procurements are generally accomplished by a consultant/contractor. Discuss when this contract has/will be awarded and the time for completion. Address how organizational conflict of interest issues will be handled.
 - iv. *Data Requirements*. Discuss the need for data and how it will be acquired.
 - v. *Purchase Request*. Indicate the date the purchase request package will be provided to procurement. This package should include assurances that funds

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 143 of 339
--	--------------------------------------	-------------------------	--------------------------------

are/will be available when needed. Also, an independent cost estimate (ICE) should be included with the purchase request and must be submitted before bids or proposals are received.

- vi. *Justification and Approval.* If other than full and open competition procedures will be used, an appropriate HRT official must sign the justification.
- vii. *Completion of the RFP/IFB.* Indicate the number of workdays required to prepare the solicitation package after receipt of all necessary information.
- viii. *Issuance of Public Notification.* Procurement issues public announcements on the Procurement page of HRT's website as far in advance as possible in its Upcoming Solicitations before the solicitation is released. The more interest HRT has in its requirements, the more beneficial it is.
- ix. *Issuance of the Solicitation.* The solicitation will establish the date when bids or proposals are due. Ensure sufficient time is allowed for bidders or offerors to prepare their bid/proposal. Allow thirty (30) to forty-five (45) days for most construction projects and longer (60 plus days) for rail systems. A pre-bid/pre-proposal conference should be held for large, complex, or construction projects. Leave sufficient time between pre-bid/pre-proposal conferences to allow the industry to adjust their bids/proposals before the due date.
- x. *Beginning and Completion of Negotiations.* Depending upon the number of responses to the RFP and the complexity of the negotiations, more than one (1) round of discussions may be required. After discussions are complete a due date for revised final proposals/BAFOs should be established. Take this into consideration when establishing milestones.
- xi. *Contract Preparation, Review, and Board Approval.* Contract preparation, staff review, legal review, and Board approval need to be addressed when establishing milestones.
- xii. *Contract Award.* Once the contract has been approved, the contractor must be given time to provide insurance documents, bonds, etc. before the Notice to Proceed can be issued. Some requirements may necessitate a substantial mobilization period which also needs to be considered when establishing a milestone chart.
- xiii. *Stakeholders Signatures and the Approval Authority.* When the acquisition plan is completed, the Stakeholders should have their signatures on the acquisition plan along with that of the final approving authority including the date of their signature.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 144 of 339
--	--------------------------------------	-------------------------	--------------------------------

14. Independent Cost Estimate. The independent cost estimate (ICE) is the first step in determining cost/price reasonableness of a procurement and must be completed for every procurement action exceeding \$100,000. The Project Manager will be responsible for obtaining an ICE of the project, based on the scope and specifications as written. The ICE may be completed in-house or by an external estimator independent of any offerors. The ICE must be independent of, and received prior to, any bids/proposals in response to the solicitation. The ICE must include detailed information as to its development and/or source, detailing how it was derived and the basis of the estimate, and must include supporting documentation of the detailed costs. The ICE must be maintained in the official solicitation file.
15. Submission to Procurement. The Project Manager should submit the completed procurement request form, with the required supporting documentation, to the Procurement department. The Director of Procurement will appoint an appropriate Contracting Officer for the procurement, based upon the required level of skill and expertise needed, and anticipated workloads.

E. Procurement Considerations

The Contracting Officer is to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award. The Contracting Officer, with assistance from the Project Manager, will develop a procurement plan to guide the solicitation process. The elements of a procurement plan should include:

1. Procurement Type (IFB, RFP, RFQ, etc.), including completion of the Method of Procurement Decision Matrix;
2. Contract Pricing (Firm Fixed Price, Fixed Unit Price, Cost Plus Fixed Fee, etc.);
3. Any requirement for bonding or liquidated damages;
4. Key dates, considering the need date, any startup period involved, Commission schedules, resource availability, issue date, advertisement requirements, pre-bid/proposal conference (if applicable), deadline for questions, due date, and tentative award date;
5. Involvement by other HRT staff, including the risk management department and DBE functions, as well as specialized expertise in other areas that may be required;
6. For an RFP, identification of evaluation criteria and sub-criteria, relative weights, and potential evaluation panel members;
7. Any preliminary steps that must be taken before a solicitation is used, such as preparation of design drawings. If these involve resources outside HRT, a separate procurement action may be required for them;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 145 of 339
--	--------------------------------------	-------------------------	--------------------------------

8. Identification of potential markets and vendors, utilizing all available resources, including the internet;
9. Identification of the need for advertising in national or specialized trade media, including their advertising lead times and deadlines, to ensure timely publication; and
10. Identification of any special requirements for a successful procurement, such as an industry review.

F. Solicitation Document

The Contracting Officer should develop the solicitation document, based upon the procurement plan, and post the solicitation to the Procurement web page as an upcoming procurement.

G. Disadvantaged Business Enterprise and Risk Management Input

Upon receipt of the draft specification, the Contracting Officer will incorporate it into the base solicitation document and forward it to the designated Risk Management Department for determination of insurance requirements and to the DBE Program Manager for determination of a DBE goal. The draft should also be sent to the Project Manager for review. It may also be sent to other HRT staff as appropriate. The Contracting Officer will share responses from the Risk Management Department and DBE Program Manager with the Project Manager, and they should jointly review the insurance requirements and DBE goal for appropriateness and any potential impact on competition.

H. Final Review

When consensus is reached upon all elements of the solicitation, the procurement schedule and dates should be given a final review and revised if necessary. The availability of an appropriate conference space for pre-bid or pre-proposal meetings, and for public bid openings should be confirmed and the rooms reserved. The procurement plan may be updated to reflect any revisions that occurred during the planning process.

I. Vendor's List

The Contracting Officer is responsible for maintaining a current vendor's list of potential vendors, including those pre-identified, those requesting the solicitation package, and those accessing the solicitation on the Procurement web page.

J. Solicitation Issuance and Distribution

The Contracting Officer shall ensure that the solicitation is put in final form, in PDF format, posted to the Procurement web page, advertised in a timely fashion, and emailed (either the actual solicitation or a notice of its availability) to identified potential vendors. The Contracting Officer will transmit the solicitation package internally to the Project Manager and any other appropriate HRT staff.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 146 of 339
--	--------------------------------------	-------------------------	--------------------------------

K. Evaluation Panel

For an RFP, the Contracting Officer should notify Evaluation Panel members of their appointment and provide them with information regarding their responsibilities, the projected evaluation schedule, and copies of the solicitation. Any amendments to the solicitation should be distributed internally to the same people.

L. Planning File Content

The procurement planning file shall include reasonable and adequate documentation of the procurement process. File documentation should be proportional to the size and complexity of the procurement. The procurement planning file should, at a minimum, include the following:

1. Procurement Request Form
2. Technical specification (Scope of Work)
3. Prospective vendors list
4. Independent Cost Estimate (if applicable)
5. Insurance requirements (if applicable)
6. DBE participation goal (if applicable)
7. Other pre-solicitation correspondence
8. Determination of solicitation type
9. Industry survey/vendor contacts (if applicable)
10. Determination of pricing structure
11. Solicitation/award schedule

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 147 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XXI – Independent Cost Estimate

Independent Cost Estimates (ICEs) are the Commission’s best estimate of a contract’s potential costs and are an important tool throughout the process of planning and awarding contracts.

An ICE should be developed without bias and typically without contractor input, and when done correctly, it is directly tied to comprehensive market research. The ICE supports efforts to ensure that the cost of meeting the Commission’s requirements for the service being acquired is known. The format and contents of the ICE will vary in accordance with the complexity and value of the requirement. It is imperative to remember that the ICE is a procurement-sensitive document and should be handled as such.

The content of this Section will help explain the importance of the ICE and its purpose. It is not intended to cover every possible acquisition but rather presents information regarding the minimum requirements for ICE documentation. It will also assist with understanding the elements of a cost estimate and the tools available for its development.

A. Background

The ICE is a cost estimate developed by a Project Manager, based on the requirements of the Scope of Work. An ICE is required for every new acquisition that exceeds \$100,000.

The purpose of the ICE is to develop an assessment of the probably cost of services or goods being acquired and to help determine the reasonableness of an offeror’s proposed cost and the offeror’s understanding of the work. Further detail is required for cost-reimbursement type contracts. This should include a cost breakdown of all cost factors required for a contractor to complete the work, including an estimate of technical staff labor categories, hours, and rates; direct material and supplies; subcontracting; consultant services; travel, indirect rates; and fee.

Prior acquisition history or similar acquisitions should provide the basis for the preparation of an ICE, as well as the data provided by thorough market research.

B. Principles

The ICE is used during all phases of a program to include Life Cycle Cost and Total Operating Cost of a Services Acquisition project, as well as more limited estimates related to a subset of a current contract or even for a contract option period within an overall period of performance. It is:

1. Developed by the Project Manager without contractor influence;
2. An aid in achieving best value and shared contract risk;
3. Based on market research;
4. An analysis of reasonable and required resources to perform the contract;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 148 of 339
--	--------------------------------------	-------------------------	--------------------------------

5. The projected, anticipated, or probable cost/price of a proposed acquisition; and
6. A benchmark for establishing cost/price analysis.

The ICE is used to:

1. Project and reserve funds for the procurement as part of the acquisition planning process;
2. Determine if assumptions in a cost proposal are based on the same or similar assumptions;
3. Assist in decisions related to project viability, structure, and resource requirements;
4. Conduct an Analysis of Alternatives;
5. Inform design trade-off decisions;
6. Conduct in-process reviews of projects; and
7. Satisfy public law and oversight requirements.

The ICE is prepared:

1. For all new services acquisitions above \$100,000;
2. Prior to Request for Proposal (RFP), Request for Quotation (RFQ), and Invitation for Bids (IFB) for new fixed-price contracts and cost-reimbursement contracts;
3. To cover the contract period of performance to include transition and multi-year periods;
4. When requested for some individual projects under an existing contract;
5. When requested by the Contracting Officer for any contract less than \$100,000; and
6. When there is a change to the Scope of Work that impacts the contract cost.

The ICE is typically not required when:

1. Modifying a contract to exercise priced options or to provide incremental funding; or when;
2. Placing relatively small dollar task/delivery orders under an indefinite-delivery contract for fixed-price services or supplies.

The estimate submitted with the procurement request shall include a basis for the estimate using current validated data, whether at the price level or at the cost element level. The estimator must provide an adequate narrative validating the source or the basis of the information comprising the estimate and ensuring the estimate is repeatable. Cost element or price values alone are not adequate without a basis to support the estimated values.

In the narrative of the ICE, the five primary questions to be answered are:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 149 of 339
--	--------------------------------------	-------------------------	--------------------------------

1. How was the estimate made?
2. What assumptions were made?
3. What information/tools were used?
4. Where was the information obtained from?
5. How did previous estimates compare with prices paid?

Prior to being accepted, the ICE preparer should ensure that:

1. The ICE contains enough detail to assist the Contracting Officer in the evaluation of the reasonableness of offered prices during the Source Selection process, especially for relatively high-dollar-value, complex acquisitions;
2. The ICE provides sufficient narrative and analytical detail, to include reference material, to support its preparation; and
3. The ICE includes a certification that it was developed independently prior to seeking any formal proposals from contractors.

C. Application

1. Importance of a Quality ICE in Acquisitions. The ICE is the Commission's estimate of the resources and projected cost of the resources a contractor will incur in the performance of a contract. A sufficiently detailed and accurate ICE establishes a realistic budget. During source selection, it aids the Contracting Officer in evaluating the reasonableness of offered prices. When appropriate, the Contracting Officer will document differences between the ICE and final contract award value in the contract file.
2. Time Phasing of Costs. In addition to looking at acquisition costs aggregated in various ways, the Project Manager must also be able to determine when these costs will be incurred. It is important to allocate the costs to the fiscal years when funds will be required.
3. Total Ownership Costs/Life Cycle Cost in Acquisitions. As distinguished from the costs of an ICE for a particular contract requirement, Project Managers are encouraged to look at all the costs associated with an acquisition requirement.

Total Ownership Cost (TOC) in acquisitions is defined as the sum of financial resources needed to organize, train, support, sustain, manage, and operate the contract service requirement while meeting mission goals, policies, and standards of readiness, environmental compliance, safety, and quality of life concerns. Sometimes even what appears to be a simple acquisition may require a level of organizational commitment, financial resources, labor, infrastructure, and other costs that are not reflected in the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 150 of 339
--	--------------------------------------	-------------------------	--------------------------------

ICE. The TOC of an acquisition should be the same as its Life Cycle Cost (LCC), which includes all the elements, appropriations, and cost categories.

D. Performing an Independent Cost Estimate

An Independent Cost Estimate (ICE) must be completed before receipt of bids or proposals. The most common ICE methods are as follows:

1. Publicly Published Price Lists. Publicly published price lists are typically appropriate for goods. Price lists or catalogs are acceptable price sources for off-the-shelf items such as technology, and office supplies. Price lists are often available online or in printed advertisements. Prices posted on a store shelf are also acceptable.
2. Recently Invoiced Price. Recently invoiced pricing is typically appropriate for goods or services. If similar goods or services have been recently purchased, a recent invoice may help determine a fair and reasonable price. Recently may vary according to circumstances. For instance, technology procurements over six (6) months old are not sufficiently relevant to determine a current fair and reasonable price range.
3. Outreach/Market Survey. Outreach and market surveys are typically appropriate for goods or services. Other agencies may be contacted to determine a fair and reasonable price, so long as the agency is of similar size and the purchase or project is of similar scope.

E. Market Research

Robust market research facilitates the development of a sound ICE by:

1. Identifying potential vendors and published labor rates;
2. Scoping market supply and demand and associated cost impacts;
3. Identifying how other potential cost drivers such as certification standards, geographic, seasonality, and other factors impact direct and indirect costs; and
4. Evaluating previous buys for relevancy and currency.

The [Market Research Report Guide for Improving the Tradecraft in the Acquisition of Services](#) provides useful information on preparation, considerations, and methods as well as optional report templates for market research.

Sources of Information

- Historical cost information such as previous prices and quantities purchased as part of prior contracts, current or previous documents, and the previous ICE. It is important to ensure that the information is relevant and recent and that the sources of information are for similar services;
- Commercial pricing sources, catalogs, and market surveys;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 151 of 339
--	--------------------------------------	-------------------------	--------------------------------

- Comparable data for specific firms/industries;
- Contracting Office personnel, including the Contracting Officer;
- Requests for Information (RFIs);
- Industry Day; and
- General Services Administration (GSA).

It is important to note that not any one of the aforementioned sources of information will provide the Project Manager with everything that they need in order to develop a sound ICE; however, the Project Manager can get bits of information from each, as each has its own strengths and weaknesses.

F. Cost Estimation Methods

This section is not intended to address *how it is done* but rather is a reference list for the developer of the ICE to recognize the terms and a quick reference guide.

An ICE can contain any combination of cost estimation methods and expert opinions. The four (4) primary cost estimation methods used to develop cost estimates are:

1. Analogy (Top Down)

- i. Estimates are based on historical data of a similar item/system.
- ii. Adjusts the known costs by adding or subtracting elements of material, time, and economic or inflationary changes, as necessary.
- iii. Generally, less costly, and less time-consuming than other methods, but also generally less accurate.
- iv. Example: In the past when landscaping at location “A” was purchased, it was \$20,000 for 100,000 square feet; therefore, estimates are made based on similar acquisitions.

2. Parametric (Statistical)

- i. Relies on statistical analysis to establish a relationship between a technical characteristic and the cost of the system.
- ii. When there is a simple mathematical relationship between two (2) tasks/elements, it is known as “Factor” cost estimating. For example, initial set-up is 10% of the operation and maintenance cost.
- iii. Measurable base units may include person-hours, trips, moves, units, and square feet.
- iv. Use in early planning stages of a contract service when specific tasks/elements are not yet known.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 152 of 339
--	--------------------------------------	-------------------------	--------------------------------

v. Example: Painting: 500 square feet x \$15 per square foot = \$7,500.

3. Engineering (Bottom Up)

- i. Estimates are very detailed, separated into tasks/elements.
- ii. The cost of individual tasks and elements are estimated to the greatest level of specified detail.
- iii. The task/element costs are then summarized or “rolled up” to higher levels.
- iv. Cost and accuracy influenced by the size and complexity of tasks/elements.
- v. Example: An enterprise-wide telephone system with switches, components, and handsets.

4. Actual Costs (Extrapolation)

- i. Typically associated with tasks/elements in progress or material items when taking the actual cost of previous production lots.
- ii. Adjusted for inflation, labor saving, production and technology changes, and other factors.

In the absence of one of the four (4) primary cost estimates, the Project Manager may have to rely on the expert opinion cost estimation method. This method relies on subject matter experts’ opinion of what something should cost and is typically used as a last-resort method.

G. General Best Practices

- 1. Employ a team approach to include department members, contracting, finance, and other stakeholders as appropriate.
- 2. Understand the requirement.
- 3. Be sure to:
 - i. Engage early and often with other members of the project team.
 - ii. Take it one piece at a time: Do not get overwhelmed!
 - iii. Thoroughly document ICE methodologies, assumptions, sources, and calculations.
 - iv. Ensure estimate reflects the period of performance, inflated properly for multi-year ICEs.
 - v. Use multiple sources of market research – not just one.
 - vi. Include the standard cost elements (e.g., direct labor, overhead), but also tailor to meet specific needs.
 - vii. Ensure that the estimate is updated, as appropriate.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 153 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XXII – Contract Administration Functions

The broad goal of contract administration is successful contract completion. The contract administration process is vital to the integrity of the procurement system, which requires that goods and services be provided, invoiced, and paid in the manner prescribed in the contract. Contract administration ensures that the contractor performs in accordance with the terms, conditions, and specifications of the contract. The contract solicitation phase begins at planning and is concluded at award. The administration phase of the procurement process begins at the award and is concluded at the completion of the warranty period for the equipment, goods, and services procured. The Contracting Officer maintains primary contractual responsibility, as part of the procurement function, with the assistance of the Project Manager, and as necessary, other departments. Based on the size and complexity of the contract, routine meetings and correspondence between the Contracting Officer and the Project Manager are essential to the success of the project.

A. Contract Solicitation

Contract solicitation is the pre-award administration of the procurement action to ensure compliance with FTA guidelines and HRT procurement policy.

B. Solicitation File Documentation

The documentation contained in the solicitation file will be maintained by the Contracting Officer. The purpose is to record the pre-award actions taken and to document the decisions made, and the rationale for, matters which may arise from or result in controversy or dispute.

The procurement department maintains the official solicitation file, including all official documents relating to the administration of the solicitation process, evaluation of bids and proposals, as well as appropriate internal documentation and analyses supporting the formal correspondence and official documents.

For the procurement of rolling stock, it will comply with 49 U.S.C. § 5325 (Contract Requirements), 49 U.S.C. § 5323(j) (Buy America Requirements), 49 U.S.C. § 5323(m) (Pre-Award and Post Delivery Requirements), 49 U.S.C. § 5318(e) (Bus Testing Requirements), 49 U.S.C. § 5323(u) (Limitation on Certain Rolling Stock Procurements), and their impending regulations. In order to maintain compliance, all Pre-Award and Post Delivery reviews are required to be performed and fully documented as part of the official solicitation file. See Appendix B.

C. Contract Administration

Contract administration is the post-award administration of the contract to ensure compliance with the terms of the contract by both the contractor and the Commission.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 154 of 339
--	--------------------------------------	-------------------------	--------------------------------

D. Contract Administration File Documentation

The documentation contained in the contract file will be maintained by, or on behalf of the Contracting Officer. The purpose is to record the post-award actions taken by the contracting parties in relation to the requirements of the contract and to document the decisions made, and the rationale for, matters which may arise from or result in controversy or dispute.

Each department involved in the performance of a contract will maintain departmental files relating to the contract, reflecting its involvement with the administration of the contract. For matters relating to contract administration, the Procurement Department will maintain the official file including all official correspondence and documents relating to the administration of the contract, as well as appropriate internal documentation supporting the formal correspondence and official documents.

Any contract involving the expenditure of public funds will be subject to review/audit during and after performance to ensure that, at the very broadest level, the Commission and its funding agencies obtained appropriate value for funds expended. At the contract administration level, the contract file (standing alone and without need of interpretation or augmentation by the Contracting Officer or others) must demonstrate that the Commission and the contractor have complied with the terms of the contract (i.e., bonds have been submitted, contractual issues requiring the approval of the Contracting Officer have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.), and that contractual and administrative issues in dispute have been addressed and settled in accordance with good administrative practice and sound business judgment. All files will be retained in accordance with the Commission's Record Retention Policy. All files will be sent to Records Management for scanning and retention in the electronic archive system after the contract has been signed. All documents, including e-mail correspondence relating to the procurement, must be included in the file. As new records are created during the life of the contract, they will be sent to Records Management to add to the scanned records.

E. Contract Administration File Contents

The contract file will include reasonable and adequate documentation of the administration of the contract. The contract file should tell the story of the contract from award through completion of the warranty period. See the Solicitation and Contract File Checklist (Appendix B) for details regarding what is to be included in the contract file. File documentation should be proportional to the size and complexity of the procurement. For all contracts, the Contracting Officer will ensure that the contract administration file includes all appropriate documentation.

F. Contract Administration Functions

Each type of Contract will have different contract administration actions, and the documentation required to support that administration will differ as well. Supply contracts have

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 155 of 339
--	--------------------------------------	-------------------------	--------------------------------

different specific administrative actions than construction contracts do, just as fixed price contracts are administered differently than cost-reimbursement contracts.

The Contract Administrator/Project Manager is designated during the planning phase of the procurement. The Contract Administrator is HRT's contractual point of contact with the contractor and is identified in the contractor's Notice of Award. The Buyer, HRT's designated point of contact for small purchases, is designated in the body of the purchase order.

The Project Manager is assigned technical responsibility for completion of the contract and is the contractor's point of contact on all technical matters. Project Managers must be cautioned to keep the Contracting Officer informed of any problems or potential problems regarding a contract or purchase order, to ensure that action is taken to correct problems before they become critical. The PM should provide copies to the Contracting Officer of technical administration files, and relevant correspondence during the performance of the work.

G. Contract Compliance

Contract administration ensures that all parties comply with the terms of the contract, e.g., milestones, metrics, and deliverables. Depending on the type and complexity of the procurement, it may be appropriate to conduct a contract kickoff meeting to establish roles and responsibilities and provide any needed clarification. Managing and monitoring of contract performance includes:

1. Ensuring that milestones are achieved, and timelines are met.
2. Ensuring compliance with risk management strategies.
3. Tracking outcomes, e.g., revenue generation, client satisfaction levels, percentage of disadvantaged businesses subcontracted.
4. Reconciling invoices against contracted price.

Methods of contract managing and monitoring may include:

1. Site visits.
2. Formal or informal audit.
3. Regular status meetings.
4. Performance review and follow up, including corrective action plan.
 - i. Status reports.
 - ii. Performance and activity reports.
5. Third-party managing and monitoring.
6. Inspection and testing.

Managing contract compliance includes:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 156 of 339
--	--------------------------------------	-------------------------	--------------------------------

1. Ensuring that any certificates of insurance are valid and remain current.
2. Confirming receipt and validation of bonds, i.e., payment and performance, if applicable.
3. Monitoring the timeline for contract renewal.
4. Addressing issues of nonperformance or noncompliance, remedies, and determinations of breach.

H. Closeout

Upon closeout of a contract in excess of the small purchase limit, the Contracting Officer and Project Manager should jointly conduct an evaluation of the contractor's performance. The evaluation should be reviewed with the contractor and revised if appropriate. The final evaluation should be retained in the contract file for future reference.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 157 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XXIII – Contract Modifications (Change Orders)

A contract modification, also called (especially in construction contracts) a change order (CO), is broadly defined as any alteration which changes a contract document after it has been executed by the parties. It may or may not involve changes to the contract price or schedule, although those are the two (2) most frequent elements of a CO; changes to the contract terms, names of the parties, or the specification or scope of services requires a CO. There are two (2) general types of COs:

A. Changes within the general scope of the contract; and

B. Cardinal changes.

1. Cardinal Changes Restricted. A cardinal change that is beyond the scope of the competition conducted to achieve the original contract is, effectively, a new contract. Accordingly, HRT must not allow a cardinal change to a contract without a justification for making a noncompetitive award.
2. Identifying Cardinal Changes. Recognizing a cardinal change can be nuanced and fact specific. The Contracting Officer should consider the circumstances of the contract and the change at issue considering the original competition. It may require the Contracting Officer to consider whether the change was reasonably foreseeable to the contractor and the other offerors at the time. Additionally, the Contracting Officer should be guided by its local procurement rules and contract law. Although the FTA has provided additional guidance in its Best Practices Procurement & Lessons Learned Manual, the FTA has not developed a definite list of acceptable contract changes. There is no specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases.
3. Tests. The Contracting Officer should consider whether a contemplated change is so drastic that it exceeds the scope of the contract's changes clause. This is not the same as the ultimate question, which is whether the change is outside the scope of the competition that procured the contract, but in practice these questions overlap. Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was contemplated during discussions with offerors or at the time the original contract was entered into, or the cumulative impact on the contract's quantity, quality, costs, and delivery terms.
4. Changes in Quantity. Very large changes to quantities may be cardinal changes. However, to categorize any change in quantity as a prohibited cardinal change would be impractical and would unnecessarily restrict the Commission's discretion to adjust a contract contemplated fairly and reasonably by the parties when they entered into the contract.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 158 of 339
--	--------------------------------------	-------------------------	--------------------------------

5. Rolling Stock. In the case of rolling stock, a substitution of major end items not contemplated when competition for the original award took place generally would be a cardinal change. For example, a change from a high-floor to a low-floor vehicle, or a change from a single-deck to a double-deck vehicle, could be cardinal changes. Changing an engine or fuel type might result in a cardinal change depending on the circumstances surrounding the project and the terms of the solicitation. Changes to seating, fabrics, colors, exterior paint schemes, signage, and floor covering, and other similar changes usually will not be cardinal changes.
6. Federal Procurement Standards. The standards applied in Federal Government contracting related to cardinal changes and the Federal Competition in Contracting Act (CICA) are well developed through Federal court decisions, Federal Boards of Contract Appeals decisions, and U.S. Comptroller General Decisions. These may provide guidance for analyzing whether a change would be a cardinal change. These Federal authorities are not controlling on the Commission. Other guidance can be found in FTA's Best Practices Procurement & Lessons Learned Manual.

An example of the difference would be a contract to build a garage: adding a window would be within the general scope of the contract, while adding a house would not. A cardinal change can also be created by a series of incremental COs that have the cumulative effect of changing the scope beyond the original intent of the parties.

Prior to issuing a contract modification, the Project Manager should document that the change is necessary, and that the modification as issued will attain HRT's objectives. The Contracting Officer must verify the funding, through documentation, that an approved purchase requisition exists. If the proposed modification will affect the contract's insurance or DBE requirements, the change in requirements should be addressed in the request for change proposal. If the change includes steel, iron, manufactured products, or construction materials, a Buy America and Build America, Buy America Act certification is required.

Change orders may be initiated by either HRT or the contractor. In either case, the formal process begins with a request by HRT for the contractor to submit a proposal identifying both the scope and cost of the proposed change. The request should be detailed enough for the contractor to submit a firm fixed price, or hourly rates on a not-to-exceed basis if the original contract was on a reimbursable-cost basis. If the proposed change will affect the contract's insurance requirements, the change should be addressed in the request for a change proposal. Occasionally in construction, the precise scope of the work cannot be reasonably determined until the work is undertaken; in those cases, the change order may be issued on the basis of payment for time and materials, including a markup for overhead and profit. This pricing formula, however, should be used only when absolutely necessary, and the scope should only extend to the point where a firm price can be established.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 159 of 339
--	--------------------------------------	-------------------------	--------------------------------

A contract modification requires a cost or price analysis if expected to exceed \$100,000. The method or degree of analysis is dependent on the facts surrounding the particular procurement action, but as a starting point, concurrently with the submittal of the change request to the contractor, HRT is required to prepare an independent cost estimate. The independent cost estimate is to be completed by a designated independent party, with technical expertise. To the greatest extent possible, both the estimate and the contractor's pricing should be based upon unit prices previously established in the contract.

The contractor's proposal should be reviewed and approved utilizing the same evaluation process as was used in determining contractor responsiveness and responsibility in the original contract award. Responsiveness would address primarily whether the change proposal adequately addresses the requested scope; responsibility issues would include price reasonableness (a cost or price analysis is required for every contract action, including change orders), schedule impacts; impact on the DBE goal, and the qualifications of the personnel or subcontractors proposed to perform the work. If the change is outside the scope of the contract, it is considered a sole source procurement and must be justified as such. The Contracting Officer, in consultation with the Project Manager, must investigate whether other sources for the changed work are reasonably available, and document the file accordingly. The same process should be followed for in-scope changes if the contractor's price cannot be determined to be fair and reasonable. Change orders are subject to negotiation, which should be undertaken jointly by the Project Manager and the Contracting Officer.

Contract modifications are subject to the approval standards set forth in the policies and procedures, including Commission approval if required.

In some instances, particularly during a construction project, following the above approval process may cause unreasonable and costly delays to the project. Under these circumstances, the Project Manager, upon authorization by the Contracting Officer, may direct the contractor to proceed with the change, pending completion of the formal change order process. Such direction must be limited as to time and cost, and the formal change order quickly initiated and processed. No such direction, or any time and materials change order, shall be issued without a defined cap on the amount the contractor may spend prior to the issuance of a formal change order. Additionally, any work performed by the contractor without the express direction of the Contracting Officer, is performed at the risk of the contractor.

The Contracting Officer shall maintain a separate file for change orders as part of the procurement record containing the documentation described in this Section.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 160 of 339
--	--------------------------------------	-------------------------	--------------------------------

Section XXIV – Contract Closeout

It is generally the responsibility of the Project Manager (PM) to establish that the work under a contract has been completed and the contract is ready for closeout. The Contracting Officer is responsible for ensuring completion of the contract closeout process, prior to release of retainage and final payment, including completion of the closeout checklist. The Contract Closeout Checklist should be used to document completion of the closeout process. See Contract Closeout Checklist (Appendix B).

When the PM determines that the work is complete, the PM should notify the Contracting Officer by memorandum. The Contracting Officer should then issue the Contract Closeout Checklist to the PM to begin the closeout process. The PM should forward the completed checklist documenting that the contract is complete, and all required deliverables have been inspected and accepted.

A. Contractor Performance Evaluation Report

The Project Manager, in conjunction with the Contracting Officer, should complete a Contractor Performance Evaluation, to document the contractor's performance for future source selection decisions. Input from the DBE office, the risk management office, and end users of the product or service should be included in the report. The contractor may be furnished with the report and given an opportunity to submit comments, rebutting statements, or additional information. The contractor's comments should be retained in the report file.

B. Proof of Insurance Coverage

For all contracts requiring the contractor to maintain insurance for its products or services (e.g., professional liability or product liability insurance) beyond the end of the contract term, the Contracting Officer should obtain proof of insurance from the contractor as part of the closeout process. This documentation should be submitted to the Risk Management department for approval prior to the release of retainage and final payment to the contractor.

C. Release of Bonds

When all work is completed and accepted, and all subcontractors paid, HRT must release the contractor's bond surety from any further obligations on behalf of the contractor. This is usually completed on a form called "Consent of Surety" provided by the surety, which must be reviewed by both the Project Manager and the Contracting Officer; if any questions arise regarding the appropriateness or wording of the release, legal counsel should be consulted.

D. Contractor's General Release

The general release is important to obtain prior to final payment because it assures HRT that there will be no further claims from the contractor once the final payment has been made. As

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 161 of 339
--	--------------------------------------	-------------------------	--------------------------------

part of the contract closeout process, the Contracting Officer must send the contractor a closeout letter that includes the contractor's "general release." The release should say that for the payment of a sum certain, which is the final contract amount agreed to by both parties, the contractor releases the Commission from any and all claims of every kind arising directly or indirectly out of the contract. The release should also contain a certification that the contractor has paid its subcontractors and suppliers for all their labor, materials, services, etc. furnished under the contract. The release is to be signed by a corporate official authorized to bind the contractor.

E. Warranty

The contract specifications may require that individual warranties or guarantees be furnished for various installed equipment or systems. For each completed contract requiring warranties, the Contracting Officer should ensure that the warranty is received prior to release of retainage and final payment. A register should be created in the contract file, identifying:

1. Each individual item of equipment and system for which a warranty or guarantee is specified (roofing, doors, sealants, etc.);
2. The pertinent section in the contract specification;
3. The name of the company providing the warranty;
4. The expiration date of the warranty; and
5. Contact information for the providing company.

F. Close-Out Audits

In contracts paid on a cost-plus basis, a close-out audit may be required to verify provisional overhead rates used for payments during the course of the contract. In addition, HRT, its auditors, or the FTA, may require an audit to verify the appropriateness of amounts paid to the contractor. Audits must be conducted by auditors who are independent from the third-party contractor. HRT may have such audits conducted by its own personnel or may retain an independent accounting firm procured through a competitive process. HRT may also request that a federal agency such as the Defense Contract Audit Agency (DCAA) conduct the audit; however, such audits are dependent upon the availability of staff time; however, the Federal Government maintains a continuing audit function at some contractor locations, and these auditors are more likely to be available for such audits. Requests for Federal audit assistance should be directed to the FTA. Any negotiations resulting from such audits must be documented in the contract file and reported to the FTA.

Upon closeout of the contract, all files will be sent to Records Management for scanning and retention in the electronic archive system. All documents, including e-mail correspondence relating to the contract, must be included in the file. Any new records created following

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 162 of 339
--	--------------------------------------	-------------------------	--------------------------------

contract closeout (e.g., documents concerning warranty issues) will be sent to Records Management to add to the scanned records.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 163 of 339
--	--------------------------------------	-------------------------	--------------------------------

This page intentionally left blank.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 164 of 339
--	--------------------------------------	-------------------------	--------------------------------

APPENDICES

Appendix A – Quick Reference – Methods of Procurement.....	166
Appendix B – Checklists.....	169
1. Method of Procurement Decision Matrix.....	170
2. Procurement Checklist (Under \$100,000).....	171
3. Solicitation and Contract File Checklist.....	172
4. Scope of Work Checklist.....	174
5. RFP Evaluation Process Checklist.....	187
6. Contractor Responsibility Checklist.....	189
7. Price Analysis Checklist (Over \$100,000).....	191
8. Cost Analysis Worksheet.....	193
9. Price Reasonableness Determination.....	194
10. Cooperative and Piggyback Procurement Checklist.....	197
11. Rolling Stock Pre-Award Checklist.....	199
12. Rolling Stock Post Delivery Checklist.....	201
13. Contract Closeout Checklist.....	203
14. Protest File Checklist.....	204
Appendix C – Forms.....	205
1. Request for Quote.....	206
2. Procurement Request Form.....	207
3. Independent Cost Estimate Form.....	217
4. Time and Material Justification.....	223
5. Sole Source Justification Request Form.....	226
6. Emergency Procurement Justification and Authorization.....	231
7. Bid Opening Record.....	235
8. Contractor Reference Verification Form.....	236
9. Procurement Summary/Record of Procurement History.....	240

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 165 of 339
--	--------------------------------------	-------------------------	--------------------------------

Appendix D – Other Resources (Provisions, Certifications, Reports, Forms, and Other Matrices)..... 245

1. Procurement Governing Directives..... 246

2. Third-Party Contract Provisions..... 249

3. Applicability of Third-Party Contract Provisions..... 253

4. Principal Statutes, Regulations, and Resources..... 256

Appendix E – Boilerplate General Conditions (Third-Party Contract Provisions)..... 258

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 166 of 339
--	--------------------------------------	-------------------------	--------------------------------

APPENDIX A

QUICK REFERENCE METHODS OF PROCUREMENT

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 167 of 339
--	--------------------------------------	-------------------------	--------------------------------

METHODS OF PROCUREMENT – QUICK REFERENCE CHART

Method	Micro Purchases (Supplies, Equipment, Non-Professional Services)	Small Purchases (Supplies, Equipment, Non-Professional Services)	Sealed Bids (IFB) (Construction, Supplies, Equipment, Non-Professional Services)	Competitive Proposals (RFP) (Supplies, Equipment, Services, Professional Services)	Non-Competitive (Single Source, Sole Source, or Emergency)
Threshold (Including Shipping and Handling)	Up to \$50,000; up to \$2,000 if construction	Exceeds \$50,000 (Construction exceeding \$2,000); Up to \$100,000	> \$100,000 (requires Commission approval)	> \$100,000 (requires Commission approval); \$30,000 Professional Services	> \$100,000 (requires Commission approval)
Planning	Method of Procurement Matrix, DBE Goal if anticipated to exceed \$25,000	Purchase Request Form or Purchase Requisition, Technical Specification or Scope of Work, DBE Goal and Insurance Requirements if anticipated to exceed \$25,000	Procurement Request Form, Purchase Requisition, Options, Specification, Prospective Vendor List, ICE, DBE Goal, Insurance Requirements, Schedule	Procurement Request Form, Purchase Requisition, Options, Scope of Work, Prospective Vendor List, ICE, DBE Goal, Insurance Requirements, Schedule	Documented Justification, Procurement Requisition and Procurement Request Form, Options, Specification or Scope of Work, ICE, Insurance Requirements
Obtain Quotes / Bids / Proposals	At least ONE Quote in writing OR may be off-the shelf pricing for retail items	RFQ, Scope of Work, REASONABLE number of written Quotes, Established evaluation criteria, Factors, and Relative importance	Specification, Publicly advertised and website for 10 days minimum, Adequate number of known suppliers, Formal Sealed Bid, Open bids publicly	Scope of Work, Performance or Functional Specification, Publicly advertised, Website for 10 Days minimum, Publish evaluation method, Factors, and Relative importance, Adequate number of qualified sources, Written proposal, Discussions expected, BAFO	Only ONE reasonably available Supplier/Contractor, Written proposal, Acknowledgment and acceptance of FTA clauses, Completion of Representations and Certifications > \$100K, Publish intent on website
Award Purchase Order/Contract	Single Quote (no competition required)	Requires competition - Awarded to “Best Value” (typically lowest quote)	Firm Fixed Price - Awarded to lowest responsive and responsible bidder (Any and all bids may be rejected)	Requires competition - Usually awarded to Best Value (best combination of meeting technical needs and price)	Written justification required, Available only from one known source
Determination of Price Reasonableness	Description of how price is determined fair and reasonable	Price Analysis	Low Bid	Price Analysis, if adequate competition exists, otherwise Cost Analysis required	Cost Analysis required, unless basis is catalog or market price of commercial product
Determination of Responsibility	Responsibility Checklist (if exceeding \$25,000)	Responsibility Checklist (if exceeding \$25,000)	Responsibility Checklist	Responsibility Checklist	Responsibility Checklist

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 168 of 339
--	--------------------------------------	-------------------------	--------------------------------

Bonding Requirements	Not Required	Not Required	Required for construction contracts over \$500,000; If federally funded, over \$250,000	Usually not required; however, required for construction contracts over \$500,000; If federally funded, over \$250,000	Required for construction contracts over \$500,000; If federally funded, over \$250,000
Davis-Bacon Wage Rates	Construction contracts over \$2,000	Construction contracts	Construction contracts	Construction contracts	Construction contracts over \$2,000
Buy America and Build America, Buy America Act Certification	Exempt	As Required	As Required	As Required	As Required
System for Award Management Verification	Required if \$25,000 or higher	Required	Required	Required	Required if \$25,000 or higher
Documentation of Rationale/Basis for Award	Price Reasonableness Determination Form	Written Procurement Summary	Written Procurement Summary	Written Procurement Summary	Written Procurement Summary

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 169 of 339
--	--------------------------------------	-------------------------	--------------------------------

APPENDIX B

CHECKLISTS

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 170 of 339
--	--------------------------------------	-------------------------	--------------------------------

METHOD OF PROCUREMENT DECISION MATRIX (B-1)

Project Title			
Solicitation/Contract/PO No.			
To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below.			
<input type="checkbox"/> Micro-Purchase	<input type="checkbox"/> Competitive Proposals > \$100,000 (RFP)	<input type="checkbox"/> Sole Source	
<input type="checkbox"/> Amount < \$50,000	<input type="checkbox"/> Complete specifications not feasible	<input type="checkbox"/> Original Equipment Manufacturer (OEM), custom item	
<input type="checkbox"/> Multiple Sources Available	<input type="checkbox"/> Offeror input needed for specification	<input type="checkbox"/> Only one (1) known source available	
<input type="checkbox"/> Small Purchase Competitive Procurement	<input type="checkbox"/> Two (2) or more responsible offers willing to compete	<input type="checkbox"/> Approved by FTA – Sole Source (<i>Rare</i>)	
<input type="checkbox"/> Amount > \$50,000 to \$100,000	<input type="checkbox"/> Discussion needed with offerors after receipt of proposal, prior to award	<input type="checkbox"/> Sole Source Justification approved by Procurement Director	
<input type="checkbox"/> Multiple Sources Available	<input type="checkbox"/> Fixed price can be set after discussions	<input type="checkbox"/> Public exigency issue/emergency	
<input type="checkbox"/> Not an Emergency Purchase	<input type="checkbox"/> Time & Material Contract (Subset of RFP)	<input type="checkbox"/> Competition is inadequate after public solicitation	
<input type="checkbox"/> Sealed Bid \$100,000 (IFB)	<input type="checkbox"/> Fixed price cannot be set for work	<input type="checkbox"/> Emergency Procurement (Subset of Sole Source)	
<input type="checkbox"/> Complete and adequate specification or purchase description	<input type="checkbox"/> Complete extent of work unknown, whether time, or material use, or both	<input type="checkbox"/> Return Material Authorization (RMA)	
<input type="checkbox"/> Two (2) or more responsible bidders willing to compete	<input type="checkbox"/> Two-Step Negotiated Procurement	<input type="checkbox"/> Other	
<input type="checkbox"/> Selection can be made on basis of price	<input type="checkbox"/> Engineering Services	<input type="checkbox"/> Cooperative Procurement	
<input type="checkbox"/> Procurement suitable for firm, fixed price	<input type="checkbox"/> Architectural Services	<input type="checkbox"/> Piggyback	
<input type="checkbox"/> No discussion with bidders needed after receipt of offers	<input type="checkbox"/> Other	<input type="checkbox"/> Intergovernmental Agreement	
Signature:			Date:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 171 of 339
--	--------------------------------------	-------------------------	--------------------------------

PROCUREMENT CHECKLIST (UNDER \$100,000) (B-2)

☐ URGENT ☐ CHANGE ORDER

This form is to be completed and maintained in the procurement file for all purchases.

Purchase Order/Contract Number: _____

Vendor Name: _____

Contract Title or Requisition Number: _____

☐ Change Order (if applicable) and all associated documents (i.e., quotes, emails, etc.)

☐ Purchase Order and Email to Vendor

☐ Terms and Conditions

☐ Insurance Certificate (if required)

☐ Fair and Reasonableness Form

☐ Copies of all quotes received (in ascending order)

Number of Quotes Received: _____

No Bids: _____

No Response: _____

Late Response: _____

☐ Copy of solicitation and email with names of vendors solicited

☐ Sole Source Justification (if applicable)

☐ Copy of requisition

☐ Method of Procurement Decision Matrix

☐ Contractor Responsibility Checklist and Documentation (over \$25,000)

☐ DBE Documentation (over \$25,000)

☐ Miscellaneous Documents: _____

Buyer/Contracting Officer's Name: _____ Date: _____

Buyer/Contracting Officer's Signature: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 172 of 339
--	--------------------------------------	-------------------------	--------------------------------

SOLICITATION AND CONTRACT FILE CHECKLIST (B-3)

Contract No.:		Title:	
Section 1	Contract File Documentation	Section 2	Solicitation File Documentation
A	<input type="checkbox"/> Notice of Award/Notice to Proceed	A	<input type="checkbox"/> Procurement Summary (<i>over \$50K or \$30K PS</i>)
B	<input type="checkbox"/> Contract	B	<input type="checkbox"/> Method of Procurement Decision
C	<input type="checkbox"/> Task Orders		<input type="checkbox"/> Selection of Contract Type
D	<input type="checkbox"/> Modifications / Change Orders / Exercise of Option Year <input type="checkbox"/> Independent Cost Estimate <input type="checkbox"/> Price Reasonableness Determination <input type="checkbox"/> Cost/Price Analysis <input type="checkbox"/> Evaluated Option Quantities	C	<input type="checkbox"/> Procurement Request <input type="checkbox"/> Duplicate Purchase Review <input type="checkbox"/> Lease vs. Buy Analysis
E	<input type="checkbox"/> Required Contractor Certifications	D	<input type="checkbox"/> Amendments – Number Issued:
F	<input type="checkbox"/> Purchase Order	E	<input type="checkbox"/> Solicitation
G	<input type="checkbox"/> External Correspondence	F	<input type="checkbox"/> Cost/Price: <input type="checkbox"/> Independent Cost Estimate <input type="checkbox"/> Price Reasonableness Determination <input type="checkbox"/> Cost/Price Analysis
H	<input type="checkbox"/> Internal Correspondence	G	<input type="checkbox"/> Advertisement Notices and Website Postings
I	<input type="checkbox"/> Performance and Payment Bonds	H	<input type="checkbox"/> Plan Holder's List
J	<input type="checkbox"/> Certificate(s) of Insurance	I	<input type="checkbox"/> Pre-Bid/Proposal Conference Presentation and Attendee List
K	<input type="checkbox"/> Added to Lextree	J	<input type="checkbox"/> Questions and Answers
L	<input type="checkbox"/> Contract Closeout Documentation	K	<input type="checkbox"/> Approved Equal Requests and Responses
M	<input type="checkbox"/> Contractor Cure Letters/Discussions	L	<input type="checkbox"/> Bid Opening Record and Attendee List
N	<input type="checkbox"/> Contract Termination/Stop Work Order(s)	M	<input type="checkbox"/> Offer Evaluation Documentation
O	<input type="checkbox"/> Contractor Performance Evaluation	N	<input type="checkbox"/> Contractor Responsibility Review <input type="checkbox"/> System for Award Management <input type="checkbox"/> Virginia Debarment and Prohibited Lists <input type="checkbox"/> Virginia State Corporation Commission <input type="checkbox"/> Dun & Bradstreet Financial Report <input type="checkbox"/> DBE Participation Verification and Approval
ROLLING STOCK ONLY:		O	<input type="checkbox"/> External Correspondence
P	<input type="checkbox"/> Pre-Award Buy America Review <input type="checkbox"/> Post-Delivery Buy America Review <input type="checkbox"/> Purchaser's Requirements Certification <input type="checkbox"/> Federal Motor Vehicle Safety Standards (FMVSS) Certification <input type="checkbox"/> On-Site Inspector's Report	P	<input type="checkbox"/> Negotiation Documentation and Best and Final Offers
OTHER		Q	<input type="checkbox"/> Internal Correspondence: <input type="checkbox"/> DBE Goal <input type="checkbox"/> Insurance Requirements <input type="checkbox"/> Confidentiality Agreement(s) <input type="checkbox"/> Conflict of Interest Form Verification <input type="checkbox"/> Other (i.e., PM Approval)
Q	<input type="checkbox"/> Assignability Letter	R	<input type="checkbox"/> Approvals: <input type="checkbox"/> Operations and Oversight Writeup <input type="checkbox"/> Commission Minutes <input type="checkbox"/> Request for CEO Approval
R	<input type="checkbox"/>	S	<input type="checkbox"/> Record of Late Offers and Returns
S	<input type="checkbox"/>	T	
T	<input type="checkbox"/>		
U	<input type="checkbox"/>		
V	<input type="checkbox"/>		
W	<input type="checkbox"/>		
X	<input type="checkbox"/>		
Y	<input type="checkbox"/>		
Z	<input type="checkbox"/>		

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 173 of 339
--	--------------------------------------	-------------------------	--------------------------------

			<input type="checkbox"/> Record of Withdrawn Offers and Verification
		U	<input type="checkbox"/> Offers
		V	<input type="checkbox"/> Protests
<i>Reviewed By Name:</i>		<i>Reviewed By Signature:</i>	

NOTES:
<div></div>

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 174 of 339
--	--------------------------------------	-------------------------	--------------------------------

SCOPE OF WORK CHECKLIST (B-4)

The Scope of Work generally consists of six (6) sections as follows:

1. Introduction
2. Background
3. Scope
4. Reference Documents
5. Technical Requirements
6. Deliverables/Contract Data Requirements

1. Introduction - The introduction section should give the contractor just enough information to recognize what you are buying. It is normally one (1) to three (3) sentences long. The introduction should focus on clarity and content rather than length.	
A. Does the introduction provide a quick reference to what you are buying?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
B. Is the introductory information readily distinguishable from the background and scope sections?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
C. Have work requirements or other redundant information that is contained in other sections of the Scope of Work been removed?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<u>Remarks:</u> 	
2. Background - The background section provides historical information which is necessary to understand how and/or why the current requirement evolved and where it is headed, if appropriate. The background section can also provide current information which helps the contractor understand the requirement. If the current requirement is part of a larger program, identify the program and the relationship of this requirement to the overall project.	
A. Does this section summarize historical information which is necessary to understand the current requirement?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
B. Will the contractor understand how and/or why the requirement evolved and where the requirement is headed, if appropriate?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

C. Is the background information readily distinguishable from the introduction and scope sections?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
D. Are the facts accurate?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
E. Have all directions to perform specific tasks, specification requirements, and deliverables been eliminated from this section?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<u>Remarks:</u>	
<p>3. Scope – The scope section is an overview of the Scope of Work and should emphasize the most important aspects of the requirement rather than minor details. It should identify the objective or purpose of the requirement; it should help the contractor understand the magnitude of the effort to be performed and it should also define the outside boundaries of the contractor's performance responsibilities. This becomes important during contract performance in determining whether additional tasks or work is considered within the originally planned responsibilities or is considered new work. The scope section should be clear and consistent with the requirements specified in Section 5, Technical Requirements. The scope section should be no more than one (1) to two (2) paragraphs.</p>	
A. Will the contractor understand the magnitude of the requirement and have a basic understanding of the requirement?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
B. Is the scope readily distinguishable from the introduction and background sections?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
C. Is the scope consistent with the tasks or activities specified, and with the end result to be obtained?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
D. Does the section emphasize the most important aspects (i.e., an overview) of the technical requirements rather than minor details?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
E. Have all directions to perform specific tasks, specification requirements, and deliverables been eliminated from this section?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 176 of 339
--	--------------------------------------	-------------------------	--------------------------------

Remarks:

4. Reference Documents – This section lists all documents referenced under Section 5, Technical Requirements, that the contractor will have to comply with in the performance of the Scope of Work (e.g., Agency policies, state and federal laws and specifications, state/city codes, etc.). If the technical requirements section describes your requirements in functional or performance terms (i.e., “what is required” versus “how to do it”), then this section should include only a minimum of documents. Generally, this section is prepared after the technical requirements section is completed. The length of this section will depend on the number of documents cited in the technical requirements.

A. Is the applicable document properly cited? (Correct Volume No., date, Revision No., etc.) ☐ Yes ☐ No ☐ N/A

B. If only portions of the document apply, have you clearly stated which portions apply? ☐ Yes ☐ No ☐ N/A

C. Are the documents cited really pertinent to the task? (If they are not, they should not be included.) ☐ Yes ☐ No ☐ N/A

D. Do any standard specifications or paragraphs apply in whole or in part? (If so, are they properly cited?) ☐ Yes ☐ No ☐ N/A

E. Are documents referenced by:

- Type (e.g., specification, code, etc.)
- Number/version
- Title
- Date

☐ Yes ☐ No ☐ N/A

F. Have all directions to perform specific tasks, specification requirements, and deliverables been eliminated from this section? ☐ Yes ☐ No ☐ N/A

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 177 of 339
--	--------------------------------------	-------------------------	--------------------------------

Remarks:

5. Technical Requirements – This section should identify when the contractor is required to do and not how the contractor should accomplish the effort. Technical requirements are generally identified as major tasks and sub-tasks. All major tasks and sub-tasks need to be defined in adequate detail so that the contractor knows what is required and the Agency knows when and if the contractor has complied with the requirement(s). The Scope of Work should identify the task, the desired output, and the associated performance standard or acceptance criteria.

A. Are the contractor's responsibilities clearly defined/identified from the introduction, scope, and background sections? ☐ Yes ☐ No ☐ N/A

B. Does the Scope of Work identify only minimum requirements? (Have "nice to haves" been eliminated?) ☐ Yes ☐ No ☐ N/A

C. Are the tasks in the Scope of Work presented in chronological order or some logical order? ☐ Yes ☐ No ☐ N/A

D. Is the Scope of Work specific enough to permit you to estimate the probable cost and the contractor to determine the levels of expertise, labor, and other resources needed to accomplish the tasks? ☐ Yes ☐ No ☐ N/A

E. Are sentences written so that there is no question of whether the contractor is obligated to perform specific tasks? (e.g., "the contractor shall do this work," not "this work shall be required") ☐ Yes ☐ No ☐ N/A

F. Are contractor responsibilities stated in such a way that he/she knows what is required and HRT can tell whether the contractor has complied? ☐ Yes ☐ No ☐ N/A

G. Are the performance standards or acceptance criteria:

- Necessary?
- Realistic?
- Specific?
- Verifiable?
- Objective?
- Measurable?

☐ Yes ☐ No ☐ N/A

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 178 of 339
--	--------------------------------------	-------------------------	--------------------------------

H. Have all elements of quality control and assurance been included (inspection, testing, and acceptance)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
I. Does the Scope of Work identify the title of data or other deliverables in parenthesis after the task which generated the data? [e.g., Contract Data Requirements List (CDRL) 001]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
J. If the Scope of Work requests data or reports, have all descriptions of that data (e.g., format and content) been eliminated and subsequently included in Section 6?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
K. Have all solicitation instructions, evaluation criteria, and references to the bidder/proposer been deleted and included in the appropriate solicitation provisions of the RFP/IFB?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
L. Does the Scope of Work identify significant contract milestones?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
M. Have all points of control or decision points, if applicable, been included?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
N. Does the Scope of Work require the contractor to get permission from, coordinate with, or provide something to someone in HRT? (If so, have specific authorizations and instructions been provided to avoid contractual problems?)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
O. If delivery/completion time is used, does it specify either calendar days or workdays and is it consistent throughout?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
P. If HRT furnished property or services will be provided, are the nomenclature, location, and availability stated?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Q. Are requirements specified that are within state-of-the-art industry?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
R. If brand name or equal descriptions are used, are the salient physical and functional characteristics of the brand name included in the Scope of Work with at least two (2) suggested brand name equivalents (brand name justification must accompany the Scope of Work)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
S. Are performance-type specifications (e.g., “at least 3 HR”) used in preference to design-type specifications, when appropriate?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 179 of 339
--	--------------------------------------	-------------------------	--------------------------------

Remarks:

6. Deliverables/Contract Data Requirements List (CDRL)– This section references the data (e.g., cost/progress reports, drawings, software, etc.) required to be submitted by the contractor and referenced throughout the Scope of Work by a “CDRL” designation.

- | | |
|--|---|
| A. Are all contract data items (CDRLs) marked with “CDRL” and a corresponding item number? (e.g., CDRL 5-301) | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| B. Are the format and content of data items clearly defined? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| C. Are the quantities and timelines for data delivery appropriately stated and phased? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| D. If alternate data deliveries may be proposed by the contractor, does the Scope of Work state this? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| E. Has the cost of the data required been considered and is it reasonable for the specific work task that requires it? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| F. If the contractor’s format for data is acceptable, does the Scope of Work mention this fact? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| G. Does the CDRL section contain a master contract data requirement listing showing all required deliverables as an exhibit? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |

Remarks:

7. General Comments (Applies to most sections of the Scope of Work)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 180 of 339
--	--------------------------------------	-------------------------	--------------------------------

A. Is the Scope of Work written using the format recommended in this checklist? (If not, provide rationale to the Procurement Department.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
B. Does the Scope of Work create an organizational conflict of interest? <ul style="list-style-type: none"> Will a specific contractor receive an unfair competitive advantage on this requirement or future requirements based on its performance under past or present contracts? (e.g., Is the Scope of Work drafted whereby the contractor will prepare a Scope of Work which will be subsequently competitively procured?) Will the contractor be placed in a position where it cannot provide impartial advice and assistance? (e.g., does the Scope of Work require the contractor to review its own work?) 	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
C. Is more than one (1) interpretation (throughout the Scope of Work) possible? (See Attachment B for a list of phrases to be avoided.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
D. Has the Scope of Work been checked for spelling and grammar?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
E. Are acronyms and abbreviations spelled out the first time they are used, and the abbreviated version put in parentheses?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
F. Is the word “shall” used whenever a task or sub-task is mandatory?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
G. Are tasks and sub-tasks written in the active voice rather than the passive voice? (e.g., “The Contractor shall establish a program” and not “A program shall be established by the Contractor”)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
H. Are paragraphs and subparagraphs numbered consecutively within each Scope of Work section?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
I. Are words used in the Scope of Work that properly express the degree of contractor involvement? (See Attachment B for a list of “work words” that might be appropriate for use in describing your requirement)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
J. Are sentences written in a short, simple, and concise form?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 182 of 339
--	--------------------------------------	-------------------------	--------------------------------

ATTACHMENT A – PHRASES HAVING MULTIPLE MEANINGS

This list of phrases having multiple meanings is provided as *an example of those to be avoided*.

- To the satisfaction of HRT
- As determined by HRT
- In accordance with instructions of HRT
- As directed by HRT
- In the opinion of HRT
- In the judgment of HRT
- Unless otherwise directed by HRT
- To furnish if requested by HRT
- All reasonable requests of HRT shall be complied with
- Photographs shall be taken when and where directed by HRT
- In strict accordance with
- In accordance with best commercial practice
- In accordance with best modern standard practice
- In accordance with the best engineering practice
- Workmanship shall be of the highest quality
- Workmanship shall be of the highest grade
- Accurate workmanship
- Securely mounted
- Installed in a neat and efficient manner
- Skillfully fitted
- Properly connected
- Properly assembled
- Good working order
- Good materials
- In accordance with applicable published specifications
- Products of a recognized reputable manufacturer
- Tests will be made unless waived.
- Materials shall be of the highest grade, free from defects or imperfections, and of grades approved by HRT
- Kinks and bends may be cause for rejection
- Carefully performed
- Neatly finished

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 183 of 339
--	--------------------------------------	-------------------------	--------------------------------

- Metal parts shall be cleaned before painting
- Suitably housed
- Smooth surfaces
- Pleasing lines
- Of an approved type
- Of standard type
- Any phrases referring to “HRT’s Technical Representative”

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 184 of 339
--	--------------------------------------	-------------------------	--------------------------------

ATTACHMENT B – WORK WORDS

The word list below is not complete but is provided to stimulate the thinking of the Scope of Work writer by pointing out the critical differences in the meaning of work words versus the product words identified in connection with deliverable data. When selecting the key work word that properly expresses the contractor's involvement, the Scope of Work writer must define explicitly the total nature of the work requirement in terms of what is to be done. In some cases, the "why" or the application of the results of the performed work may be stated if it clarifies the requirement. The following sample list contains words which have the inherent value of work. This list is offered as a reminder of the various shades of meaning conveyed by choice of words.

Analyze	Solve by analysis
Annotate	Provide with comments
Ascertain	Find out with certainty
Attend	Be present at
Audit	Officially examine
Build	Make by putting together
Calculate	Find out by computation
Consider	Think about, to decide
Construct	Put together; build
Control	Direct; regulate
Contribute	Give along with others
Compare	Find out likeness or differences
Create	Cause to be; make
Determine	Resolve; settle; decide
Differentiate	Make a distinction between
Develop	Bring into being or activity
Define	Make clear; settle the limits
Design	Perform an original act
Evolve	Develop gradually, work out
Examine	Look at closely; test quality of
Explore	Examine for discovery
Extract	Take out; deduce, select

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 185 of 339
--	--------------------------------------	-------------------------	--------------------------------

Erect	Put together; set upright
Establish	Set up; settle; prove beyond dispute
Estimate	Approximate an opinion of
Evaluate	Find or fix the value of
Fabricate	Build; manufacture, invent
Form	Give shape to; establish
Formulate	To put together; add, express
Generate	Produce, cause to be
Identify	To show or to find
Implement	To carry out; put into practice
Install	Place; put into position
Inspect	Examine carefully or officially
Institute	Set up; establish, begin
Interpret	Explain the meaning of
Inquire	Ask, make a search of
Integrate	To add parts to make whole
Investigate	Search into; examine closely
Judge	Decide; form an estimate of
Make	Cause to come into being
Maintain	To keep in an existing state, to continue in, carry on
Manufacture	Fabricate from raw materials
Modify	To change, alter
Monitor	To watch or observe
Notice	Comment upon, review
Observe	Inspect, watch
Organize	Integrate, arrange in a coherent unit
Perform	Do, carry out, accomplish
Plan	Devise a scheme for doing, making, arranging activities to achieve objectives
Probe	Investigate thoroughly

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 186 of 339
--	--------------------------------------	-------------------------	--------------------------------

Produce	Give birth or rise to
Pursue	Seek, obtain, or accomplish
Reason	Think, influence another's actions
Resolve	Reduce by analysis, clear up
Record	Set down in writing or act of electronic reproduction of communications
Recommend	Advise, attract favor of
Review	Inspection, examination, or evaluation
Revise	To correct, improve
Study	Careful examination or analysis
Seek	Try to discover; make an attempt
Search	Examine to find something
Scan	Look through hastily, examine intently
Screen	To separate, present, or shield
Solve	Find an answer
Test	Evaluate, examine
Trace	To copy or find by searching
Track	Observe or plot the path of
Update	Modernize, make current

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 187 of 339
--	--------------------------------------	-------------------------	--------------------------------

RFP EVALUATION PROCESS CHECKLIST (B-5)

Procurement Lead is to assure that every Evaluation Panel member understands all of the following aspects of being a part of the RFP evaluation process. The completed and signed checklist shall become a part of the permanent procurement record.

Review Basics of RFP Evaluation Process with Emphasis on

- ☐ Review “GUIDANCE FOR EVALUATION PANEL MEMBERS” document with emphasis on:
 - ☐ Evaluation Panel members must hold the proposals in strict confidence.
 - ☐ All evaluations must be conducted independently. Do not discuss the proposals with anyone except other Evaluation Panel members at the discussion meeting and the Procurement Lead unless directed by the Procurement Lead.
 - ☐ Do not have any contact with the proposers except at the direction and with the approval of the Procurement Lead. Any contacts must be documented.
 - ☐ Explore all potential conflicts of interest with any of the Evaluation Panel members.
 - ☐ Review and make determination regarding all potential organizational conflicts of interest with any of the Offerors.
- ☐ RFP timeline variables
 - ☐ Ramifications of the Best and Final Offer phase.
 - ☐ Potential for protests.
- ☐ Review the Basics of the RFP process including how the evaluation will occur, team discussion, communications between Evaluation Team members, scoring criteria and overall timeline. Make sure to discuss the following:
 - ☐ Discuss process for initial individual scoring. Determine whether evaluators will take proposals home to complete scoring. If so, discuss the need to secure proposals and maintain confidentiality.
 - ☐ Explain any worksheets and scoring guidelines to be used in the process.
 - ☐ Explain the difference between official evaluator scores and working notes.
 - ☐ The Evaluation Team individually scores each proposal against the RFP criteria or scoring benchmarks, not against each other.
 - ☐ The Evaluation Team may submit questions to the Procurement Lead, to be asked of the proposers, to help clarify any ambiguities in the proposal. Requests for clarification must be made in writing to the Procurement Lead, who will forward them to the proposers to be addressed during presentations.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 188 of 339
--	--------------------------------------	-------------------------	--------------------------------

- ☐ An evaluator's scores may be questioned if it is determined that the score or scores are outside the norm of other evaluators. The Procurement Lead may call a meeting for the purpose of clarifying an evaluator's score. At this meeting, the Evaluation Team may discuss any variations in scoring. This does not mean the score will be discarded, only reviewed. Sometimes, based upon information/clarification shared during the discussion evaluator(s) may elect to change his/her scores, however that is at the sole discretion of each evaluator.
- ☐ Discuss the components of the official RFP file. All written documents, including e-mails related to the evaluation become part of the official file.
- ☐ Reference checking. The team may split the reference checking between them (all references are asked the same set of questions) or one person may be assigned to complete this task. Notes must be maintained of these contacts.
- ☐ Discuss the process for Evaluation Team members to express their concerns with the process or other members of the Evaluation Team, and the various internal and external steps available.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 189 of 339
--	--------------------------------------	-------------------------	--------------------------------

CONTRACTOR RESPONSIBILITY CHECKLIST (B-6)

SOLICITATION NUMBER: _____

CONTRACTOR / VENDOR: _____

A responsibility review is required, prior to award, to determine that the Contractor is responsible and capable of performing the work as specified. Check all that apply.

VERIFICATION DOCUMENTATION	NOTES
<input type="checkbox"/> System for Award Management (SAM)	
<input type="checkbox"/> Virginia State Debarment List	
<input type="checkbox"/> Virginia License	
<input type="checkbox"/> Certificate of Insurance	
<input type="checkbox"/> Certificate of Insurance Compliance Verification	
<input type="checkbox"/> DBE Participation Commitment Verification	
<input type="checkbox"/> Financial Resources	
<input type="checkbox"/> Bid/Payment/Performance Bond(s), if applicable	
<input type="checkbox"/> Evaluation of Technical Qualifications/Experience	
<input type="checkbox"/> Past Performance Verifications	
<input type="checkbox"/> Integrity and Business Ethics	
<input type="checkbox"/> Operational Capability	
<input type="checkbox"/> History of Compliance with Contract Requirements	
<input type="checkbox"/> Technical Licensing and Certifications	
<input type="checkbox"/> Other Verifications, as necessary	
Is Contractor Deemed Responsible? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Signature of Contract Administrator: Date	

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 190 of 339
--	--------------------------------------	-------------------------	--------------------------------

NOTES: Contractor Responsibility Review Sources

Certified DBE Directory

<https://directory.sbsd.virginia.gov/#/>

System for Award Management

<https://sam.gov/content/home>

Virginia Debarment List & Prohibited List

https://logi.cgieva.com/External/rdPage.aspx?rdReport=Public.Reports.Report9020_Data

Dunn and Bradstreet (Director of Procurement)

Virginia Business Directory

<https://cis.scc.virginia.gov/EntitySearch/Index>

Virginia Business License Lookup and Disciplinary Action

<http://www.dpor.virginia.gov/LicenseLookup/>

Listing of Certified Surety Companies (for verification of Certificates of Insurance)

https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm

Better Business Bureau

<https://www.bbb.org/>

Procurated

<https://app.procurated.com/#authenticate>

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 191 of 339
--	--------------------------------------	-------------------------	--------------------------------

PRICE ANALYSIS CHECKLIST (OVER \$100,000) (B-7)

A price analysis is the process of examining and evaluating proposed prices to determine its reasonableness, without consideration of the separate elements of labor, material, equipment, overhead, and profit. It may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed pricing. It does not include a detailed analysis of the cost elements. This worksheet and supporting documentation are maintained in the official procurement file.

Contract Number: _____

Contract Title: _____

Select one or more below:

☐ Competition (Documentation of 2 or more offers required)

Number of Offers Received: _____

☐ Independent Cost Estimate: \$ _____

Percent Variance: _____%

☐ Commercial Catalog or Website/Published Price List

Catalog Date: _____ Page Number: _____

Website: _____

☐ Comparison of Historical Purchases of Same or Like Items/Services

PO/Contract Number: _____ Date: _____ Price: \$ _____

☐ Comparison of Prices Obtained by other Agencies for Like Items/Services

Agency Name: _____

PO/Contract Number: _____ Date: _____ Price: \$ _____

☐ Required Offeror to certify that the price(s) offered are no higher than those charged by other customers for items of similar quality or quantity (documentation attached).

☐ Action is the result of a competitive State or Municipality Contract that has provisions for use by FTA agencies for goods, supplies, or services.

State or Municipality: _____

State Contract Number: _____ Contract Date: _____

☐ Price has been established as fair and reasonable through negotiation with Awardee.

Original Price: \$ _____ Negotiated Price: \$ _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 192 of 339
--	--------------------------------------	-------------------------	--------------------------------

- ☐ The awardee has shown a high degree of technical competence and adherence to HRT's business performance requirements. Past competitive pricing transactions with this vendor were determined fair and reasonable.
- ☐ The awardee is the Original Equipment Manufacturer and/or only known distributor for this (these) item(s). The pricing quoted to HRT does not differ, or is less, than those quoted to any other customers.
- ☐ Other (List specific reasons):

By signing below, I certify that all statements on this form are true and correct to the best of my knowledge:

Contracting Officer's Name: _____ Date: _____

Contracting Officer's Signature: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 193 of 339
--	--------------------------------------	-------------------------	--------------------------------

COST ANALYSIS WORKSHEET (B-8)

PROJECT TITLE	
Solicitation/Contract No.	

Unless price reasonableness can be determined, a cost analysis must be performed for each sole source Contract award (or change order). The Offeror is required to submit the elements (i.e., labor hours and rates, overhead, materials, equipment, etc.) of the estimated cost. A cost analysis is not required when the pricing reflects a catalog or market price of a commercial product sold in substantial quantities to the general public or is based on prices set by law or regulation.

Labor Category	Hourly Rate	Hours	Total
Labor (Details Attached)			\$
Labor Burden (%)	%		\$
Total Labor	\$		\$
Material (Details Attached)			\$
Material Handling Fee	%		\$
Equipment (Details Attached)			\$
Equipment Markup	%		\$
Other Direct Costs (Details Attached)			\$
Subcontractor Costs (Details Attached)			\$
Subcontractor (markup)	%		\$
Negotiated Profit (Documentation attached)			\$
TOTAL			\$

Signature:

NOTES:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 194 of 339
--	--------------------------------------	-------------------------	--------------------------------

PRICE REASONABLENESS DETERMINATION (B-9)

This form is to be completed and maintained in the procurement file for all purchases.

Purchase Order/Contract Number: _____

Contract Title or Requisition Number: _____

MICRO-PURCHASE (\$50,000 OR LESS)

Pricing is determined to be FAIR AND REASONABLE based on the following (check all that apply):

☐ Competition – Number of Quotes Received: _____ (See page 3)

☐ Comparison of Historical Purchases of Same or Like Items/Services

PO/Contract Number: _____ Date: _____ Price: \$_____

☐ Rate set by law or regulation

☐ Commercial Catalog or Website/Published Price List

Catalog Date: _____ Page Number: _____

Website: _____

☐ Other (List specific reasons):

Micro-Purchase was distributed equally among qualified suppliers: ☐ Yes ☐ No

The size of the procurement was not reduced merely to come within the micro-purchase limit:

☐ Yes ☐ No

SMALL PURCHASE (OVER \$50,000 and less than \$100,000)

Pricing is determined to be FAIR AND REASONABLE based on the following (check all that apply):

☐ Competition (Documentation of a minimum of 2 quotes, 4 preferred, required)

Number of Quotes Received: _____ (See page 3)

☐ Commercial Catalog or Website/Published Price List

Catalog Date: _____ Page Number: _____

Website: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 195 of 339
--	--------------------------------------	-------------------------	--------------------------------

☐ Comparison of Historical Purchases of Same or Like Items/Services

PO/Contract Number: _____ Date: _____ Price: \$_____

☐ Comparison of Prices Obtained by other Agencies for Like Items/Services

Agency Name: _____

PO/Contract Number: _____ Date: _____ Price: \$_____

☐ Required Offeror to certify that the price(s) offered are no higher than those charged by other customers for items of similar quality or quantity (documentation attached).

☐ Action is the result of a competitive State or Municipality Contract that has provisions for use by FTA agencies for goods, supplies, or services.

State or Municipality: _____

State Contract Number: _____ Contract Date: _____

☐ Price has been established as fair and reasonable through negotiation with Awardee.

Original Price: \$_____ Negotiated Price: \$_____

☐ The awardee has shown a high degree of technical competence and adherence to HRT's business performance requirements. Past competitive pricing transactions with this vendor were determined fair and reasonable.

☐ The awardee is the Original Equipment Manufacturer and/or only known distributor for this (these) item(s). The pricing quoted to HRT does not differ, or is less, than those quoted to any other customers.

☐ Repair/Return Material Authorization (RMA) – Repair price is less than purchasing new or like item. New Item Price: \$_____

☐ Other (List specific reasons):

By signing below, I certify that all statements on this form are true and correct to the best of my knowledge:

Contracting Officer's Name: _____ Date: _____

Contracting Officer's Signature: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 197 of 339
--	--------------------------------------	-------------------------	--------------------------------

COOPERATIVE AND PIGGYBACK PROCUREMENT PROCESS CHECKLIST (B-10)

Definitions:

Cooperative procurements Contract means a Contract entered into between a state government or eligible nonprofit entity and one (1) or more vendors; and under which vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants.

Piggybacking is the post award assignment of unneeded Contract rights or options. Used only when another agency has inadvertently acquired Contract rights in excess of its needs due to changed circumstances or honest mistakes.

To document the substantiation of cooperative/piggybacking assignment of an existing agreement, the following is required:

All

- ☐ Have you obtained a copy of the Contract and the solicitation document, including the specifications and any Buy America Pre-Award or Post-Delivery audits?
- ☐ Did the Contractor submit the certifications required by federal regulations?
- ☐ Does the Contract contain clauses required by federal regulations?
- ☐ Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for the official Contract file.
- ☐ Was there a proper evaluation of the bids/proposals? Include a copy in the official file.
- ☐ If changes to the deliverables are required, are they within the scope of the Contract, or are they cardinal changes?
- ☐ If this is a cardinal change, have sole source requirements been followed and documented?

Cooperative Procurement Contract

- ☐ If the Contract is for rolling stock or replacement parts, does the Contract term comply with the FAST Acts' initial term of not more than two (2) years? It may include three (3) optional extensions of one (1) year each.
- ☐ Is the lead agency charging no more than 1% of the total value of the Contract?
- ☐ If federal clauses were not included, were they added into the purchase order issued?
- ☐ Did the state use geographic preference?

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 198 of 339
--	--------------------------------------	-------------------------	--------------------------------

Piggyback Procurement

- ☐ Does the solicitation and Contract contain an express “assignability” clause that provides for the assignment of all or part of the specified deliverables?
- ☐ Were the piggybacking quantities included in the original solicitation (i.e., were they in the original bid, and were they evaluated as part of the award decision)?
- ☐ If this is an indefinite quantity Contract, did the original solicitation and resultant Contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the Contract?
- ☐ Does this action represent the exercising of an option in the Contract, and is the option provision still valid?
- ☐ If the Contract is for rolling stock or replacement parts, does the Contract term comply with FTA’s five- or seven-year term limit?

Contracting Officer’s Name: _____

Contracting Officer’s Signature: _____

Date: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 199 of 339
--	--------------------------------------	-------------------------	--------------------------------

ROLLING STOCK PRE-AWARD CHECKLIST (B-11)

Rolling Stock Serial Numbers:	
Contract Number:	

<input type="checkbox"/> Price Reasonableness Determination	<input type="checkbox"/> Reviewed and Verified price reasonableness: Supporting documentation maintained in procurement file
<input type="checkbox"/> Buy America Certification	<input type="checkbox"/> Reviewed and Verified Domestic Content: Buy America List of bus components and sub-components that will be used to calculate the percentage of domestic content (must be >70% U.S. components)
	<div style="display: flex; justify-content: space-between;"> _____ _____ </div> <div style="display: flex; justify-content: space-between;"> Date Requested Date Received </div>
	<input type="checkbox"/> Reviewed and Verified Proposed U.S. Final Assembly Location, Operations, and Total Cost: A signed document stating the final proposed assembly location.
	<div style="display: flex; justify-content: space-between;"> _____ _____ </div> <div style="display: flex; justify-content: space-between;"> Date Requested Date Received </div>
	<input type="checkbox"/> A listing of activities that will take place during final assembly, i.e., welding, subassembly, component installation, and painting must be done at the previously noted final location).
	<div style="display: flex; justify-content: space-between;"> _____ _____ </div> <div style="display: flex; justify-content: space-between;"> Date Requested Date Received </div>

<input type="checkbox"/> Buy America Waiver	<input type="checkbox"/> Requested and Received Buy America Waiver: Request and FTA Waiver maintained in procurement file.
	<div style="display: flex; justify-content: space-between;"> _____ _____ </div> <div style="display: flex; justify-content: space-between;"> Date Requested Date Received </div>

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 200 of 339
--	--------------------------------------	-------------------------	--------------------------------

<input type="checkbox"/> Purchaser's Requirements Certification	<input type="checkbox"/> Checked Bid Specification Compliance with Solicitation Specifications
	<input type="checkbox"/> Completed Manufacturer Capability Study

<input type="checkbox"/> FMVSS (Federal Motor Vehicle Safety Standards) Certification	<input type="checkbox"/> Requested and Received Manufacturer's Letter Stating: The Information to be Included on the FMVSS Stickers
	<div> <div>Date Requested</div> <div>Date Received</div> </div>
	<p style="text-align: center;">OR</p>
	<input type="checkbox"/> The Rolling Stock Is Not Subject to FMVSS

Reviewed and Accepted By: _____

Signature: _____ **Date:** _____

Title: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 201 of 339
--	--------------------------------------	-------------------------	--------------------------------

ROLLING STOCK POST DELIVERY CHECKLIST (B-12)

Rolling Stock Serial Numbers:	
Contract Number:	

BUY AMERICA CERTIFICATION

- ☐ Reviewed and Verified 70 Percent Domestic Content
- AND**
- ☐ Reviewed and Verified Actual U.S. Final Assembly Location, Operations, and Total Cost
- OR**
- ☐ Requested and Received Buy America Waiver

PURCHASER'S REQUIREMENTS CERTIFICATION

For Procurements of More Than Ten Rolling Stock

- ☐ Completed Resident Inspector's Report (and maintained in procurement file)
- AND**
- ☐ Completed Visual Inspections and Road Tests
- OR**

For Procurements of Ten or Fewer Rolling Stock, and any Number of Unmodified Vans

- ☐ Completed Visual Inspections and Road Tests

FMVSS CERTIFICATION

- ☐ Verified FMVSS Sticker is Affixed to Each Rolling Stock
- OR**
- ☐ Requested and Received Manufacturer's Letter Stating That the Rolling Stock Are Not Subject to FMVSS

Note: All certifications must be kept on file. Supporting documentation should accompany each certification.

Reviewed and Accepted By: _____

TITLE	NUMBER	DATE	Page
Procurement Policy and Procedures Manual	PRO-001 Rev. 16	5/1/2025	Page 202 of 339

Signature: _____ **Date:** _____

Title: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 203 of 339
--	--------------------------------------	-------------------------	--------------------------------

CONTRACT CLOSEOUT CHECKLIST (B-13)

CONTRACT No.			
Contractor			
Substantial Completion Date			
Closeout Item	Responsible Party	Due Date	Status
Notification of Substantial Completion	PM		
Substantial Completion Punch List	PM		
Completion of Punch List Items	PM		
Inspection / Acceptance Documentation	PM		
Certificate of Completion	PM		
Resolution of Final Quantities, as applicable	PM		
Determination / Recovery of Liquidated Damages, as applicable	CA / PM		
Systems Integration Testing, as applicable	PM		
Systems Integration Commissioning, as applicable	PM		
Spare Parts List, as applicable	PM / CA		
Warranties, as applicable	PM / CA		
Operation and Maintenance Manuals, as applicable	PM / CA		
Final Requests for Information (RFIs) and Submittals	PM		
As-Built Drawings, as applicable	PM		
Resolution of Changes, Disputes, Claims	CA		
Review and closeout of insurance file	Risk Mgt		
Settlement of Insurance Claims, as applicable	Risk Mgt		
Final Invoice Received	PM / Finance		
Final DBE Form E from Prime Contractor	PM/DBE officer		
Final DBE Form E-2 from DBE Subcontractors	PM/DBE officer		
Contractor's Affidavit of Release of Liens	CA		
Consent of Surety to Release final payment to Contractor	CA		
Contractor's General Release	CA		
Retainage and Final Invoice Paid	PM / Finance		
Files to Document Control	CA / PM		
Notification of Closeout to Grants Management	CA		
Contractor Performance Evaluation Report	PM/CA		

Acronyms: PM – Project Manager; CA – Contract Administrator; DBE – Disadvantaged Business Enterprise

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 204 of 339
--	--------------------------------------	-------------------------	--------------------------------

PROTEST FILE CHECKLIST (B-14)

SOLICITATION/CONTRACT NUMBER: _____

CONTRACTOR/VENDOR: _____

Note: Protest file should be maintained separately from the Contract administration file.

PROTEST FILE DOCUMENTATION	NOTES
<input type="checkbox"/> Protest	
<input type="checkbox"/> Record of Notification of Protest to FTA	
<input type="checkbox"/> Record of Determination of Protest Timeliness	
<input type="checkbox"/> Record of Internal Distribution of Protest	
<input type="checkbox"/> Record of Notification to Interested Parties	
<input type="checkbox"/> Determination of Findings (with supporting documentation)	
<input type="checkbox"/> Record of Internal Responses to Protest	
<input type="checkbox"/> Record of Decision	
<input type="checkbox"/> Record of Legal Review (if applicable)	
<input type="checkbox"/> Protester Response/Appeal	
<input type="checkbox"/> Record of Result of Appeal	
<input type="checkbox"/> Notice of Cancellation of Solicitation (if applicable)	
<input type="checkbox"/> Record of Notification of Decision to FTA	
<input type="checkbox"/> Other:	
<input type="checkbox"/>	
Notes:	
Signature of Contract Administrator:	Date
Signature of Approver:	Date

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 205 of 339
--	--------------------------------------	-------------------------	--------------------------------

APPENDIX C

FORMS

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 207 of 339
--	--------------------------------------	-------------------------	--------------------------------

PROCUREMENT REQUEST FORM (C-2)

SHADED AREA FOR PROCUREMENT USE ONLY		
Solicitation/Contract No.:	Contract Administrator:	DBE Participation Goal:

TYPE OF REQUEST (<i>One must be selected</i>):	
<input type="checkbox"/> New Contract <input type="checkbox"/> Modification <input type="checkbox"/> Task Order <input type="checkbox"/> Exercise of Option <input type="checkbox"/> Other	
Complete all below applicable fields (Note: Instructions regarding required documents and/or actions begin on the following page):	
Project/Contract Title:	
Date of Request:	
Project Manager:	
Requesting Department:	
Specific Funding Source (<i>Operating, State, HRRTF, 5307 Federal, ACC, etc.</i>):	
Requisition Number: (<i><u>DO NOT</u> enter a requisition for New Contracts.</i>)	
Independent Cost Estimate (ICE): (<i>Note: ICE must be substantiated by providing details and supporting documentation.</i>)	\$
Period of Performance (for new contract or extension): (<i>Example: One (1) base year with four (4) additional one-year options</i>)	
Existing Contract Number (if applicable):	
Existing Contract Expiration Date (if applicable):	
Notes or Justification (<i>excluding Scope of Work</i>):	

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 208 of 339
--	--------------------------------------	-------------------------	--------------------------------

Instructions: The following actions and documents are required to request any form of procurement action. **If your request is missing any of the below required documents, signatures, reviews, etc., the request will be rejected by Procurement, and you will be advised of any deficiencies in writing.** Upon correction of the deficiencies, a new Procurement Request will need to be submitted. *Please note that it is the Project Manager's (Requestor's) responsibility to obtain the required signatures from Technology; Engineering and Facilities; Safety, Risk, and Emergency Management; Rail and Facilities Maintenance; Marketing and Strategic Communications; and Security Services.*

REQUIRED

New Contracts	Modification	Task Order	Exercise of Option	Other
<input type="checkbox"/> Review of Scope of Work by Technology; Engineering and Facilities; Safety, Risk, and Emergency Management; Rail and Facilities Maintenance; Marketing and Strategic Communications; and Security Services <input type="checkbox"/> Reviewed and Signed Procurement Request Form <input type="checkbox"/> Detailed Scope of Work attached as a <u>Word document</u> (See the Scope of Work Checklist for guidance) <input type="checkbox"/> Period of Performance <input type="checkbox"/> <u>Signed</u> Independent Cost Estimate with supporting documentation <input type="checkbox"/> List of Prospective Vendors <input type="checkbox"/> Signed Sole Source Justification or Emergency Procurement Request (if required) <input type="checkbox"/> Alignment to Strategic Goals/Objectives <input type="checkbox"/> Project Charter, if applicable	<input type="checkbox"/> Procurement Request Form (reviews and signoffs not required) <input type="checkbox"/> Details of any modification(s), including, but not limited to, Scope of Work, pricing, quantities, and period of performance. <input type="checkbox"/> <u>Signed</u> Independent Cost Estimate with supporting documentation, if anticipated to exceed \$100,000 <input type="checkbox"/> Purchase Requisition entered into D365 (obtain Procurement and Budget direction prior to entering) <input type="checkbox"/> Project Charter, if applicable	<input type="checkbox"/> Review of Scope of Work by Technology; Engineering and Facilities; Safety, Risk, and Emergency Management; Rail and Facilities Maintenance; Marketing and Strategic Communications; and Security Services <input type="checkbox"/> Reviewed and Signed Procurement Request Form <input type="checkbox"/> Detailed Scope of Work attached as a <u>Word document</u> <input type="checkbox"/> Quote from Contractor <input type="checkbox"/> Purchase Requisition entered into D365 <input type="checkbox"/> Project Charter, if applicable	<input type="checkbox"/> Procurement Request Form (reviews and sign offs not required) <input type="checkbox"/> Purchase Requisition entered into D365 (not required for Task Order Contracts)	<input type="checkbox"/> Speak with Procurement prior to requesting

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 209 of 339
--	--------------------------------------	-------------------------	--------------------------------

Alignment to Strategic Goals/Objectives *Required for New Contracts*

Select which HRT Goal and Objective(s) that the goods/services of this procurement would directly support:

- ☐ **A. Provide a high-quality service that is easy to use and enhances people’s lives.**
 - ☐ 1. Provide reliable, safe, equitable, and desirable service, amenities, and information.
 - ☐ 2. Serve people where and when they need to travel.
 - ☐ 3. Achieve and maintain a high rate of customer satisfaction.
- ☐ **B. Foster regional quality of life and economic vitality.**
 - ☐ 1. Contribute to regional congestion mitigation and environmental health and sustainability.
 - ☐ 2. Maximize access for residents, employees, and visitors to and between regional activity centers, job centers, and workforce development opportunities.
 - ☐ 3. Build community trust as a valuable partner in a thriving region.
- ☐ **C. Ensure financial stewardship and cost-effective operations.**
 - ☐ 1. Provide cost-efficient transit service that leverages all available resources to offer the best value for the investment.
 - ☐ 2. Perform asset management that achieves and maintains a state of good repair and sustainability and maximizes investment impacts.
 - ☐ 3. Effectively align and manage resources and processes to maximize workplace productivity, achieve agency goals, and demonstrate safe and sustainable business practices to ensure long-term viability.
- ☐ **D. Build a culture for innovation and workforce success to ensure HRT remains relevant to the dynamic needs of the region.**
 - ☐ 1. Continue to progress and innovate collaboratively with our partners and stakeholders to improve service to customers.
 - ☐ 2. Support a diverse and empowered workforce to strengthen core competencies and support an inclusive and productive workplace.
 - ☐ 3. Be an employer of choice and inspire and invest in our workforce and develop future leaders.

Provide an explanation of Strategic Alignment to the Goal(s) and Objective(s) selected above:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 210 of 339
--	--------------------------------------	-------------------------	--------------------------------

Departmental Reviews:

- If the Scope of Work includes any technology related hardware, software, and/or services, it must first be reviewed by the **Technology Department** (Technology PMO Manager/Chief Technology Officer).
- If the Scope of Work includes construction, alteration of an HRT facility, or the purchase, installation, and/or modification of an asset, it must first be reviewed by the **Engineering and Facilities Department** (Chief Engineering and Facilities Officer/Delegate).
- If the Scope of Work involves or requires marketing, communications, social media, or public outreach ideas and/or support, it must first be reviewed by **Marketing and Strategic Communications Department** (Chief Communications Officer).
- Review Attachment A, Safety, Risk, and Emergency Management Department Review Checklist to determine if the Scope of Work is required to be reviewed by the **Safety, Risk, and Emergency Management Department** (Chief Safety Officer/Safety Manager).
- Review Attachment B, Security Services Review Checklist to determine if the Scope of Work is required to be reviewed by the **Security Services Department** (Chief Transit Operations Officer/Security Manager).
- Review Attachment C, Rail and Facilities Maintenance Review Checklist to determine if the Scope of Work is required to be reviewed by the **Rail and Facilities Maintenance Department** (Director of Rail and Facilities Maintenance).

Required Review and Signatures:

Does this procurement request include any technology related hardware, software, and/or services?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, has the Chief Technology Officer/Technology PM Office Manager reviewed the Scope of Work?		<input type="checkbox"/> Yes <input type="checkbox"/> No
CTO or Delegate Signature:		Date:

Does this procurement request include a construction project, the alteration of an HRT facility, or the purchase, installation, and/or modification of an asset?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, has the Chief Engineering and Facilities Officer/Delegate reviewed the Scope of Work?		<input type="checkbox"/> Yes <input type="checkbox"/> No
CEFO or Delegate Signature:		Date:

Does this procurement request require a safety, risk, and emergency management review (reference Attachment A)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, has the Chief Safety Officer/Delegate reviewed the Scope of Work?		<input type="checkbox"/> Yes <input type="checkbox"/> No
CSO or Delegate Signature:		Date:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 211 of 339
--	--------------------------------------	-------------------------	--------------------------------

Does this procurement request require a security services review (reference Attachment B)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, has the Chief Transit Operations Officer/Delegate reviewed the Scope of Work?		<input type="checkbox"/> Yes <input type="checkbox"/> No
CTOO or Delegate Signature		Date:

Does this procurement request require a rail and facilities maintenance review (reference Attachment C)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, has the Director of Rail and Facilities Maintenance/Delegate reviewed the Scope of Work?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Director or Delegate Signature:		Date:

Does this Procurement request involve or require marketing, communications, social media, public outreach, and/or support?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, has the Chief Communications Officer reviewed the Scope of Work?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Chief Communications Officer Signature:		Date:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 212 of 339
--	--------------------------------------	-------------------------	--------------------------------

Approximate Processing Times

Requestor: You are required to provide Procurement with documents as stated above with your Procurement request. Procurement cannot start the acquisition process without the listed documents. If your request is missing any of the above required documents, signatures, reviews, etc., the request will be rejected by Procurement, and you will be advised of any deficiencies in writing.

Processing Times:

- *Request for Proposals* - \$100,000 or greater: **180 workdays** from the time a completed Procurement Request is received and assigned to a Contract Specialist to the date of Notice-of-Award is issued.
- *Invitation for Bids (Sealed Bids)* - \$100,000 or greater: **Ninety (90) workdays** from the time a completed Procurement Request is received and assigned to a Contract Specialist to the date of Notice-of-Award is issued.
- *Request for Quotes* – Under \$100,000: **Fourteen (14) to thirty (30) workdays** from the time a completed Procurement Request is received and assigned to a Contract Specialist to the date of Notice-of-Award is issued.
- *Modification/Change Order*: **Fifteen (15) workdays** from the time a completed Procurement Request is received and assigned to a Contract Specialist to the date the Modification/Change Order is executed.
- *Task Order*: **Ten (10) to twenty (20) workdays** from the time a completed Procurement Request is received and assigned to a Contract Specialist to the date the Task Order is issued.

These times are averages and are provided to allow you sufficient time to plan your delivery dates.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 213 of 339
--	--------------------------------------	-------------------------	--------------------------------

ATTACHMENT A, SAFETY, RISK, AND EMERGENCY MANAGEMENT DEPARTMENT REVIEW CHECKLIST

In accordance with HRT's Agency Safety Plan, and in an effort to keep all Contractors safe and prevent injuries and/or fatalities while working on HRT property, the Safety, Risk, and Emergency Management Department will review the Scope of Work for any procurements that may affect the Agency's safety performance or falls under 29 CFR Part 1910, Occupational Safety and Health Administration Standards. The Safety Department has developed a list of procurements that require review by the Chief Safety Officer or delegate.

If the Scope of Work includes any of the following, please check which are applicable and forward to the Safety, Risk, and Emergency Management Department for signature:

- ☐ All electrical projects, including assessments to be conducted on HRT facilities. For example, Traction Power Substation maintenance and lighting maintenance services.
- ☐ Construction, including demolition and new installation of facilities, including bus shelters.
- ☐ Roofing maintenance or construction activities.
- ☐ HVAC maintenance.
- ☐ Track, Systems, and Vehicle repair and maintenance projects and/or contracts.
- ☐ Fire suppression and detection system maintenance and monitoring services.
- ☐ Landscaping maintenance on the Tide alignment or requiring the use of aerial lifts.
- ☐ Concrete installation and repair.
- ☐ Fencing infrastructure projects.
- ☐ Facilities cleaning services.
- ☐ Sanitation contract services.
- ☐ Environmental contracts.
- ☐ Bus maintenance and Light Rail maintenance facility contract services.
- ☐ Bus and Light Rail operations and maintenance software changes.
- ☐ Shop equipment inspection and maintenance, including lifts and equipment cleaning services.
- ☐ Plumbing contracts.
- ☐ Vendor-based safety training services.
- ☐ Fleet procurements.
- ☐ Learning Management System contracts.
- ☐ Training simulator contracts.
- ☐ Personal Protective Equipment.
- ☐ Chemicals and Bulk Fluids Purchases
- ☐ Any equipment rental or procurement contracts.
- ☐ Building design (flood mitigation).
- ☐ Storage of oil and/or hazardous materials.
- ☐ Emergency generator or redundant power supply system.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 214 of 339
--	--------------------------------------	-------------------------	--------------------------------

ATTACHMENT B, SECURITY SERVICES REVIEW CHECKLIST

The Department of Security Services, in an effort to protect the security and readiness of the Agency, has developed the below list of items that should be taken into consideration when writing a Scope of Work. The Department of Security Services is required to approve any Scope of Work that addresses any of these items.

If the Scope of Work includes any of the following, please check which are applicable and forward to the Department of Security Services for signature:

- ☐ Building placement (to include new facilities or amenities).
- ☐ Building design (physical security applications, safe spaces, areas of refuge, etc.)
- ☐ Fencing, gates, and site access points.
- ☐ Exterior cameras and placement.
- ☐ Interior cameras and placement.
- ☐ Building perimeter traffic patterns.
- ☐ Building or area security equipment (i.e., access control, detection systems, locks, and door hardware, etc.).
- ☐ Access card readers and requirements.
- ☐ Fueling area(s).
- ☐ Windows and door functions/designs.
- ☐ Storage of sensitive or high-value inventory or equipment
- ☐ Employee locker areas.
- ☐ Fire Alarms and systems.
- ☐ Paging system.
- ☐ Landscaping.
- ☐ Facility entry points.
- ☐ Security services (armed, unarmed, armored car, etc.).
- ☐ Visitor Management and/or Deliveries.
- ☐ Building or property access requirements.
- ☐ Building/Environmental design/Crime Prevention Through Environmental Design (CPTED).
- ☐ Alarm/alert system(s) such as public announcement, strobes, audible alert systems, panic buttons.
- ☐ Communications systems and physical design of Dispatch Centers (OCC/RCC).
- ☐ Platform or shelter design (i.e., lighting, trash cans, bollard systems).
- ☐ Efforts that may utilize or generate Sensitive Security Information (SSI).

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 215 of 339
--	--------------------------------------	-------------------------	--------------------------------

ATTACHMENT C, RAIL AND FACILITIES MAINTENANCE REVIEW CHECKLIST

The Department of Rail and Facilities Maintenance the below list of items to ensure that all external department projects are planned and funded prior to contract award. These items should be taken into consideration when writing a Scope of Work. The Department of Rail and Facilities Maintenance is required to approve any Scope of Work that addresses any of these items.

If the Scope of Work includes any of the following, please check which are applicable and forward to the Department of Rail and Facilities Maintenance for signature:

- ☐ Any project or contract that would require expenses from facilities contracted services budget.
- ☐ Any interruption of LRV, Signals, or Track Revenue, or Non-Revenue Service.
- ☐ All electrical projects, including assessments to be conducted on HRT facilities. For example, Traction Power Substation maintenance and lighting maintenance services.
- ☐ Construction, including demolition and new installation of facilities, including bus shelters.
- ☐ Roofing maintenance or construction activities.
- ☐ HVAC maintenance.
- ☐ Track repair and maintenance projects.
- ☐ Fire suppression and detection system maintenance and monitoring services.
- ☐ Landscaping maintenance on the Tide alignment or requiring the use of aerial lifts.
- ☐ Concrete installation and repair.
- ☐ Fencing infrastructure projects.
- ☐ Facilities cleaning services.
- ☐ Sanitation contract services.
- ☐ Bus maintenance and Light Rail maintenance facility contract services.
- ☐ Bus and Light Rail operations and maintenance software changes.
- ☐ Shop equipment inspection and maintenance, including lifts and equipment cleaning services.
- ☐ Plumbing contracts.
- ☐ Personal Protective Equipment.
- ☐ Any equipment rental or procurement contracts.
- ☐ Building placement (to include new facilities or amenities).
- ☐ Building design (flood mitigation, safe spaces, areas of refuge, etc.).
- ☐ Interior and Exterior cameras and placement.
- ☐ Building or area security equipment (i.e., access control, detection systems).
- ☐ Fueling area(s).
- ☐ Windows and door functions/designs.
- ☐ Storage of oil and hazardous materials.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 216 of 339
--	--------------------------------------	-------------------------	--------------------------------

- ☐ Employee lockers areas.
- ☐ Emergency generator or redundant power supply systems.
- ☐ Communications systems and physical design of Dispatch Centers (OCC/RCC).
- ☐ Platform or shelter design (i.e., lighting, trash cans, bollard systems).
- ☐ Utilization of LRV or NTF facilities, or potential interruption to normal operations (including wraps).
- ☐ Any modification to Light Rail Vehicle systems, components, or body.
- ☐ Any modification to the Light Rail facility impacting the function of daily activities.
- ☐ Requiring manpower support of maintenance personnel outside of their normal duties.
- ☐ Any work not previously mentioned requiring support from any operations contracts.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 217 of 339
--	--------------------------------------	-------------------------	--------------------------------

INDEPENDENT COST ESTIMATE (ICE) (C-3)

Independent Cost Estimate Definition: Internal cost estimate of the cost of the Scope of Work for a project or Contract Modification, which is derived separately from the Contractor's pricing.

Independent Cost Estimate Requirements:

- **New or Renewal Contracts:**

The independent cost estimate (ICE) is the first step in determining cost/price reasonableness of a procurement. The Project Manager is responsible for obtaining an ICE of the project, based on the scope and specifications as written. The ICE may be completed in-house or by an external estimator, independent of any offerors. The ICE must be independent of, and received prior to, any bids/proposals in response to the solicitation. **The ICE must include detailed information as to its development and/or source, detailing how it was derived and the basis of the estimate, and must include supporting documentation of the detailed costs.**

- **In accordance with the FTA, an ICE based on vendor quotes or budgetary numbers, are UNACCEPTABLE.**

- **Contract Modifications (as required):**

The independent cost estimate must be prepared without knowledge of the Contractor's proposed pricing. To the greatest extent possible, both the estimate and the Contractor's pricing should be based upon unit prices previously established in the Contract.

Project Name: _____

Project Manager: _____

Date of Estimate: _____ **Estimate:** \$ _____

Method of Obtaining the Estimate (check one or more):

☐ Published Price List ☐ Past Pricing (including date) ☐ Engineering or Technical Estimate
☐ Independent Third-Party Estimate ☐ Other (Specify) _____

Has the budget for this acquisition been identified? ☐ Yes ☐ No

Have the funds for this acquisition been allocated? ☐ Yes ☐ No

Is this acquisition FTA funded? ☐ Yes ☐ No

Funding Source (Operating, Grant, etc.): _____

Signature below indicates that the Scope of Work and ICE are complete and conforms with HRT's Policy and Procedures for Procurement.

Project Manager's Signature

Date

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 218 of 339
--	--------------------------------------	-------------------------	--------------------------------

Services Work Estimate Sheet

Labor Type <i>(Provide Specific Labor Categories)</i>	No. of Hours	Billing Rate	Total Labor Hours x Billing Rate
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
Other Expenses <i>(Be specific)</i>	Quantity	Unit Rate	Total Quantity x Unit Rate
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
TOTAL ESTIMATED SERVICES:			\$

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 220 of 339
--	--------------------------------------	-------------------------	--------------------------------

Architectural and Engineering Services Work Estimate Sheet

Labor Type <i>(Provide Specific Labor Categories)</i>	No. of Hours	Billing Rate	Total Labor Hours x Billing Rate
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
Total Direct Labor			\$
Overhead Percentage			Total Overhead Costs Overhead x Total Labor
Overhead/Indirect Costs:	%		\$
Fixed Fee (Limited to 10% of the total labor and overhead expense)	%		\$
Direct Expenses	Quantity	Unit Rate	Total Quantity x Unit Rate
Travel (Lump Sum)		\$	\$
Travel (Per Mile)		\$	\$
Meals		\$	\$
Lodging		\$	\$
Postage		\$	\$
Telephones		\$	\$
Copies		\$	\$
Other Direct Expenses (Describe ODCs)	Quantity	Unit Rate	Total Quantity x Unit Rate
		\$	\$
TOTAL ESTIMATED SERVICES:			\$

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 221 of 339
--	--------------------------------------	-------------------------	--------------------------------

Best Practices and Reference Documents

The following are best practices and reference documents for developing cost estimates:

- [GAO's Cost Estimating and Assessment Guide](#) - GAO's best practices for developing and managing capital program costs
- [Capital Cost Database](#) - Historical database of actual costs of building transit projects
- [Project and Construction Management Guidelines](#) - Appendix A of this document provides information on cost estimation methodology
- [Market Conditions Research](#) - A report with recommendations for improving cost estimation of transit projects
- [Managing Capital Costs of Major Federally Funded Public Transportation Projects](#) - TCRP report
- [Estimating Soft Costs for Major Public Transportation Fixed Guideway Projects](#) - TCRP report
- [Capital Cost Estimating Guidance](#) - Federal Railroad Administration's (FRA) capital cost estimating guidance for project sponsors

Independent Cost Estimate Guide

The attached Scope of Work contains, at a minimum, the following:

For Materials:

- ☐ Quantity of items and/or materials required.
- ☐ A detailed description of each item required.
- ☐ Specifications and/or drawings for materials required.
- ☐ Date materials are required.
- ☐ Delivery address and point of contact.

For Contractors:

- ☐ A detailed list of tasks to be performed by the Contractor.
- ☐ Specifications, drawings, and/or pictures of job site or projected results of Contractor's tasks.
- ☐ Anticipated Contract term and start date.
- ☐ Location of project.

For Consultants:

- ☐ List of responsibilities to be performed by Consultant.
- ☐ A detailed list of deliverables required from Consultant.
- ☐ Anticipated Contract term and start date.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 222 of 339
--	--------------------------------------	-------------------------	--------------------------------

Estimate Guide (Continued)

Estimate Type	Items to Include	Where to find supporting information
Services (Other than A&E)	<ol style="list-style-type: none"> 1. The tasks you want done. 2. The types of people needed (i.e., supervisor admin. assistant, other). 3. The positions required (i.e., Project Manager, Deputy PM, Senior Engineer/Planner, other). 4. The estimated hours by position. 5. The salary/billing rates applied. 6. Prevailing wage rate category applied. 7. The profit/applied fee. 8. Direct expenses. 9. Completion schedule. 	<ol style="list-style-type: none"> 1. Current or past Contracts for similar services. 2. Other agencies/departments doing similar work. 3. Procurement staff can assist you in obtaining historical price and cost data.
Architect, Engineers, Designers	<ol style="list-style-type: none"> 1. The tasks you want done. 2. The types of people needed (i.e., engineers, administrative assistant, other). 3. The positions required (i.e., Project Manager, Deputy PM, Senior Engineer/Planner, other). 4. The estimated hours by position. 5. The salary/billing rates applied. 6. The profit/applied fee. 7. Overhead rate percentage. 8. Direct expenses. 9. Completion schedule. 	<ol style="list-style-type: none"> 1. Current or past Contracts for similar services. 2. Other agencies/departments doing similar work. 3. Procurement staff can assist you in obtaining historical price and cost data.
Goods/Equipment	<ol style="list-style-type: none"> 1. Product needed. 2. Quantity. 3. Unit Price. 4. Markups – overheads – profit. 5. Delivery schedule desired. 6. Warranty. 	<ol style="list-style-type: none"> 1. Vendor survey/Market survey. 2. Current or past Contracts for the same or similar product. 3. Procurement staff can assist you in obtaining historical price and cost data.
Construction	<ol style="list-style-type: none"> 1. Product needed. 2. Labor (at a minimum use Davis Bacon). 3. Materials. 4. Bonds. 5. Insurance. 6. Mobilization. 7. Equipment. 8. Markups: fringes, overheads, profits. 9. Completion schedule. 	<ol style="list-style-type: none"> 1. “Means Book” 2. “Blue Book” 3. Davis Bacon Wage Rates https://wdolhome.sam.gov/ 4. Current or past Contracts for the same project. 5. Procurement staff can assist you in obtaining historical price and cost data.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 223 of 339
--	--------------------------------------	-------------------------	--------------------------------

TIME AND MATERIAL JUSTIFICATION (C-4)

This form is to be completed and maintained in the procurement file for time and material Contracts.

Contract Title: _____

Contract Number: _____ **Date:** _____

Change Order Number (if applicable): _____

Order of Magnitude Cost: _____

Not-to-Exceed Ceiling: _____

Justification:

1. *Explain in detail why the requirements preclude the use of another Contract type, providing the strongest argument available; expiring funds or the need for expeditious Contract award are not acceptable explanations. No other Contract type is suitable for this requirement because:*

2. Describe steps taken to perform market research:

3. In this particular situation, it is not possible to estimate accurately the extent or duration of the work to anticipate costs with any reasonable degree of confidence because *(insert rationale)*:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 224 of 339
--	--------------------------------------	-------------------------	--------------------------------

4. The requirement has been structured to minimize the use of time and material requirements. This has been accomplished by *<insert steps, such as limiting the value or length of the time and materials portion of the Contract or establishing fixed prices for a portion of the requirement. Note what actions are planned to transition to the use of a firm-fixed price Contract in the future.> [Note: If acquisition is for commercial item(s), in addressing this requirement, at a minimum, insert the following specific language: The requirement has been structured to maximize the use of firm-fixed price or fixed-price with economic price adjustment Contracts on future acquisitions by <insert supporting details, e.g. limiting the value or length of the time-and-materials/labor-hour Contract or order or establishing fixed prices for portions of the requirement.>]*:

5. Use of time-and-materials Contracts on future acquisitions for the same requirement will be minimized by *<explain planned actions, such as using a different Contract type for follow-on acquisitions once sufficient knowledge of cost and schedule has been attained>.* *[Note: If acquisition is for commercial items, in addressing this requirement, at a minimum, insert the following specific language: For future acquisitions of the same requirements, use of firm-fixed-price or fixed-price with economic price adjustment Contracts will be maximized by <explain planned actions>.]*:

6. There will be adequate surveillance of Contractor performance conducted by *<insert title(s) of responsible individual(s), such as the Contracting Officer's Technical Representative, Contracting Officer's Representative, Administrative Contracting Officer, Quality Assurance Representative, or Program Manager>* _____ *<He/she/they>* _____ will *<describe what steps will be taken to ensure controls>* _____ to ensure efficient methods and effective cost controls are being used.

7. The ceiling price will be established in the Contract schedule based on the best estimate of the number of hours and amount of material required to perform the Contract. Any change in the ceiling price will only be authorized upon a determination, documented in the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 225 of 339
--	--------------------------------------	-------------------------	--------------------------------

Contract file, that it is in the best interest of HRT to make that change (*document details of ceiling price calculation below*).

Determination

Based on the above findings, I hereby determine that use of a time and material Contract is the most suitable Contract for this requirement.

Prepared by:

Project Manager's Name: _____ Date: _____

Signature: _____

Approved by:

Contracting Officer's Name: _____ Date: _____

Signature: _____

Director of Procurement's Name: _____ Date: _____

Signature: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 226 of 339
--	--------------------------------------	--------------------------	--------------------------------

SOLE SOURCE JUSTIFICATION REQUEST FORM(C-5)

This form must be completed and accompany any requisition or procurement request above \$50,000 or more if the vendor will not be selected through the competitive procurement process.

Clarifications:

- The Procurement Department is required to endeavor to obtain as much full and open competition as possible on all purchases of goods or services. Procurement will scrutinize all sole source requests and seek to compete whenever possible.
- Personal preferences should not dictate sourcing as HRT is a public agency and governed by the Federal Transit Administration and the Commonwealth of Virginia.
- The requestor should be able to document a thorough and equitable evaluation of alternatives.
- Special or unique features may be used as a consideration; however, price, quality, and/or delivery terms may not be used as a basis for sole source justification.
- Sole source requests may not be used for the purpose of expediting a purchase which otherwise would not qualify as a sole source.

Prohibitions:

- Less than full and open competition is not justified based on:
 - Failure to plan. Lack of advance planning; or
 - Limited availability of federal assistance. Concerns about the amount of federal assistance available to support the procurement (for example, due to expiration of Federal assistance available for award).
- Impermissible Actions
 - Improper contract expansion. The Common Grant Rules require grantees to have procurement procedures that preclude them from acquiring property or services it does not need.
 - Cardinal changes. A cardinal change is one in which the change causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

Please utilize the Emergency Procurement Justification and Authorization form for emergency purchases.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 227 of 339
--	--------------------------------------	--------------------------	--------------------------------

NOTE: Sole source justifications are to be supported by factual statements that will pass an internal, federal, state, or local audit. It is the salient features of a product/service that make it a sole source. Sparse or incomplete information will require greater investigation by the Procurement Department and will result in a less expedient resolution to your needs. The more relevant information provided in each section, the better.

Section 1: Basic Information

Date: _____ Requisition Number: _____

Requestor's Name: _____ Department: _____

Contractor/Supplier's Name: _____

Contractor/Supplier's Contact Information (phone/email): _____

Source of Funding (*Operating, Grant, etc.*): _____ Estimated Amount: _____

What are you buying? Provide a full description of the goods or services that you want to purchase from the Contractor/Supplier named above. For equipment or supplies, provide the manufacturer and model number.

Section 2: Case for Sole Source Procurement

All fields must be completed.

A. Condition for Sole Source

Select at least one valid condition from the list below to justify the rationale for Sole Source purchasing.

- ☐ Unsolicited Proposal. HRT may negotiate a sole-source award with an offeror that presents an unsolicited proposal that makes available a unique and innovative idea or approach. Commercial products or commercial services cannot be the basis of an unsolicited proposal. The offeror should demonstrate a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to the Commission only from one source and has not in the past been available to the Commission from another source.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 228 of 339
--	--------------------------------------	--------------------------	--------------------------------

- ☐ Patents or Restricted Data Rights. Patent or data rights restrictions may preclude competition. However, the mere existence of such rights does not by itself justify a noncompetitive award.
- ☐ Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- ☐ Unacceptable Delay. In the case of a follow-on contract for the continued development or production of highly specialized equipment or major component thereof, award to another Contractor would result in unacceptable delays in fulfilling the Commission's needs.
- ☐ Inadequate Competition. If, after soliciting several sources, competition is determined inadequate, the Commission may make a noncompetitive award. If the Commission receives inadequate competition in response to its solicitation, it should review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After the Commission determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the Commission may make a noncompetitive award.
- ☐ Authorized by the Federal Transit Administration (*rare*). 2 CFR § 200.320(c)(4) permits the Commission to request FTA's approval to use a noncompetitive procurement method. Under this authority, the FTA has made several determinations regarding the utilization of team, consortium, joint venture, or partnership or Federal standards, which include statutory authorization or requirement; national emergency; research; protests, disputes, claims, and litigation; international agreements; national security; or public interest. 2 CFR § 200.320 must be reviewed prior to selecting this justification.
- ☐ Time Extension. Contract time extensions or change orders will be considered in light of whether they are permissible changes or impermissible cardinal changes. Once HRT awards a contract, a permissible extension of the contract term length will require a sole source justification along with an ICE.
- ☐ Failure to Evaluate Options Before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award. This will require a sole source justification along with an ICE.
- ☐ Negotiating a Lower or Higher Option Price. Exercising an option after HRT has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from federal actions that can be reliably measured, such as changes in federal prevailing labor rates, for example. If the price cannot be reasonably determined from the terms of the original contract or that price cannot be shown was a result of federal actions that can be reliably measured, then this will require a sole source justification along with an ICE.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 229 of 339
--	--------------------------------------	--------------------------	--------------------------------

B. Description of Investigation

Provide a description of how your investigation was conducted and how you determined your request may be a sole source (internet research, publications, market evaluation, consultations, etc.). List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements.

--

C. Features or Capabilities

Provide a description of features or capabilities unique to the vendor/brand being requested as it relates to your program and/or project requirements. Note that the FTA prohibits brand restricted procurements.

--

D. Justification for Vendor Selection

If there are other suppliers of similar goods or services, provide a side-by-side comparison of key features/specifications/qualifications that clearly distinguishes your selection as the only source of these goods/services that will meet your specified requirements. Additional sheets may be attached if necessary.

--

E. Involvement

List below the names of each individual who was involved in making this sole source purchase recommendation.

--

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 230 of 339
--	--------------------------------------	--------------------------	--------------------------------

Section 3: Certification and Signatures

Note that this certification is required to ensure compliance with federal and state law. Review it carefully before signing.

- A. I certify that neither I, nor my cohabitating partner, nor any member of my immediate family, nor a business with which I, or any of these individuals, am/are associated, (a) has a financial or other interest in this vendor or (b) will derived a monetary gain or other tangible personal benefit as a result of the proposed purchase/contract with this vendor.
- B. I certify, to the best of my knowledge, no other person associated with this sole source has a conflict of interest.
- C. I certify, to the best of my knowledge, all statements made herein are factual and true.

Requestor's Signature	Title	Date
-----------------------	-------	------

Department Chief's Signature	Printed Name	Date
------------------------------	--------------	------

Department Chief's Title

Section 4: Procurement Approval and Signature

☐ Approved
 ☐ Not Approved (provide explanation below)

Signature	Printed Name	Date
-----------	--------------	------

Approver's Title

Not approved explanation:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 231 of 339
--	--------------------------------------	--------------------------	--------------------------------

EMERGENCY PROCUREMENT JUSTIFICATION AND AUTHORIZATION (C-6)

EMERGENCY PROCUREMENT GUIDELINES

This form must be completed by the requesting department for all emergency procurement requests, based on the specified guidelines for completion. Submit the completed form along with any other supporting documentation to the Director of Procurement to obtain an authorized signature.

Definition

In the simplest form, an Emergency Procurement is one that creates an immediate threat to the public health, welfare, or safety of people and/or property as proclaimed by the Chief Executive Officer, the Department's Chief Officer, and the Director of Procurement. An emergency is defined as a situation (such as a flood, epidemic, riot, equipment failure, or other reasons declared by the CEO) that creates an immediate threat to public health, welfare, or safety.

Regulation

The FTA's Circular 4220.1G and the Virginia Public Procurement Act provide guidelines and conditions for emergency procurements. Specifically, emergency conditions are only permissible when the existence of emergency conditions must create an immediate and serious need for supplies, services, equipment, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of the Commission, the preservation of protection or property or the health or safety of any person.

Such determination will be in writing and must be supported by documentation from the department that contains sufficient factual grounds and reasoning stating the basis for an emergency procurement and for the selection of a particular Contractor. In cases of procurements involving agreements or Contracts, the determination must be authorized prior to execution of the agreement or Contract and issuance of a Purchase Order.

Emergency procurements shall be made with as much competition as is practicable under the circumstances.

Emergency procurements require thorough documentation and file retention for auditing purposes.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 232 of 339
--	--------------------------------------	--------------------------	--------------------------------

The requestor certifies that the proposed procurement action described herein is being procured pursuant to the authority of the Transportation District Commission of Hampton Roads d/b/a Hampton Roads Transit; of 2 CFR § 200.320; FTA Circular 4220.1G; and the Virginia Public Procurement Act.

Section 1: Basic Information

Date: _____ Department: _____

Requestor's Name: _____ Phone No.: _____

Contractor/Supplier's Name: _____

Contractor/Supplier's Contact Information (phone/email): _____

Source of Funding (*Operating, Grant, etc.*): _____ Estimated Amount: \$ _____

What are you buying? Provide a full description of the goods or services that you want to purchase from the Contractor/Supplier named above. For equipment or supplies, provide the manufacturer and model number.

Section 2: Case for Emergency Procurement

All fields MUST be completed. Lack of planning or grant expiration are NEVER a justification for an emergency procurement.

The above product or service meets the definition of an emergency procurement and satisfies the following circumstance(s). Please select all that apply:

- ☐ Emergency action is required to prevent loss of life, damage to property, a threat to public safety or the environment, or the disruption of transit service or other essential functions of the Commission.
- ☐ An emergency has been declared by local, state, or national officials affecting the Commission's service area, directly or indirectly, or a request for waiver of regulatory requirements has been entered on the FTA's Emergency Docket.
- ☐ Delay in approving a Contract or purchase will cause the Commission to incur substantial costs (by delaying a Contractor, for example) or potential liabilities.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 233 of 339
--	--------------------------------------	--------------------------	--------------------------------

Section 3: Detailed Justification for Emergency

Provide a detailed justification for the emergency procurement. Include the following in the justification (refer to Page 3, Emergency Procurement Guidelines):

- What emergency occurred.
- The identified threat to health/welfare of persons/property or disruption to the transit services or other essential functions of the Commission.
- The minimum services/work necessary to eliminate the immediate threat/emergency.
- What solicitation attempts have been made to acquire the minimum services/work necessary. Once the immediate threat/emergency has been met, solicitation to replace or repair the damage permanently must occur.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 15	DATE 11/8/2024	Page Page 234 of 339
--	--------------------------------------	--------------------------	--------------------------------

Section 4: Certification and Signatures

Note that this certification is required to ensure compliance with federal and state law. Review it carefully before signing.

- D. I certify that neither I, nor my cohabitating partner, nor any member of my immediate family, nor a business with which I, or any of these individuals, am/are associated, (a) has a financial or other interest in this vendor or (b) will derived a monetary gain or other tangible personal benefit as a result of the proposed purchase/Contract with this vendor.
- E. I certify, to the best of my knowledge, no other person associated with this sole source has a conflict of interest.
- F. I certify, to the best of my knowledge, all statements made herein are factual and true.

Requestor's Signature	Title	Date

Department Chief's Signature	Printed Name	Date

Department Chief's Title

Section 4: Procurement Approval and Signature

☐ Approved ☐ Not Approved (provide explanation below)

Signature	Printed Name	Date

Approver's Title

Not approved explanation:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 235 of 339
--	--------------------------------------	-------------------------	--------------------------------

BID OPENING RECORD (C-7)

Bid Tabulation Summary Form

Invitation for Bid Number: _____

Bid Opening Date: _____

Below are unofficial, AS READ results at Bid Opening. Bid Results are not official until completion of bid evaluation.

Bidder No.	Name of Bidder	Bid Bond (Y/N)	Total Bid	DBE Participation (Y/N)	Bidder DBE Commitment %	Responsive Bid (Y/N)	Bid Rejected (Reason)

Contracting Officer Name: _____ **Contracting Officer Signature:** _____

Witness Name: _____ **Witness Signature:** _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 236 of 339
--	--------------------------------------	-------------------------	--------------------------------

CONTRACTOR REFERENCE VERIFICATION FORM (C-8)

This form is the only form utilized to document reference verifications when contacting references provided by the Contractor. Other questions may be asked as warranted and documented on Page 4.

Solicitation Number and Title: _____

Prospective Contractor's Name: _____

Reference Company Name: _____

Reference Point of Contact Name: _____

Phone Number: _____ **Date of Reference Verification:** _____

Name of Person Completing Reference Verification: _____

Questions:

1. What type of work was performed?

2. When was the work performed?

3. What was the basis of award to this company?

4. What was the best aspect about working with this company?

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 237 of 339
--	--------------------------------------	-------------------------	--------------------------------

5. Were there any issues/problems? How were they resolved?

6. How would you rate this company on a scale from 1 to 5, with 1 being the lowest and 5 being the highest?

a. Quality of workmanship: _____

Notes:

b. Ease to work with: _____

Notes:

c. Kept to schedule: _____

Notes:

d. Adhered to contract: _____

Notes:

e. Worksite kept clean and organized: _____

Notes:

f. Effectiveness of communication: _____

Notes:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 238 of 339
--	--------------------------------------	-------------------------	--------------------------------

g. Willingness to work through problems: _____

Notes:

h. Honesty and trustworthiness: _____

Notes:

i. Management of crew members: _____

Notes:

j. Delivered what was promised: _____

Notes:

k. Administration (i.e., invoicing): _____

Notes:

Add total score for questions a through k. Score should equal no more than 55: _____

☐ Excellent (Score between 50 – 55)

☐ Very Good (Score between 44 – 49)

☐ Average (Score between 33 – 43)

☐ Fair (Score between 22 – 32)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 239 of 339
--	--------------------------------------	-------------------------	--------------------------------

Additional Questions/Notes:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 240 of 339
--	--------------------------------------	-------------------------	--------------------------------

PROCUREMENT SUMMARY/RECORD OF PROCUREMENT HISTORY (C-9)

(Required for procurements of \$50,000 or higher; \$30,000 for Professional Services)

Date: _____ Solicitation Number: _____

Project Title: _____

Type of Solicitation:

- ☐ Request for Proposal
 ☐ Invitation for Bids
 ☐ Request for Quote
☐ Sole Source
 ☐ Other: _____

Method of Public Advertising: _____

Date of Advertising: _____ Date of Receipt of Offer: _____

Procurement Method

- ☐ Full and Open Competition
☐ Other than Full and Open Competition: _____

Contract Type

- ☐ Firm Fixed Price
 ☐ Firm Fixed Unit Price
 ☐ Lump Sum
 ☐ Cost plus Fixed Fee
☐ Time and Material – Indicate the following:

Not-to-exceed ceiling price: _____ Date of Final Price Negotiation: _____

Basis for Contractor Selection

Reason for Contractor Selection:

Offeror's Name: _____

Offeror's Address: _____

Business Size and Type (i.e., small, large, DBE): _____

Offeror's Total Proposed Price: _____

Independent Cost Estimate: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 241 of 339
--	--------------------------------------	-------------------------	--------------------------------

Procurement Description

Brief description of the procurement:

Delivery or Period of Performance: _____

Procurement Point of Contact and Title: _____

Technical Point of Contact and Title: _____

Introduction

1. Describe the acquisition, including a brief history of the requirement, the place of performance, and any other pertinent information. Questions to be answered include: What is it? Why is it needed? Quantity? If this is a contract modification, what events or circumstances contributed to needing the change?

2. Address the extent of competition under the acquisition. If other than full and open competition, include a statement regarding the sole source justification and approval. Was the procurement publicized in accordance with procurement policy and procedure? If not, why? How many offers were received? If conducted, what the results of the post opening survey?

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 242 of 339
--	--------------------------------------	-------------------------	--------------------------------

3. Identification of HRT's evaluation panel/negotiating team members by name and position.

--

Responsible Determination

1. The prospective Contractor(s) has (have) been determined to be responsible technically and are financially stable. ☐ Yes ☐ No
2. If applicable, the prospective Subcontractor(s) has (have) been determined to be responsible technically and are financially stable: ☐ Yes ☐ No
3. The prospective Contractor(s) ☐ is (are), ☐ is not (are not) in the SAM database.
4. The prospective Contractor(s) ☐ is (are), ☐ is not (are not) on the Virginia list of "Debarred Contractors."
5. Authority to enter into a contract was approved by (name and title of individual):

6. The offeror has submitted "Cost or Pricing Data." ☐ Yes ☐ No
7. The major subcontractor(s) have submitted "Cost or Pricing Data." ☐ Yes ☐ No
8. The offeror(s) has (have) an adequate accounting system as determined by (name and title of individual) _____. ☐ Yes ☐ No
9. Address any deviations, special clauses, or conditions:

--

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 243 of 339
--	--------------------------------------	-------------------------	--------------------------------

Special Features, Requirements, and Pre-Negotiation Compliance

The use of sealed bid procedures is not appropriate for this acquisition because:

Cost and Profit/Fee Analysis

In summary, compare the offeror's proposal, Independent Cost Estimate, audit of offeror's cost, and/or other recommendations. *Include attachment with Cost and Profit/Fee Analysis.*

Major Differences

Identify any anticipated problem areas, exceptions taken by the offeror(s) to the solicitation terms and conditions, or major differences which may interfere with negotiations.

Negotiation Strategy and Results

Describe the negotiation strategy and any resultant price/cost concessions.

By signing below, I certify that all statements on this form are true and correct to the best of my knowledge:

Contracting Officer's Name: _____ Date: _____

Contracting Officer's Signature: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 244 of 339
--	--------------------------------------	-------------------------	--------------------------------

Review:

Reviewer's Name: _____ Date: _____

Reviewer's Title: _____

Reviewer's Signature: _____

Approval:

Approver's Name: _____ Date: _____

Approver's Title: _____

Approver's Signature: _____

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 245 of 339
--	--------------------------------------	-------------------------	--------------------------------

APPENDIX D – OTHER RESOURCES

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER MATRICES

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 246 of 339
--	--------------------------------------	-------------------------	--------------------------------

Federal Procurement Governing Directives (D-1)

Description	Governing Directive
<i>Systemwide Elements</i>	
Standards of Conduct are Written	2 CFR 200.318 (c)(1) and (2)
Standards of Conduct Include All Elements	2 CFR 200.318 (c)(1) and (2)
Standards of Conduct Are Enforced When Necessary	2 CFR 200.318(c)(1) and (2)
Contract Administration System	2 CFR 200.318(b)
Protest Procedures Available to Public	2 CFR 200.318(k)
Written Protest Procedures	2 CFR 200.318(k)
Protest Procedures Followed	2 CFR 200.318(k)
Prequalification System	2 CFR 200.319(e)
System for Ensuring Most Efficient and Economic Purchase	200 CFR 200.318(d)
Procurement Policies and Procedures Exist	2 CFR 200.319(d)
Procurement Policies and Procedures Require Clear and Accurate Description and Evaluation Factors	2 CFR 200.319(d)
Procurement Policies and Procedures Written and Do Not Conflict with Federal Requirements, or Implementation Can be Demonstrated	2 CFR 200.317-327
Subrecipient Oversight	2 CFR 200.332
<i>Procurement File Elements</i>	
Independent Cost Estimate	2 CFR 200.324
Independent Cost Estimate for Change Orders	2 CFR 200.324
Sufficient Independent Cost Estimate	2 CFR 200.324
A&E Geographic Preference	2 CFR 200.320(b)(2)(iv)
Unreasonable Qualification Requirements	2 CFR 200.319(b)
Unnecessary Experience and Excessive Bonding	2 CFR 200.319(b)
Organizational Conflict of Interest	2 CFR 200.319(b)
Arbitrary Action	2 CFR 200.319(b)
Brand Name Restrictions	2 CFR 200.319 (b) and (d)(1)
Geographic Preferences	2 CFR 200.319(c)
Contract Term Limitation – Vehicle	49 U.S.C. 5325(e)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 247 of 339
--	--------------------------------------	-------------------------	--------------------------------

Contact Term Limitation for Non-Rolling Stock	FTA C 4220.1G, IV, 2.b.(3)
Written Procurement Selection Procedures	2 CFR 200.319(d)(2)
Solicitation Prequalification Criteria	2 CFR 200.319(e)
Award to Responsible Contractors	49 U.S.C. 5325(j)
Suspension and Debarment Verification	2 CFR 180.300
Contract Actions for Contractors Suspended or Debarred After Contract Award	2 CFR 180.310
Micro-Purchase Procedures	2 CFR 200.320(a)(1)
No Splitting (Micro-Purchase)	FTA C 4220.1G, VI, 3.a.(6)(b)
Micro-Purchase Davis Bacon	40 U.S.C. 3142(a)(1)
Price Quotations (Small Purchase)	2 CFR 200.320(a)(2)
No Splitting (Small Purchase)	FTA C 4220.1G, VI, 3.b.(2)(b)
Clear, Accurate, and Complete Specification	2 CFR 200.319(b)
Adequate Competition – Two or More Competitors	2 CFR 200.320(b)
Firm Fixed Price (Sealed Bid)	2 CFR 200.320(b)
Selection on Price (Sealed Bid)	2 CFR 200.320(b)
Discussions Unnecessary (Sealed Bid)	2 CFR 200.320(c)
Advertised/Publicized	2 CFR 200.320(b)
Adequate Number of Sources Solicited	2 CFR 200.320(b)
Sufficient Bid Time (Sealed Bid)	2 CFR 200.320(b)
Bid Opening (Sealed Bid)	2 CFR 200.320(b)
Responsiveness (Sealed Bid)	2 CFR 200.320(b)
Lowest Price (Sealed Bid)	2 CFR 200.320(b)
Rejecting Bids (Sealed Bid)	2 CFR 200.320(b)
Evaluation Factors (RFP)	2 CFR 200.320(b)
Price and Other Factors (RFP)	2 CFR 200.320(b)
Sole Source if Other Award is Infeasible	2 CFR 200.320(c)
Cost Analysis Required (Sole Source)	2 CFR 200.324(b)
Options Based on Foreseeable Need	2 CFR 200.318(d)
Cost or Price Analysis	2 CFR 200.324(b)
Profit Negotiation Required	2 CFR 200.324(b)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 248 of 339
--	--------------------------------------	-------------------------	--------------------------------

Written Record of Procurement History	2 CFR 200.318(i)
Exercise of Options Evaluated	FTA C 4220.1G, IV, 1.d.
Evaluation of Options	FTA C 4220.1G, V, 7.a.(1)(a)(b)
Exercise of Options	FTA C 4220.1G, VI, 5.b.
Change Orders	FTA C 4220.1G, III, 3.d.(3)
Advance Payment Provisions	FTA C 4220.1G, IV, 2.b.(5)(a)
Time and Material Contracts	2 CFR 200.318(j)(1)
Cost Plus Percentage of Cost	2 CFR 200.324(d)
Liquidated Damages Provisions	FTA c 4220.1G, IV, 2.b.(9)(d)
Accounting for Received Liquidated Damages	FTA C 4220.1G, IV, 2.b.(9)(d)
Piggyback Purchase	FTA C 4220.1G, V, 8.b
Domestic Content for Vehicle Piggyback	September 1, 2016, Phased Increased Domestic Policy Notice
Qualifications Exclude Price (A&E)	2 CFR 200.320(b)(2)(iv)
Serial Price Negotiations (A&E)	40 U.S.C. 1104(b)
Bid Security, Performance Security, or Payment Security (Construction over \$250,000)	2 CFR 200.326
Clauses Included	Appendix II to 2 CFR Part 200
Clauses Added to Existing Contracts	Appendix II to 2 CFR Part 200
TVM Certifications	49 CFR 26.49
Signed Lobbying Certifications	31 U.S.C. 1352
Buy America Certification Included in Solicitation	49 CFR 661.6 or 661.12
Signed Buy America Certification	49 CFR 661.6 or 661.12
Buy America Waivers	49 CFR 661.6 or 661.12
Bus Testing Requirements	49 CFR 665.7
Bus Testing Report	49 CFR 665.7
Buy America Domestic Content	September 1, 2016, Phased Increased Domestic Content Policy Notice
Pre-Award and/or Post Delivery Audits	49 CFR 663
Pre-Award and/or Post Delivery Certifications	49 CFR 663

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 249 of 339
--	--------------------------------------	-------------------------	--------------------------------

THIRD-PARTY CONTRACT PROVISIONS (D-2) <i>(Excluding micro-purchases, except Davis-Bacon requirements apply to Contracts exceeding \$2,000)</i>		
Requirement	Comments	Master Agreement Reference
<i>All FTA-Assisted Third-Party Contracts and Subcontracts</i>		
No Federal Government Commitment or Liability to Third Parties		§ 3(l)
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 4.e
Access to Third-Party Contract Records		§ 16.s
Changes to Federal Requirements		§ 3.j.(1)
Equal Employment Opportunity (except special DOL construction clause)		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs	§ 12.e
Incorporation of FTA Terms	Per FTA C 4220.1G	§ 16.d
Prompt Payment		49 CFR 26.29
Prohibition on Certain Telecommunications Equipment		2 CFR 200.216 FAR 52.204-24
<i>Awards Exceeding \$10,000</i>		
Terminations	If 2 CFR 200.340-343 applies	§11 and § 16.d(2)
<i>Awards Exceeding \$25,000</i>		
Debarment and Suspension	2 CFR Parts 180 and 1200	§ 4.h
Notice to FTA and U.S. DOT Inspector General of waste, fraud, abuse...		§ 39(b)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 250 of 339
--	--------------------------------------	-------------------------	--------------------------------

<i>Awards Exceeding the Simplified Acquisition Threshold (\$250,000)</i>		
Resolution of Disputes, Breaches, or Other Litigation		§ 39
<i>Awards Exceeding \$150,000 by Statute</i>		
Lobbying		§ 4.c and § 16.d.(10)
Clean Air	42 U.S.C. 7401-7671q.	§ 16.d.(8)
Clean Water	33 U.S.C. 1251-1388	§ 16.d.(8)
Buy America and Build America, Buy America Act	When tangible property or construction will be acquired. The threshold for applicability is no longer tied to the simplified acquisition threshold. It is statutorily fixed in 49 U.S.C. § 5323(j)(13)	§ 15.a and b
<i>Transport of Property or Persons</i>		
Cargo Preference – Use of United States-Flag Vessels	When acquiring property suitable for shipment by ocean vessel	§ 15.c
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§ 15.d
<i>Construction Activities</i>		
Federally Assisted Construction Contracts	Pursuant to 41 CFR § 60-1.4(b)(1)	§ 16.d(4)
Construction Employee Protections - Davis Bacon Act	For Contracts exceeding \$2,000	§ 16.d.(5)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For Contracts exceeding \$100,000	§ 16.d.(6)
Construction Employee Protections <ul style="list-style-type: none"> • Sect. 1 Copeland Anti-Kickback Act • Sec. 2 Copeland Anti-Kickback Act 	All contracts Contracts >\$2,000	§ 16.d (4)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 251 of 339
--	--------------------------------------	-------------------------	--------------------------------

Special EEO Provision for Construction	All construction contracts	§ 16.d.(3)
Bonding for construction activities exceeding \$250,000	5% bid guarantee 100% performance and payment bond	§ 16.n
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§ 23.b
Veterans Preference	All construction contracts	§ 16.u
<i>Non-construction Activities</i>		
Non-construction Employee Protection - Contract Work Hours and Safety Standards Act	Applicable to all turnkey, rolling stock and operational Contracts (except transportation services and open market contracts) >\$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
<i>Transit Operations</i>		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions	§ 35.b
Alcohol Misuse and Testing	Safety sensitive functions	§ 35.b
<i>Planning, Research, Development, and Demonstration Projects</i>		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
<i>Miscellaneous Special Requirements</i>		
Energy Conservation		§ 26
Recycled Products	Contracts for items designated by EPA, when procuring \$10,000 or more per year	§ 16.d (10)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 252 of 339
--	--------------------------------------	-------------------------	--------------------------------

Prohibition on Certain Telecommunications Equipment	All Contracts	2 CFR 200 Appendix II and 2 CFR 200.216
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects	§ 16.l
ADA Access	Contracts for rolling stock or facilities construction/renovation	§ 12.h
Assignability Clause	Procurements through assignments (“piggybacking”)	§ 16.a, which incorporates FTA Circular 4220.1

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 253 of 339
--	--------------------------------------	-------------------------	--------------------------------

APPLICABILITY OF THIRD-PARTY CONTRACT PROVISIONS (D-3)
(Excluding micro-purchases, except Davis-Bacon requirements apply to Contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
Provision	Professional Services/A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Commitment or Liability to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
Program Fraud and False or Fraudulent Statements or Related Acts	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	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Equal Employment Opportunity (except Special DOL EEO clause for construction projects)	All	All	All	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			>\$150,000	>\$150,000	>\$150,000
Build America, Buy America Act				All	
Resolutions of Disputes, Breaches, or Other Litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 254 of 339
--	--------------------------------------	-------------------------	--------------------------------

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
Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Wates, etc.	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs
Prompt Payment	All	All	All	All	All
Davis-Bacon Act				>\$2,000 (also ferries)	
Veterans Preference				>\$150,000	
Contract Work Hours and Safety Standards Act		\$250,000 (transportation services excepted)	>\$250,000	>\$250,000 (also ferries)	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (also ferries)	
Bonding				\$250,000	
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

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 255 of 339
--	--------------------------------------	-------------------------	--------------------------------

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
Seat Belt Use	All	All	All	All	All
Distracted Driving	All	All	All	All	All
Conformance with ITS National Architecture	ITS projects	ITS projects	ITS projects	ITS projects	ITS projects
Access Requirements for Individuals with Disabilities	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
Prohibition on Certain Telecommunications Equipment	All	All	All	All	All

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 256 of 339
--	--------------------------------------	-------------------------	--------------------------------

PRINCIPAL STATUTES, REGULATIONS, AND RESOURCES (D-4)

Citation	Title	Subject	URL
2 CFR Part 200	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards	Regulations governing Federally assisted projects	2 CFR Part 200
40 USC § 1102	Brooks Act	Procurement of Architectural & Engineering and Related Services	40 USC § 1102
40 USC § 3141 et seq.	Davis-Bacon Act	Prevailing wage requirements for Federally assisted construction projects	40 USC § 3141 et seq.
49 CFR Part 26	Participation by DBE in DOT Programs	Regulations governing the certification of DBEs and the establishment/administration of DBE goals	49 CFR Part 26
49 CFR Part 661	Buy America Requirements	Buy America requirements for iron, steel, manufactured products, and rolling stock	49 CFR Part 661
Public Law 117-58, div. G, Title, IX, sections 70911 – 70927 (2021)	Build America, Buy America Act Requirements	Buy America requirements for all construction materials used in FTA funded projects	Public Law 117-58, div. G, Title, IX, sections 70911 – 70927 (2021)
49 USC Chapter 53	Federal Transit Laws	Statutes governing federal transit programs	49 USC Chapter 53

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 257 of 339
--	--------------------------------------	-------------------------	--------------------------------

FAST Act Section 3011	Fixing America's Surface Transportation (FAST)	Re-establishes a Bus Discretionary Program that allows states to apply for project-specific funding via a competitive process	FAST Section 3011
FAST Act Section 3019	Fixing America's Surface Transportation (FAST)	Establishes parameters for joint cooperative purchasing of rolling stock and related equipment	FAST Section 3019
FTA C4220.1G	Third-Party Contracting Requirements	Requirements for Federally funded procurements	FTA C4220.1G
FTA C5010.1E	Grant Management Guidelines	Regulations governing the administration of grants	FTA C5010.1E
FTA MA (Current Year)	Master Agreement	Terms and conditions governing Federally assisted projects	FTA MA (Current Year)
SAM	System for Award Management	Listing of Debarred Individuals and Companies	SAM
Treasury Circular 570	List of Approved Sureties	Companies approved to provide bonds on federal projects	Treasury Circular 570
VA Debarment Listing	Virginia Division of Purchases and Supplies Debarment and Prohibited List	Listing of Debarred Individuals and Companies	VA Debarment Listing
VPPA	Virginia Public Procurement Act	Public policy pertaining to governmental procurement within the Commonwealth of Virginia	§ 2.2-4300 et seq.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 258 of 339
--	--------------------------------------	-------------------------	--------------------------------

APPENDIX E

BOILERPLATE GENERAL CONDITIONS (THIRD-PARTY CONTRACT PROVISIONS)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 259 of 339
--	--------------------------------------	-------------------------	--------------------------------

1. Definitions and Acronyms (All Contracts)

Agency or Commission or HRT or TDCHR or Board of Commissioners or Administration or Hampton Roads Transit means the Transportation District Commission of Hampton Roads.

Change Order or Modification means a written document signed by the Commission, and issued to the Contractor, which alters the scope of the Work to be performed by the Contractor, changes the schedule for performance of the Work, increases or decreases the Contractor's compensation, or makes any other change to the Contract.

Completion means "final completion."

Contract includes the properly executed Solicitation, Offer and Award Form; the Contractor's offer, including executed bid/proposal forms and attachments; the Special Provisions, General Conditions, Appendices, Exhibits, Plans, and Specifications; properly executed Certificates of Insurance; Payment Bond; Performance Bond; List of Subcontractors; List of Changes in Subcontractors, due to Alternates; Notice(s) to Proceed; and all Amendments (Addenda) issued prior to and all Modifications (Change Orders) issued after execution of the Contract.

Contracting Officer means the person granted authority to act on behalf of the Commission in all matters concerning this Contract, any successor thereto, and the authorized representative of the Contracting Officer acting within the limits of authority delegated by the Contracting Officer.

Contractor or Consultant means the individual, firm, partnership, corporation, joint venture, or combination thereof who, as an independent Contractor, has entered into this Contract with the Commission for the performance of the Work required by the Contract.

Days except as otherwise provided herein, shall refer to calendar days, including without limitation weekends and holidays.

Final Completion means fulfillment of all the Contractor's obligations under the Contract.

IFB means Invitation for Bids.

Materials include materials, equipment, products, articles, and other physical items incorporated or to be incorporated into the Work.

Owner means Hampton Roads Transit.

Product Data includes written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, drawings, or other information furnished by the Contractor to describe materials to be used for some portion of the Work.

Project means the Commission's overall objective or endeavor of which this Contract forms a part.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 260 of 339
--	--------------------------------------	-------------------------	--------------------------------

Project Manager or **PM** means either the Commission's or the Contractor's designated and authorized representative and point of contact for managing the project. The PM is charged with the oversight and administration of the performance of the Work.

Project Schedule means the schedule prepared by the Contractor and accepted by the Commission setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with this Contract, and specifically, to meet the specified milestone dates, including updates.

RFP means Request for Proposal.

Samples include physical examples of materials to be supplied or workmanship, which shall, when approved by the Commission, establish standards by which the Work shall be judged. **(Not applicable to Professional Services)**

Shop Drawings means drawings, diagrams, schedules, or other data prepared by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate or detail some portion of the Work. **(Not applicable to Professional Services)**

Specifications means that part of the Contract containing written directions and requirements for completing the Work. Standards, or portions thereof, cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.

Special Provisions means Contractual terms which supplement or modify the General Conditions. Any such Special Provision shall take precedence over any General Condition modified by it.

Specialty Items means materials which are of a special design, or which require special fabrication specifically for this Project. **(Not applicable to Professional Services)**

Subcontract means any agreement including purchase orders (other than one involving an employer/employee relationship) entered into between the Contractor and a Subcontractor calling for services, labor, equipment, and/or materials required for the Contract performance, including any modification thereto.

Subcontractor means any individual, firm, partnership, corporation, joint venture, or combination thereof, or other entity, other than employees of the Contractor, who Contract with the Contractor or a Subcontractor of any tier to furnish services, labor, equipment and/or materials, or labor and materials, under this Contract. As used herein, the term Subcontractor is considered to include the term Supplier.

Supplies, material, and equipment, as used herein shall include without limitation, all items, tangible or intangible, to be incorporated in the Work or otherwise delivered to the Commission hereunder.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 261 of 339
--	--------------------------------------	-------------------------	--------------------------------

Work means the furnishing of all of the supervision, labor, materials, equipment, services, and incidentals necessary to complete any individual item and the entire Contract and the carrying out of any duties and obligations imposed on the Contractor by the Contract.

2. Changes (All Contracts)

The Contracting Officer may at any time, by written order, and without notice to the sureties, make changes, within the general scope of this Contract. Such change will serve to modify this Contract to the extent necessary to execute the change as directed.

If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Work under this Contract, whether changed or not changed by the order, the Contracting Officer will make an equitable adjustment in the Contract price, the delivery schedule, or both, and will modify the Contract accordingly.

The Contractor must assert its right to an adjustment under this Article within three (3) working days from the date of receipt of the written order. Failure by the Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment of the Contract.

If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the Contracting Officer will have the right to prescribe the manner of the disposition of such equipment or materials.

Failure to agree to any adjustment will be a dispute under the Disputes Article. However, nothing in this Article will excuse the Contractor from proceeding with the Contract as changed.

Granting or acceptance of extensions of time to complete the Work or furnish the labor, supplies, materials, or equipment required under the Contract will not release the Contractor or its surety from their obligations hereunder.

3. Order of Precedence (All Contracts)

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents will govern in the following order of precedence: Contract Modifications (Change Orders), Contract Agreement, Contract Appendices, Special Provisions, General Conditions, Plans, Technical Specifications, Contractor's proposal including executed forms and attachments.

4. Assignment and Delegation (All Contracts)

The Contractor shall neither delegate any duties or obligations under this Contract nor assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title, or interest in or to the same, or any part thereof, without previous consent in writing from the Contracting Officer.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 262 of 339
--	--------------------------------------	-------------------------	--------------------------------

5. Authority of Owner's Representative (Construction, Operations and Maintenance)

The Work of the Contract will be conducted under the general direction of the Commission's Project Manager (PM). The PM has authority to oversee the performance of the Work, and may take the following actions:

- A. Act as the principal technical point of contact with the Contractor.
- B. Review and approve invoices and payment estimates. In those cases requiring release of final retained percentage of payment, the Project Manager will make his/her recommendations in writing to the Contracting Officer.
- C. Coordinate correspondence with the Contracting Officer if it significantly affects the contractual terms, or the rights and obligations of the parties thereunder.
- D. Notify the Contracting Officer whenever the Project Manager has reason to believe that any estimated cost not-to-exceed amount for a Contract modification will be exceeded.
- E. Approve, in writing, the Contractor's progress schedule when required.
- F. Receive from the Contractor monthly DBE status reports, if applicable.
- G. Upon notice from the Contractor that the Work is Substantially Complete, conduct an inspection of the Work, establish a Punch List, and advise the Contracting Officer as to whether or not Substantial Completion has been attained.
- H. Provide the Contracting Officer with a written notification after all Work has been satisfactorily completed, stating that he/she is not aware of any open issues that would preclude close out of the Contract.

The Contractor shall adhere to the actions below only if received from or directed by the Contracting Officer or his/her designee.

- A. Contract modifications.
- B. Issuance of written orders to stop and/or resume Work.
- C. Negotiations with the Contractor for adjustment of Contract price and/or time.

The presence or absence of the Commission's Project Manager or inspectors at any time shall not relieve the Contractor from adherence to any requirement of the Contract.

6. Authority of Owner's Representative (Materials and Supplies, Professional Services, Rolling Stock)

The Work of the Contractor will be conducted under the general direction of the Commission's Project Manager (PM). The PM has authority to oversee the performance of the Work, and may take the following actions:

- A. Act as the principal technical point of contact with the Contractor.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 263 of 339
--	--------------------------------------	-------------------------	--------------------------------

- B. Review and approve invoices and payment estimates. In those cases requiring release of final retained percentage of payment, the Project Manager will make his/her recommendations in writing to the Contracting Officer.
- C. Coordinate correspondence with the Contracting Officer if it significantly affects the contractual terms, or the rights and obligations of the parties thereunder.
- D. Notify the Contracting Officer whenever the Project Manager has reason to believe that any estimated cost not-to-exceed amount for a Contract modification will be exceeded.
- E. Approve, in writing, the Contractor's progress schedule when required.
- F. Receive from the Contractor monthly DBE status reports, if applicable.
- G. Provide the Contracting Officer with a written notification after all Work has been satisfactorily completed with stating that he/she is not aware of any open issues that would preclude close out of the Contract.

The Contractor shall adhere to the actions below only if received from or directed by the Contracting Officer or his/her designee.

- A. Contract modifications.
- B. Issuance of written orders to stop and/or resume Work.
- C. Negotiations with the Contractor for adjustment of Contract price and/or time.

The presence or absence of the Commission's Project Manager or inspectors at any time shall not relieve the Contractor from adherence to any requirement of the Contract.

7. Flow Down (All Contracts)

The Contractor shall ensure appropriate flow-down of applicable Contract provisions to appropriate Subcontracts of every tier. The Contractor agrees that it will incorporate the provisions of this Contract, to the extent applicable, into all Subcontracts and orders with Subcontractors and suppliers of all tiers. It is understood that these provisions apply to all types of Contracts and/or Subcontracts specifically including lump sum (or fixed price Contracts), unit price Contracts, and/or cost type Contracts with or without a guaranteed maximum. It is further understood that change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals and cost type change order proposals.

8. Subcontracting (All Contracts except Rolling Stock)

The Commission reserves the right, without liability, to approve any Subcontractor of any tier employed by the Contractor hereunder. Nothing in the Contract shall create any contractual relationship between the Commission and any Subcontractor. The Contractor is fully responsible to the Commission for the acts and omissions of its Subcontractors, vendors, materialmen, and persons directly employed by any of them.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 264 of 339
--	--------------------------------------	-------------------------	--------------------------------

The Contractor shall not, without the prior written consent of the Contracting Officer, substitute any Subcontractor in place of any previously approved Subcontractor. When a portion of the Work which has been subcontracted by the Contractor is not being performed in a manner satisfactory to the Commission, the Subcontractor shall be removed immediately upon the written request of the Commission and shall not be employed for any future Work under the Contract. The Commission reserves the right to direct the removal from the work site of any individual employed, directly or indirectly, by the Contractor or any Subcontractor. No substitution or replacement of a Subcontractor, however caused, shall relieve the Contractor of its obligation to attain the percentage of DBE activity specified herein.

The Contractor shall, within ten (10) days of receiving payment from the Commission, pay all amounts properly due to its Subcontractors and materialmen, and shall cause its Subcontractors of every tier to pay their Subcontractors and materialmen within an equivalent period after their receipt of payment. The Contractor shall promptly notify the Commission of any circumstance in which payment is not so made. Failure to comply with the requirements of this paragraph may be deemed a material breach of this Contract. Any retainage held at the completion of a Subcontractor's Work shall be returned to the Subcontractor within thirty (30) days of the completion and acceptance of the Subcontractor's Work.

For those Contracts for which a DBE goal has been established, the failure to perform in accordance with the DBE program detailed in Appendix A may result in partial or full suspension of payment and/or progress payments.

Should the Contractor wish to withhold payment otherwise due a Subcontractor hereunder, it shall notify the Commission's representative of such intention in writing, providing the reasons for such withholding. Approval of such withholding by the Commission is required. The Contractor shall furnish the Commission with a copy of the notice given to the Subcontractor or Supplier specifying:

- A. The amount to be withheld;
- B. The specific causes for the withholding under the terms of the Subcontract; and
- C. The remedial actions to be taken by the Subcontractor or Supplier in order to receive payment of the amounts withheld.

9. Invoices (All Contracts)

Mail original and one (1) copy of all invoices to Transportation District Commission of Hampton Roads, ATTN: Accounts Payable, 3400 Victoria Blvd, Hampton, VA 23661. Electronic invoices may be submitted to acctspayable@hrtransit.org.

The form and content of invoices are subject to review and approval by the Commission. Payment will be made only after receipt and approval of a proper invoice. A proper invoice includes the Purchase Order/Contract Number, date of invoice, dates of delivery of item/service, a description

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 265 of 339
--	--------------------------------------	-------------------------	--------------------------------

of the item/service delivered, sizes and quantities if applicable, unit prices, and extended totals, and any additional information required by the Commission. Invoices shall be accompanied by any supporting documentation that may be required by the Commission.

If applicable, the Contractor shall also provide a “Form E – Contractor’s Monthly DBE Payment Report,” with each application for payment. This form is provided in Appendix A.

10. Payments (Construction)

The Commission will pay to the Contractor at the times and in the manner hereinafter provided, the amount set forth in the Price Schedule for the Work satisfactorily performed, contingent upon the Contractor's satisfactory compliance with the terms and conditions of the Contract. The Contractor agrees to accept that amount as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by the Contractor in performing its obligations under the Contract.

The Contractor shall not request payment from the Commission of any amount that the Contractor has withheld or retained from Subcontractors or Suppliers until such time that the Contractor has determined and certified to the Commission that the Subcontractor is entitled to the payment of such amount. If the Contractor has made application for payment to the Commission and subsequently withholds or retains payments from a Subcontractor, the Contractor may be obligated to pay interest to the Commission on that amount, in addition to any other remedies the Commission may have hereunder.

No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by the Commission, will constitute an acceptance of any Work that is not in accordance with the Contract.

In the event Progress Payments are applicable, and unless otherwise specified in the Special Provisions or Specifications, within thirty (30) days after receipt of the Commission’s Notice to Proceed, and prior to submission of the Contractor's first invoice, the Contractor shall submit to the Commission a supplementary Schedule of Values allocated to various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as the Commission may require. When accepted by the Commission, that schedule shall be the basis for determining the amount of each progress payment.

The Contractor shall submit monthly invoices setting forth the percentage of work, or units of work where applicable, completed during the month and the amount due for such Work based upon the Price Schedule and any supplementary schedule of values that may be required by the PM.

By submitting a Request for Payment, the Contractor warrants that:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 266 of 339
--	--------------------------------------	-------------------------	--------------------------------

- A. Title to all materials furnished by the Contractor or incorporated into the Work by the Contractor and covered by the progress payment shall pass to the Commission at the time the Contractor receives the progress payment;
- B. All materials are free and clear of all liens, claims, security interests, or encumbrances; and
- C. No materials have been acquired by the Contractor, or by any other person performing work at the work site or furnishing materials for the Work under this Contract, which are subject to an agreement under which an interest in, or encumbrance on, the materials or equipment is retained by the seller or otherwise imposed.

The Commission may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken on the application by the Commission on account of work done by the Subcontractor.

11. Payments (Materials and Supplies, Rolling Stock)

The Commission will pay to the Contractor at the times and in the manner hereinafter provided, the amount set forth in the Price Schedule for the Work satisfactorily performed, contingent upon the Contractor's satisfactory compliance with the terms and conditions of the Contract. The Contractor agrees to accept that amount as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by the Contractor in performing its obligations under the Contract.

The Contractor shall not request payment from the Commission of any amount that the Contractor has withheld or retained from Subcontractors or Suppliers until such time that the Contractor has determined and certified to the Commission that the Subcontractor is entitled to the payment of such amount. If the Contractor has made application for payment to the Commission and subsequently withholds or retains payments from a Subcontractor, the Contractor may be obligated to pay interest to the Commission on that amount, in addition to any other remedies the Commission may have hereunder.

No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by the Commission, will constitute an acceptance of any Work that is not in accordance with the Contract.

In the event Progress Payments are applicable, and unless otherwise specified in the Special Provisions or Specifications, within thirty (30) days after receipt of the Commission's Notice to Proceed, and prior to submission of the Contractor's first invoice, the Contractor shall submit to the Commission a supplementary Schedule of Values allocated to various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as the Commission may require. When accepted by the Commission, that schedule shall be the basis for determining the amount of each progress payment.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 267 of 339
--	--------------------------------------	-------------------------	--------------------------------

The Contractor shall submit monthly invoices setting forth the percentage of work, or units of work where applicable, completed during the month and the amount due for such Work based upon the Price Schedule and any supplementary schedule of values that may be required by the PM.

By submitting a Request for Payment, the Contractor warrants that:

- A. Title to all materials furnished by the Contractor or incorporated into the Work by the Contractor and covered by the progress payment shall pass to the Commission at the time the Contractor receives the progress payment;
- B. All materials are free and clear of all liens, claims, security interests, or encumbrances; and
- C. No materials have been acquired by the Contractor or any other entity furnishing materials or Work under this Contract, which are subject to an agreement under which an interest in, or encumbrance on, the materials or Work is retained by the seller or otherwise imposed.

The Commission may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken on the application by the Commission on account of work done by the Subcontractor.

12. Payments (Operations and Maintenance, Professional Services)

The Commission will pay to the Contractor at the times and in the manner hereinafter provided, the amount set forth in the Price Schedule for the Work satisfactorily performed, contingent upon the Contractor's satisfactory compliance with the terms and conditions of the Contract. The Contractor agrees to accept that amount as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by the Contractor in performing its obligations under the Contract.

The Contractor shall not request payment from the Commission of any amount that the Contractor has withheld or retained from Subcontractors or Suppliers until such time that the Contractor has determined and certified to the Commission that the Subcontractor is entitled to the payment of such amount. If the Contractor has made application for payment to the Commission and subsequently withholds or retains payments from a Subcontractor, the Contractor may be obligated to pay interest to the Commission on that amount, in addition to any other remedies the Commission may have hereunder.

No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by the Commission, will constitute an acceptance of any Work that is not in accordance with the Contract.

By submitting a Request for Payment, the Contractor warrants that in the event materials are furnished by the Contractor or incorporated in the Work by the Contractor and covered by the progress payment, title shall pass to the Commission free and clear of all liens or encumbrances at the time the Contractor receives the progress payment.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 268 of 339
--	--------------------------------------	-------------------------	--------------------------------

The Commission may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken on the application by the Commission on account of work done by the Subcontractor.

13. Availability of Funds (All Contracts)

- A. Funds may not be presently available for performance under this Contract beyond the end of the Commission's current fiscal year (July 1 to June 30). The Commission's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. No legal liability on the part of the Commission for any payment may arise for performance under this Contract until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Commission which will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this Article.
- B. This Contract may be funded in whole or in part by grants from the Federal Transit Administration, the Commonwealth of Virginia, or the Commission's member communities. The performance of this Contract is expressly contingent upon receipt of such funds.

14. Withholding of Payments (All Contracts)

The Commission may withhold all or part of a payment to the extent deemed necessary to protect the Commission from loss because of (i) defective Work not remedied; (ii) third-party claims filed, or evidence reasonably indicating that a third-party claim will be filed; (iii) failure of the Contractor to make payments properly to Subcontractors, or for labor, materials, or equipment; (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract price; (v) damage to the Commission or another Contractor; (vi) the Contractor's failure to carry out the Work in accordance with the Contract; (vii) the Contractor's failure to comply with any material provision or requirement of the Contract; (viii) the Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor; (ix) the Contractor's failure to provide the required progress schedules and record drawings in accordance with the Contract; (x) any sums expended by the Commission in performing any of the Work under the Contract which the Contractor has failed to perform; or (xi) liquidated damages, if applicable.

15. Conditions Affecting the Work (All Contracts)

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and extent of the Work, and the general and local conditions which can affect the Work or the cost thereof. Any failure by the Contractor to do so shall not relieve the Contractor from responsibility for successfully performing Work without additional expense to the Commission. The Commission assumes no responsibility for any understanding or representations concerning

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 269 of 339
--	--------------------------------------	-------------------------	--------------------------------

conditions made by any of its officers or agents prior to the execution of this Contract unless such understanding or representations are expressly stated in the Contract.

16. Governing Law and Choice of Venue (All Contracts)

This Contract will be governed by the laws of the Commonwealth of Virginia, notwithstanding any conflicts of law provisions to the contrary. The parties agree that the sole and exclusive venue for any disputes arising out of or related to this Contract will be the Federal District Court or State Circuit Court sitting in the City of Norfolk, Virginia. The Commission may enter into agreements to submit disputes arising from contracts entered into pursuant to the *Code of Virginia*, § 2.2-4366, to mediation, arbitration, or other alternative dispute resolution procedures. Unless otherwise specified, such procedures entered into by the Commission shall be nonbinding.

17. Waiver of Conditions (All Contracts)

The waiver of any provision, term, or condition in this Contract by the Commission on any particular occasion shall not constitute a general waiver of that or any other provision, term, or condition, nor a release from the Contractor's obligation to otherwise perform or observe any other provision, term, or condition of the Contract, and will not be considered a precedent for future waivers.

18. Notice of Intent to File a Claim (All Contracts)

Whenever the Contractor deems a potential claim has arisen, the Contractor shall, within three (3) days, notify the Contracting Officer in writing of its intent to file a claim, before proceeding with any Work viewed by the Contractor as outside of the current Scope of Work. The claim shall be submitted within thirty (30) calendar days of initial notification.

Should the Contractor assert a claim against the Commission, under this or any other provision of this Contract, involving an amount in excess of \$50,000.00, it shall accompany such claim with a sworn affidavit and certification that, to the best of the Contractor's knowledge and belief, the facts and amounts stated in the claim are true and complete and that the claim is asserted in good faith. Failure to submit such affidavit and certification will be grounds for denial of such claim.

19. Severance (All Contracts)

If any part of this Contract is declared invalid by a court of law, such decision will not affect the validity of any remaining portion, which shall remain in full force and effect, to the greatest extent consistent with the determination of such court.

20. General Insurance Requirements (All Contracts)

(This is an example only and all insurance requirements must be requested for each individual solicitation)

The Contractor shall procure and maintain, at his own cost and expense, during the entire period of the performance under this Contract, the following types of insurance.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 270 of 339
--	--------------------------------------	-------------------------	--------------------------------

IMPORTANT NOTE: Cancellation of insurance will automatically place the Contractor in default. The Contractor shall keep proper insurance in full force and effect at all times during the life of the Contract.

A. Professional Liability (Errors and Omissions) \$1,000,000

B. Workers' Compensation

A policy complying with the requirements of the statutes of the jurisdiction(s) in which the Work will be performed, and if there is any exposure to any of the Contractor or Subcontractor personnel with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, the Contractor will provide coverage for these requirements.

Workers' Compensation:	STATUTORY
Employer's Liability - Each Accident	\$1,000,000
Disease Policy Limits	\$1,000,000
Disease - Each Employee	\$1,000,000

C. Commercial/Comprehensive General Liability

The Contractor and any Subcontractor shall provide a valid Certificate of Insurance listing the insurance coverage maintained. The liability insurance maintained by the Contractor and any Subcontractor shall include, at a minimum, the following coverage:

- ☒ Premises - Operations
- ☒ Products - Completed Operations
- ☒ Contractual - This Contract

The minimum Limit of Liability shall be:

Bodily Injury (per person / occurrence)	\$1,000,000
Property Damage (per occurrence)	\$1,000,000

Or

Combined Single Limit per Occurrence	\$2,000,000
--------------------------------------	-------------

If the insurance Contract has a Limit of Liability Aggregate, the minimum Aggregate level shall be \$3,000,000 per policy year.

The Selected Contractor and any Subcontractor shall name the following as an Additional Insured:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 271 of 339
--	--------------------------------------	-------------------------	--------------------------------

The Commission shall be included as an additional insured under the coverage for Commercial General Liability insurance with respect to all activities under this Contract and shall provide a copy to the Contracting Officer.

D. Automobile Insurance

The Contractor and any Subcontractor shall provide a valid Certificate of Insurance listing the insurance coverage maintained. The Automobile Insurance maintained by the Contractor and any Subcontractor shall include, at a minimum, the following coverage:

☒ Owned and Hired Automobiles

☒ Non-Owned Automobiles

The minimum Limit of Liability shall be:

Bodily Injury per person / occurrence \$1,000,000

Property Damage per occurrence \$1,000,000

or

Combined Single Limit per occurrence \$2,000,000

If the insurance Contract has a Limit of Liability Aggregate, the minimum Aggregate level shall be \$3,000,000 per policy year.

The Selected Firm and any Subcontractor shall name the following as an Additional Insured:

Hampton Roads Transit shall be included as an additional insured under the coverage for Commercial General Liability insurance with respect to all activities under this Contract and shall provide a copy to the Contracting Officer.

E. Special Provisions of Insurance Furnished by Contractor or any Subcontractor

- i. The Contractor shall forward to the Contracting Officer for approval a certificate, or certificates, issued by the insurer(s), of the insurance required under the foregoing provisions, including special endorsements. Such certificate(s) shall be in a form satisfactory to the Commission and shall list the various coverages and limits. Insurance companies providing the coverage must be acceptable to Commission; rated by A.M. Best and carry at least an "A" rating. In addition to any provisions herein before required, a provision of such insurance policies shall be that the policies shall not be changed or canceled, and they will be automatically renewed upon expiration and continued in full force and effect until final acceptance by the Commission of all Work covered by the Contract, unless the Commission is given thirty (30) days written notice before any change or cancellation is made effective. The Contractor shall promptly furnish the Contracting Officer with a certified copy of each insurance policy upon request.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 272 of 339
--	--------------------------------------	-------------------------	--------------------------------

- ii. All insurance shall be procured from insurance or indemnity companies acceptable to the Commission/Jurisdiction and licensed and authorized to do business in the Commonwealth of Virginia. Commission/Jurisdiction approval or failure to disapprove insurance furnished by the Contractor shall not release the Contractor of full responsibility for liability for damage and accidents.
- iii. If at any time the above required insurance policies should be canceled, terminated, or modified so that the insurance is not in full-force and effect as required herein, the Contracting Officer may terminate this Contract for default or obtain insurance coverage equal to that required herein, the full cost of which shall be charged to the Contractor and deducted from any payments due the Contractor.

21. Onsite Safety and Security (All Contracts)

The Contractor shall be responsible for compliance with all Commission safety and security policies, safety rules, and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), and all applicable laws, ordinances, and/or regulations of the Commonwealth of Virginia or locality where the Contract is being performed. Contractors or Subcontractors responsible for operating on track equipment, aerial lifts, or construction/electrical/welding equipment on Commission property shall provide a copy of their safety manual and a list of equipment that will be used onsite, including inspection and training records. A site-specific work plan and job hazard analysis will be provided for all Contractors working on Commission property that are responsible for conducting electrical tasks, construction activities, cutting and brazing, working at heights, or operating on track equipment. All requested documents, including a list of the Contractor's Project Manager and Safety representatives, shall be furnished to the Project Manager who will be responsible for submitting all documents to the Safety Department. Contractors and Subcontractors shall be required to participate in an initial safety briefing with the Safety Department and the Project Manager prior to commencing any onsite work activity. The Safety/Security Departments and the Commission's Project Manager will conduct random inspection of the Work site to ensure adherence to all safety and security policies.

All Contractors and Subcontractors assigned to work on the Tide Light Rail right-of-way shall be required to complete track access training Level I. Contractors and Subcontractors who will be assigned to perform flagging responsibilities within the Tide Light Rail operating right-of-way must complete track access training Level I and II. All Contractors and Subcontractors who are responsible for operating any on-track equipment, including hi-rail vehicles on the Tide Light Rail operating right-of-way must complete track access training Level I, II, and III. All track access training examinations will be administered in English only. Please refer to Appendix H, Track Access and Allocation Procedure for further details regarding the track access program and training requirements.

Upon request, the Contractor or Subcontractor shall provide the Commission with a list of names and residential addresses for all onsite representatives or individuals who may require a security

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 273 of 339
--	--------------------------------------	-------------------------	--------------------------------

badge and/or key. The Contractor or Subcontractor is required to coordinate access issuance needs with the Project Manager, who is responsible for requesting access according to Commission policy. All Contractors must comply with the Commission visitor and parking policy. The Contractor shall be responsible for safely storing and securing all equipment while onsite to minimize any operational impacts. It will be the responsibility of the Contractor's Project Manager and the Commission's Project Manager to consult with the applicable department manager when equipment will be stored in the vehicle yards or mainline.

Upon request, the Contractor or Subcontractor shall provide accurate and updated results of Criminal Background checks generated on persons expected to perform work or other services at Commission properties.

All Contractors, Subcontractors, and onsite representatives working near moving traffic, on the Commission's property, or public roads, including the right-of-way areas and vehicle yards, are required to wear, at a minimum, an American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) Type R Performance Class 2 vest with an "X" on the rear of the vest and safety boots with ankle protection that are electrical hazard rated and meet the American Society for Testing and Materials (ASTM) F2412 and ASTM F2413 standards. The vest shall be an outer garment and shall not be covered by anything (i.e., articles of clothing, a carrying bag, etc.). Any substitutions such as Class 2 reflective t-shirts or reflective jackets must be pre-approved by the Commission's Safety Department.

Upon entry into any Commission facility, all Contractors, Subcontractors, and onsite representatives must understand and comply with all OSHA regulations, the Commission's policies, and the original equipment manufacturer (OEM) recommendation for Personal Protective Equipment (PPE) such as safety glasses, hard hats or bump caps, safety boots, and protective gloves. All Commission policies related to onsite safety and security will be provided to Contractors by the Project Manager. The Contractor must consult the Project Manager if clarification is required for any safety or security policy/procedure.

The Contractor shall provide a list of all chemicals that will be used in any of the Commission's facilities to the Project Manager. The Project Manager will be responsible for furnishing the list of chemicals and corresponding Safety Data Sheets to the Safety Department and Director of Facilities for review and approval to use on property. The Contractor shall be responsible for obtaining and posting the Safety Data Sheets to the full extent required by law within their work area.

The Contractor shall be responsible for accident prevention and work site safety, and initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, including the Work of its Subcontractors. This responsibility cannot be delegated to the Commission, Subcontractors, suppliers, or other persons. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to the following:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 274 of 339
--	--------------------------------------	-------------------------	--------------------------------

- A. The public;
- B. Employees on the work site;
- C. Other persons who may be affected by the Work;
- D. The work materials and equipment to be incorporated therein, whether in storage on or off the work site, under the care, custody, or control of the Contractor or any of its Subcontractors; and
- E. Other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction (if applicable).

If an accident or incident occurs that results in injury or property damage when working in any of the Commissions facilities, the Contractor must cease all work activities and immediately notify the Project Manager. If medical treatment is required, the Contractor is responsible for notifying 911 to seek immediate medical treatment. The Project Manager will be responsible to immediately notify the Safety Department and the Radio Communications Center or the Operations Control Center of any accident or incident involving the Contractor or the Contractor's equipment. The Contractor shall comply with the safety investigation by furnishing any requested documents and participating in interview(s) with the Safety Department for an investigation to be completed. The Contractor and Project Manager will be responsible for implementing corrective actions in coordination with the Commission's Safety Department to prevent unsafe conditions.

The Contractor's Project Manager shall ensure compliance with all safety provisions of the Contract. Additional safety duties of the Contractor's Project Manager shall include the following:

- A. Stop any work site activity when, in their opinion, such stoppage is warranted for the protection of life and/or property;
- B. Review and direct immediate action to correct all substandard safety conditions brought to their attention;
- C. Actively participate in all supervisory safety meetings, including the discussion of observed unsafe work practices and corrective actions, and encouragement of safety suggestions from employees;
- D. Ensure that a "Safety Bulletin Board" is established and maintained to include all required postings and relevant safety posters/information; and
- E. Cooperate with the Commission's Project Manager and Safety representatives.

In accordance with the Contract, the Contractor shall indemnify HRT for fines, penalties, and corrective measures that result from acts of commission or omission of the Contractor, its Subcontractors (if any), agents, employees, and assigns, and their failure to comply with such safety rules, laws, ordinances, and regulations.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 275 of 339
--	--------------------------------------	-------------------------	--------------------------------

In compliance with these safety and security provisions, the Contractor shall perform the following:

- A. Comply with the work stoppage orders, as directed by the Commission's Project Manager, the Contractor's Project Manager, the Commission's Chief Safety Officer, and/or other Safety/Security representatives.
- B. Plan and execute all work to comply with applicable federal, Commonwealth of Virginia, and local laws, regulations, industry standards, and Contract requirements with regard to safety, as well as the stated objectives and requirements contained in the Contractor's Safety Plan.
- C. Conduct initial and annual orientation and training programs for employees which shall include, at a minimum, a review of hazards present at the work site, and the PPE and apparel the workers will be required to use or wear as specified under OSHA.
- D. Ensure that all employees, Subcontractors, suppliers, vendors, and other visitors to the work site are properly informed of and comply with all applicable Contractor safety plans and programs, to include all PPE requirements.
- E. Ensure that formal safety meetings are conducted on a weekly basis, maintaining documentation of topics discussed and attendees.
- F. Ensure that any and all safety training is presented in English, as well as the predominant language of the majority of the applicable work force, if that is different from English.
- G. Furnish and/or enforce the wearing and use of the following required PPE for all Contractor and Subcontractor personnel working on the work site:
 - i. Hard hats, meeting the requirements of ANSI/ISEA Z89.1-2014 (R2019), at all times;
 - ii. Work boots, meeting the requirements of ASTM F2412 and ASTM F2413, at all times;
 - iii. Eye protection with side shields, meeting the requirements of ANSI Z87, at all times;
 - iv. Warning vests made of high visibility material with reflectorized tape, meeting the minimum requirements of ANSI/ISEA-107, Type R Performance Class II, at all times; and
 - v. Ear protection, respirators, protective clothing and gloves, safety belts, safety harnesses, lifelines, and lanyards, and any and all other PPE, in accordance with OSHA's specific guidelines for work activities and conditions that necessitate such items for work safety.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 276 of 339
--	--------------------------------------	-------------------------	--------------------------------

22. Sensitive Security Information (All Contracts)

The Contractor shall take all appropriate measures to protect “sensitive security information” made available during the course of its performance hereunder, in accordance with 49 U.S.C. 40119(b), then applicable provisions of U.S. Department of Transportation regulations (currently defined in 49 CFR Part 15; 49 U.S.C. § 114(r)), and then applicable provisions of U.S. Department of Homeland Security regulations (currently defined in 49 CFR Part 1520). The Contractor shall ensure, and require its Subcontractors to ensure, that the requirements of this Section be included in Subcontracts at all tiers.

23. Hazardous Chemicals and Wastes (All Contracts)

The Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances by it or its employees, agents, representatives, or by its Subcontractors or suppliers of any tier, or the employees, agents, or representatives of any of them during the course of its performance of the Work. The Contractor shall immediately report any such release to the Commission’s Project Manager. The Contractor shall be solely responsible for compliance with all applicable federal, state, and local laws and regulations regarding reporting of such releases of hazardous chemicals or substances to appropriate government agencies. The Contractor shall be solely responsible for all claims and expenses associated with the response to, and removal and remediation of such releases, including, without limitation, the payment of any fines or penalties levied against the Commission as a result of such release, and shall hold harmless, indemnify, and defend the Commission from any claims arising from such release. For purposes of this Section only, “claims” include the following:

- A. All notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction; and
- B. Any claim, cause of action, or administrative or judicial proceeding brought against the Commission, its Commissioners, officers, employees, or agents, or for any loss, cost (including reasonable attorney’s fees), damage, or liability, sustained or suffered by any person or entity including the Commission.

In the event that the Contractor discovers hazardous materials in the course of its Work, it shall immediately cease Work in the affected area, remove its personnel, and notify a field representative of the Commission or the Commission’s Project Manager, and shall not resume Work until directed by the Commission. Any delay or other costs incurred by the Contractor as a result of such work stoppage shall be compensable hereunder, provided that the Contractor:

- A. Is not responsible for the hazardous materials under this Section; and
- B. Complies with the requirements of this paragraph regarding the stoppage of Work, notification, and removal of personnel.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 277 of 339
--	--------------------------------------	-------------------------	--------------------------------

If, in the performance of the Work, the Contractor uses hazardous chemicals or substances or creates any hazardous wastes, as defined in federal and state law, all such resulting hazardous wastes shall be properly handled, stored, and disposed of according to federal, state, and local laws, including the use of protective equipment and clothing by workers exposed to such hazardous materials, substances, or wastes, at the expense of the Contractor. The Contractor shall dispose of any and all such hazardous waste under its own EPA Identification Number via a licensed hazardous waste transporter, at an appropriately permitted disposal facility selected by the Contractor. In no event shall the Commission be identified as the generator of any such waste. The Contractor shall determine whether any waste generated during the Work is hazardous waste and shall notify the Commission's Project Manager if the Contractor generates any hazardous wastes. The Commission reserves the right to a copy of the results of any tests conducted on the waste, and at the Commission's cost, to perform additional tests or examine those wastes prior to disposition. The Contractor shall hold harmless, indemnify, and defend the Commission from any claims arising from the disposal of such hazardous wastes regardless of the absence of negligence or other malfeasance by the Contractor.

24. Environmental Management and Sustainability (All Contracts)

The Commission recognizes that environmental compliance involves everyone (both internal and external to the Commission), and expects its Contractors, suppliers, and vendors to provide services in an environmentally responsible manner. This includes, among other things, maximizing the use of recycled and recyclable materials and supplies, utilizing energy-efficient and non-polluting vehicles and equipment, and encouraging employee awareness of environmentally sensitive activities in order to mitigate potential adverse impacts on the environment. As such, acceptance of this Contract constitutes acknowledgement of the information presented herein and included in the Commission's Environmental Compliance Contractor Briefing Package and Preconstruction Mitigation Disclosure Form, additional copies available upon request.

25. Warranty (Construction)

Definitions. "Acceptance" as used in this clause, means the act of an authorized representative of the Commission by which the Commission assumes for itself or an agent of another, ownership of the Work or any identified separable part thereof, or otherwise approves specific materials, supplies, equipment, or services, as partial or complete performance of the Contract. "Correction" as used in this clause, means the elimination of a defect.

Warranty of the Work shall be a minimum of one (1) year from final acceptance. Items corrected during the warranty period shall have an additional warranty period, from acceptance of the correction.

The Contractor shall obtain, for the benefit of the Commission, each of its suppliers' standard commercial warranty for items purchased by the Contractor and incorporated in the Work hereunder. All such warranties, as well as manuals or other documents related to the use or

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 278 of 339
--	--------------------------------------	-------------------------	--------------------------------

operation of such items, shall be provided to the Commission prior to Final Acceptance of the Work. However, notwithstanding any warranty or inspection and acceptance by the Commission or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed, and materials, supplies, or equipment furnished under this Contract shall, at time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The Contracting Officer will give written notice to the Contractor of any defect or nonconformance identified by the Commission. This notice will state either:

- A. That the Contractor shall correct or reperform any defective or nonconforming services, or
- B. That the Commission does not require corrective action or reperformance.

If the Contractor is required to correct or reperform, it shall be at no cost to the Commission, and any services corrected or reperformed by the Contractor will be subject to this clause to the same extent as Work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by Contract or otherwise, correct or replace with similar service and charge to the Contractor the cost occasioned to the Commission thereby, or make an equitable adjustment in the Contract price. The Contractor will not be entitled to any extension of the Contract schedule as a result of any required correction or reperformance, or failure to do so.

If the Commission does not require correction or reperformance, the Contracting Officer will make an equitable adjustment to the contact price.

In addition to the Contractor's warranty defined herein, warranties provided by a manufacturer shall be passed on to the Commission at no additional cost.

26. Warranty (Materials and Supplies, Operations and Maintenance, Rolling Stock)

The Contractor warrants that it shall perform this Contract in a good and skillful manner consistent with accepted industry practice and in compliance with applicable laws and regulations. The Contractor warrants that any products and all services it will provide are of a merchantable quality and suitable for the purposes of this Contract.

Warranty of the Work shall be a minimum of one (1) year from final acceptance. Items corrected during the warranty period shall have an additional warranty period, from acceptance of the correction.

The Contractor shall obtain, for the benefit of the Commission, each of its suppliers' standard commercial warranty for items purchased by the Contractor and incorporated in the Work hereunder. All such warranties, as well as manuals or other documents related to the use or operation of such items, shall be provided to the Commission prior to Final Acceptance of the Work. However, notwithstanding any warranty or inspection and acceptance by the Commission or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed, and materials, supplies, or equipment furnished under this Contract shall, at time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 279 of 339
--	--------------------------------------	-------------------------	--------------------------------

The Contracting Officer will give written notice to the Contractor of any defect or nonconformance identified by the Commission. This notice will state either:

- A. That the Contractor shall correct or reperform any defective or nonconforming Work, or
- B. That the Commission does not require corrective action or reperformance.

If the Contractor is required to correct or reperform, it shall be at no cost to the Commission, and any services corrected or reperformed by the Contractor will be subject to this clause to the same extent as Work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by Contract or otherwise, correct or replace with similar service and charge to the Contractor the cost occasioned to the Commission thereby, or make an equitable adjustment in the Contract price. The Contractor will not be entitled to any extension of the Contract schedule as a result of any required correction or reperformance, or failure to do so.

If the Commission does not require correction or reperformance, the Contracting Officer will make an equitable adjustment to the contract price.

In addition to the Contractor's warranty defined herein, warranties provided by a manufacturer shall be passed on to the Commission at no additional cost.

27. Warranty (Professional Services)

The Contractor warrants that it shall perform this Contract in a good and skillful manner consistent with accepted industry practice and in compliance with applicable laws and regulations. The Contractor warrants that any products and all services it provides are of a merchantable quality and suitable for the purposes of this Contract.

All such warranties, as well as manuals or other documents related to the use or operation of such items, shall be provided to the Commission prior to Final Acceptance of the Work. The Contracting Officer will give written notice to the Contractor of any defect or nonconformance identified by the Commission. This notice will state either:

- A. That the Contractor shall correct or reperform any defective or nonconforming services, or
- B. That the Commission does not require corrective action or reperformance.

If the Contractor is required to correct or reperform, it shall be at no cost to the Commission, and any services corrected or reperformed by the Contractor will be subject to this clause to the same extent as Work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by Contract or otherwise, correct or replace with similar service and charge to the Contractor the cost occasioned to the Commission thereby, or make an equitable adjustment in the Contract price. The Contractor will not be entitled to any extension of the Contract schedule as a result of any required correction or reperformance, or failure to do so.

If the Commission does not require correction or reperformance, the Contracting Officer will make an equitable adjustment to the contract price.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 280 of 339
--	--------------------------------------	-------------------------	--------------------------------

In addition to the Contractor's warranty defined herein, warranties provided by a manufacturer shall be passed on to the Commission at no additional cost.

28. Inspection of Services (Construction, Operations and Maintenance)

Definition: "Services," as used in this clause, includes services performed, workmanship, and materials, supplies, and equipment, whether tangible or intangible, furnished or utilized in the performance of services.

The Contractor shall provide and maintain an inspection system acceptable to the Commission covering its services under this Contract. Complete records of all inspection Work performed by the Contractor shall be maintained and made available to the Commission during Contract performance and for as long afterwards as the Contract requires.

The Commission has the right to inspect all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The Commission will perform inspections and tests in a manner that will not unduly delay the Work. The Contractor shall not cover over any portion of the Work until such Work is:

- A. Inspected by the Commission or its representative and the Contractor is authorized to close the Work; or
- B. The Commission's representative authorizes closure of the Work without inspection. Should the Contractor fail to afford the Commission a reasonable opportunity to inspect the Work before closure, it will be liable for all costs and any delay to the project for it or for other Contractors occasioned thereby.

If any of the services do not conform to Contract requirements, the Commission may require the Contractor to reperform the services in conformity with Contract requirements, at no cost or delay to the Commission, including costs of reinspection.

When defects in services cannot be corrected by reperformance, the Commission may:

- A. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
- B. Reduce the Contract price to reflect the reduced value of the services performed.

If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the Commission may:

- A. By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Commission that is directly related to the performance of such service; or
- B. Terminate the Contract or the portion affected by the non-performance for default.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 281 of 339
--	--------------------------------------	-------------------------	--------------------------------

29. Inspection of Materials and Supplies (Materials and Supplies, Rolling Stock)

The Contractor shall provide and maintain an inspection system acceptable to the Commission covering its provision of materials and supplies under this Contract. Complete records of all inspection Work performed by the Contractor shall be maintained and made available to the Commission during Contract performance and for as long afterwards as the Contract requires.

The Commission has the right to inspect all materials and supplies provided by the Contractor, to the extent practicable at all times and places during the term of the Contract. The Commission will perform inspections and tests in a manner that will not unduly delay the Work.

If any of the materials and supplies do not conform to Contract requirements, the Commission may require the Contractor to provide materials and supplies in conformity with Contract requirements, at no cost or delay to the Commission, including costs of reinspection.

When defects in materials and supplies cannot be corrected, the Commission may:

- A. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements;
- B. Reduce the Contract price to reflect the reduced value of materials and supplies provided;
- C. Charge the Contractor all reasonable cost incurred by the Commission directly related to the acquisition of conforming materials and supplies from another party, or
- D. Terminate the Contract or the portion affected by the non-performance for default.

30. Inspection of Services (Professional Services)

Definition: "Services," as used in this clause, includes services performed, workmanship, and materials, supplies, and equipment, whether tangible or intangible, furnished or utilized in the performance of services.

If any of the services do not conform to Contract requirements, the Commission may require the Contractor to reperform the services in conformity with Contract requirements, at no cost or delay to the Commission, including costs of reinspection.

When defects in services cannot be corrected by reperformance, the Commission may:

- A. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
- B. Reduce the Contract price to reflect the reduced value of the services performed.

If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the Commission may:

- A. By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Commission that is directly related to the performance of such service; or

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 282 of 339
--	--------------------------------------	-------------------------	--------------------------------

B. Terminate the Contract or the portion affected by the non-performance for default.

31. Title and Risk of Loss (Construction, Operations and Maintenance)

Unless this Contract specifically provides for earlier passage of title, title to the Work, and any supplies, material, or equipment covered by this Contract shall pass to the Commission upon formal acceptance, regardless of when or where the Commission takes physical possession.

Unless this Contract specifically provides otherwise, risk of loss of or damage to the Work, or supplies, materials, and equipment covered by this Contract shall remain with the Contractor until, and shall pass to the Commission upon:

- A. Substantial Completion or Final Completion, as specified, of the Work or any identified separable part thereof; or
- B. Acceptance by the Commission or delivery of possession of the supplies to the Commission at the destination specified in this Contract, whichever is later.

Notwithstanding (B) above, the risk of loss of or damage to supplies which so fail to conform to the Contract as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time (B) above will apply.

32. Title and Risk of Loss (Materials and Supplies, Rolling Stock)

Unless this Contract specifically provides for earlier passage of title, title to the Work, and any supplies, material, or equipment covered by this Contract shall pass to the Commission upon formal acceptance, regardless of when or where the Commission takes physical possession.

Unless this Contract specifically provides otherwise, risk of loss of or damage to the Work, or supplies, materials, and equipment covered by this Contract shall remain with the Contractor until, and shall pass to the Commission upon, acceptance by the Commission of conforming materials and supplies at the destination specified in this Contract.

Notwithstanding the above, the risk of loss of or damage to supplies which so fail to conform to the Contract as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time the above will apply.

33. Title and Risk of Loss (Professional Services)

Unless this Contract specifically provides for earlier passage of title, title to the Work, and any supplies, material, or equipment covered by this Contract shall pass to the Commission upon formal acceptance, regardless of when or where the Commission takes physical possession.

34. Delivery (Construction, Operations and Maintenance)

The Contractor shall prepare all equipment and materials for shipment in such a manner as to protect them from damage in transit and shall be responsible for and repair all damaged parts or replace all losses incurred in the course of delivery of the equipment and materials to the work site.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 283 of 339
--	--------------------------------------	-------------------------	--------------------------------

35. Delivery (Materials and Supplies, Rolling Stock)

The Contractor shall prepare all materials and supplies for shipment in such a manner as to protect them from damage in transit and shall be responsible for and repair all damaged parts or replace all losses incurred in the course of delivery of the materials and supplies.

36. Materials and Workmanship (All Contracts except Professional Services)

All materials, parts, and equipment furnished by the Contractor shall be new, high grade, and free from defects. Workmanship shall be in accordance with generally accepted industry standards. The Contractor shall establish and maintain quality assurance policies and procedures to ensure compliance with these specifications. Such policies and procedures will be subject to review and approval by the Commission.

The Commission will have the right to correct nonconforming materials and supplies, which are not remedied by the Contractor, with other forces at the Contractor's expense.

Nothing in this Section will limit or restrict the provisions of any warranty of fitness as set forth in the Special Provisions, these General Conditions, and other portions of the Contract Documents.

37. Suspension (All Contracts)

The Commission may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Commission may determine. An adjustment may be made for increases in the schedule or cost of performance of the Contract, excluding profit on the increased cost of performance, caused by suspension, delay, or interruption. No adjustment will be made to the extent:

- A. That performance is, was, or would have been suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- B. That an equitable adjustment is made or denied under another provision of this Contract.

38. Delay of Work (All Contracts)

If the performance of all or any part of the Work is delayed or interrupted by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or impliedly authorized by this Contract, or by his/her failure to act within the time specified, an adjustment (excluding profit) will be made for any increase in the schedule or cost of performance of this Contract caused by such delay or interruption and the Contract modified in writing accordingly. Adjustment will be made also to the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment will be made under this Article for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or for which an adjustment is provided or excluded under any other provision of this Contract.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 284 of 339
--	--------------------------------------	-------------------------	--------------------------------

No claim under this clause will be allowed for any costs incurred more than twenty (20) working days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the end of such delay or interruption, but not later than the date of final payment under the Contract.

39. Stop Work Order (All Contracts)

The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the Work called for by this Contract for a period not to exceed ninety (90) calendar days after the order is delivered to the Contractor or any other date cited in the order, and for any further period to which the parties may agree. Any such order will be specifically identified as a Stop Work Order issued pursuant to this Article. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to protect and preserve the Work and minimize the incurrence of costs allocable to the Work covered by the order during the period of work stoppage. Within a period of ninety (90) calendar days after a Stop Work Order is delivered to the Contractor, or within any extension of that period, the Contracting Officer will either cancel the Stop Work Order, or terminate the Work covered by such order as provided in Section XX, Termination for Convenience, of these General Conditions.

If a Stop Work Order issued under this Article is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment will be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if:

- A. The Stop Work Order results in an increase in the time required for or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
- B. The Contractor asserts a claim for such adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this Contract.

If a Stop Work Order is not cancelled and the Work covered by such order is terminated for the convenience of the Commission, the reasonable costs resulting from the Stop Work Order will be allowed in arriving at the termination settlement.

40. Conflict of Interest (All Contracts)

- A. The Contractor covenants no appointed or elected official, member or other officer or employee of the Commonwealth of Virginia, or of the Transportation District Commission of Hampton Roads (TDCHR), or their affiliates and subsidiaries:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 285 of 339
--	--------------------------------------	-------------------------	--------------------------------

- i. Is interested directly or indirectly, in any manner whatsoever in or in the performance of the Contract or in the supplies, Work, or business to which it relates or in any portion of the profits thereof;
 - ii. Has been or will be offered or given any tangible consideration in connection with this Contract; and/or
 - iii. Has used confidential information that he/she acquired by reason of his/her public position, and which is not available to the public, in conjunction with the Contract.
- B. The Contractor covenants that it has not, nor anyone on its behalf, directly or indirectly offered, promised, nor actually given any money, honorarium, loan, gift, favor, service, or business or professional opportunity to any appointed or elected official, member or other officer or employee of the Commonwealth of Virginia, or of the TDCHR, or their affiliates and subsidiaries, in conjunction with the preparation of the Proposal or Bid.
- C. The Contractor covenants that no person associated in any way with the Contract participated in the underlying preparation of the Invitation for Bid or Request for Proposal by TDCHR.
- D. The Contractor covenants that it does not employ any current TDCHR employees or former TDCHR employees (who have been separated from TDCHR for less than one calendar year) that have or had any responsibility for procurement transactions at TDCHR.
- E. The Contractor covenants that neither the Contractor nor, to the best of the Contractor's knowledge after diligent inquiry, any director, officer, owner, or employee of the Contractor has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the faithful performance of the Contract hereunder.
- F. In the event the Contractor has no prior knowledge of a conflict of interest as set forth in "A" and "E" above and hereafter acquires information which indicates that there may be an actual or apparent violation of any of the above, the Contractor shall promptly bring such information to the attention of the Commission's Director of Procurement. The Contractor shall thereafter cooperate with the Commission's review and investigation of such information and comply with any instruction it receives from the Director of Procurement in regard to remedying the situation.

41. Covenant Against Contingent Fees (All Contracts)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commission will have the right to annul this Contract without

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 286 of 339
--	--------------------------------------	-------------------------	--------------------------------

liability or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

42. Gratuities (All Contracts)

In connection with performance of Work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts, or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or Subcontractor furnishing material to or performing Work under this Contract, or any agent, representative or other person deemed to be acting on behalf of such supplier or Subcontractor, to any Commissioner, officer, or employee of the Commission; or to any director, officer, employee or agent of any of the Commission's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Commission with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, managing, or the making of any determinations with respect to the performing of such Contract is expressly prohibited. Violation of this provision will be deemed an instance of default hereunder.

43. Collusion (All Contracts)

If at any time it is found that the person, firm, or corporation to whom a Contract has been awarded has, in preparing or presenting any bid or bids, including but not limited to proposals for Contract modifications, colluded with any other party or parties with the intent of preventing full and open competition or the obtaining by the Commission of a fair and reasonable price for the Work hereunder, then the Commission may terminate this Contract for default, or exercise such other remedies as it deems appropriate, and the Contractor and its sureties shall be liable to the Commission for all loss or damage which the Commission may suffer thereby.

44. Indemnification (All Contracts)

- A. Indemnification for Claims of Intellectual Property Infringement. To the fullest extent possible, the Contractor shall indemnify and hold harmless the Commission and its officers, agents, successors, and employees against any and all intellectual property infringement or misappropriation claims brought by a third-party or parties, enforceable in the United States, and related to the Work performed by the Contractor pursuant to this Contract.

The Contractor's indemnity obligations hereunder include: (i) all costs and attorney's fees incurred by the Commission and/or its outside legal counsel, as selected by the Commission in its sole discretion, in the event the Contractor fails to assume the defense of the claim, (ii) payment of any settlement agreed to by the Commission and approved by the Contractor, and (iii) any award of damages against the Commission and in favor of the third-party regardless of whether such claims are unfounded or substantiated.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 287 of 339
--	--------------------------------------	-------------------------	--------------------------------

The Contractor's obligations under this Section shall not apply to the extent that the infringement or violation is caused by (i) functional or other specifications that were provided by or requested by the Commission; or (ii) the Commission's continued use of infringing materials, equipment, or services after the Contractor provides reasonable notice to the Commission of the infringement or any third-party claim that the Contractor receives.

To minimize the potential for claim, the Contractor may, at its option, either: (i) procure the right for the Commission to continue using the materials, equipment, or services at the Contractor's sole expense or (ii) replace or modify, at the Contractor's sole expense, the materials, equipment, or services with comparable materials, equipment, or services that is acceptable to the Commission.

Failure by the Contractor to provide either the right to continue using the materials, equipment, or services as specified in (i) above, or replacement materials, equipment, or services as specified in (ii) above, will constitute a material breach of this Agreement by the Contractor.

- B. Indemnification for Personal Injury or Property Damage Claims. To the fullest extent possible, the Contractor shall indemnify and hold harmless the Commission, its officers, employees, agents, successors, assigns, affiliates and subsidiaries against all third-party claims for damages, losses, liabilities, or expenses, related to personal injury to or death of any person or persons, and for any loss or damage to any from the acts, omissions, or willful misconduct of the Contractor, its agents, employees, subcontractors, suppliers, assigns, subsidiaries and/or affiliates.

The Contractor's indemnity obligations hereunder include: (i) all costs and attorney's fees incurred by the Commission and/or its outside legal counsel, as selected by the Commission in its sole discretion, in the event the Contractor fails to assume the defense of the claim; (ii) payment of any settlement agreed to by the Commission and approved by the Contractor, and (iii) any award of damages against the Commission and in favor of the third-party regardless of whether such claims are unfounded or substantiated.

- C. Civil or Criminal Penalties. The Contractor shall indemnify the Commission, its officers, employees, agents, and/or their successors, assigns and/or heirs against any liability, including but not limited to any civil or criminal penalties assessed against any of them resulting from the failure of the Contractor or any Subcontractor to conform to any law or regulation pertaining to professional services performed under this Contract.
- D. To be indemnified, the Commission must (i) give the Contractor prompt written notice of the claim and tender its defense within forty-five (45) days of the Commission receiving written notice of the claim; (ii) give the Contractor full and complete authority, information and assistance for the claim's defense and settlement; and (iii) not intentionally prejudice

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 288 of 339
--	--------------------------------------	-------------------------	--------------------------------

the Contractor's ability to satisfactorily defend or settle the claim. The Contractor shall retain the right, at its option to settle or defend the claim, at its own expense and with its own counsel.

- E. The provisions of this "Indemnification" Section states the entire liability and obligations of the Contractor and any of its Affiliates or licensors, and the exclusive remedy of the Commission, with respect to any claims subject to indemnification.

45. Cost or Pricing Data (All Contracts)

In accordance with 48 CFR Part 15, Subpart 15.4, and by submission of a bid or offer, the Contractor certifies that throughout performance of the resulting Contract and any modifications and extensions, all costs and pricing are in accordance with federal cost principles as shown in the Federal Acquisition Regulations (FAR) 15.403-4 and 15.403-5, and have been certified, or is required to be certified, in accordance with 15.406-2. This certificate states that, to the best of the Offeror's knowledge and belief, the cost or pricing data is accurate, complete, and current as of a date certain before Contract award.

If applicable, exceptions to certified cost or pricing data are included in FAR 15.403-1(b).

46. Drug-Free Workplace (*applicable if over \$10,000*) (All Contracts)

In accordance with the *Code of Virginia* § 2.2-4312, currently in effect or as may be amended in the future, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include such provisions in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor.

47. Privacy Act (All Contracts)

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements with the Privacy Act of 1974, 5 U.S.C. § 552a, currently in effect or as may be amended in the future.

48. Ownership of Works and Inventions (All Contracts)

All documents, reports, recommendations, supporting documentation, works of authorship, inventions, improvements, data, processes, computer software programs, and discoveries (hereafter called intellectual property or IP) conceived, created, or furnished under this Agreement and paid for by the Commission will be the sole property of the Commission, with no rights of ownership in the Contractor or any Subconsultants/Subcontractors. This Agreement shall operate

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 289 of 339
--	--------------------------------------	-------------------------	--------------------------------

as an irrevocable assignment by the Contractor and Subconsultants/Subcontractors to the Commission of the copyright in any IP created, published, or furnished to the Commission under this Agreement, including all rights thereunder in perpetuity. The Contractor and Subconsultants/Subcontractors shall not patent any IP conceived, created, or furnished under this Agreement. The Contractor and Subconsultants/Subcontractors agree to execute and deliver all necessary documents requested by the Commission to affect the assignment of the IP to the Commission or registration or confirmation of the Commission's rights in or to IP under the terms of this Agreement. The Contractor agrees to include the provision in all its Subcontracts under this Agreement.

49. Certification of Internal Controls (All Contracts)

This section applies to Contracts where sensitive data and/or processes are subject to Agency Risk Management and Internal Control Standards (ARMICS) standards or other certification is required to demonstrate adequate internal controls (e.g. outsourcing of financial services, when data is collected on behalf of the Commission and/or shared with the Contractor, and other significant Agency functions.

The Contractor shall have clearly delineated processes and procedures for the internal control of sensitive data and processes, which are any data and processes of which the compromising of confidentiality, integrity, and/or availability could have a material adverse effect on the Commission's interests, the conduct of Agency programs, or to the privacy of which individuals are entitled, when such sensitive data or processes are related to the goods and/or services provided pursuant to this agreement.

The Contractor shall provide evidence of compliant and ongoing internal control of sensitive data and processes through a standard methodology, such as but without limitation the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the Contractor's internal controls. The most recent version of the report shall be provided to the Contracting Officer upon request. Trade secrets or proprietary information contained within the report shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Contractor must invoke the protection of Code of Virginia, § 2.2-4342F, in writing, prior to or upon submission of the report, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

If deficiencies in the Contractor's internal control processes and procedures are described in the most recent version of the report, the Contractor shall automatically submit the report to the Contracting Officer within a timely manner and shall describe the corrective actions to be put into place by the Contractor to remedy the deficiencies. Failure to report and/or repair deficiencies in a timely manner shall be cause for the Commission to make a determination of breach of contract.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 290 of 339
--	--------------------------------------	-------------------------	--------------------------------

The Contractor's obligations for certification of internal controls shall survive and continue after completion of this agreement unless the Contractor certifies the destruction of the sensitive data at the end of the Contract term.

50. Notices and Communications (All Contracts)

All notices and other communications concerning this Contract shall be written in English, sequentially numbered, reference the Contract number assigned by the Commission, and be in Microsoft Office format, i.e., Word, Excel, or PDF. Notices and other communications may be delivered personally, by facsimile, or by regular, certified, or registered mail. Formal notices and communications are effective when received. Email notices and communications are not considered formal and will not be considered official unless confirmed in writing by the designated Commission representative and delivered as noted above.

All formal communications shall be between the Commission's Project Manager and the Contractor's Project Manager.

51. Brand Name or Approved Equal (All Contracts)

If a brand name, make or model number, or descriptive material is included in the specification without the phrase "or approved equal," it is implied. To be accepted as an approved equal, the Contractor must provide specific supporting documentation that the product offering proposed as "or equal" meets or exceeds the salient physical and functional characteristics of the product specified in the solicitation. Approval as an "approved equal" must be in writing from the Contracting Officer. The Contractor shall be responsible for ensuring that the product performs equally with the specified brand-named product.

52. Registration and Use of Federal Employment Eligibility Verification Program (*applicable if over \$50,000*) (All Contracts)

For purposes of this Section, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

In accordance with the *Code of Virginia*, § 2.2-4308.2, the Contractor shall agree as follows:

- A. Any Contractor with more than an average of fifty (50) employees for the previous twelve (12) months entering into a Contract in excess of \$50,000 with the Commission to perform work or provide services pursuant to such Contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing Work pursuant to this Contract.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 291 of 339
--	--------------------------------------	-------------------------	--------------------------------

- B. Any such Contractor who fails to comply with the provisions of subsection A shall be debarred from contracting with any agency of the Commonwealth for a period of up to one (1) year. Such debarment shall cease upon the Contractor's registration and participation in the E-Verify program. If requested, the Contractor shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

53. Compliance with Federal, State, and Local Laws and Federal Immigration Law (All Contracts)

Pursuant to § 2.2-4311.1 of the *Code of Virginia*, the Contractor does not, and shall not, during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

54. Authorization to Conduct Business in the Commonwealth of Virginia (All Contracts)

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with the Commission pursuant to the *Virginia Public Procurement Act* § 2.2-4311 shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. The Commission may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

55. Incorporation of Federal Transit Administration Terms (All Contracts)

The contractual provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200, currently in effect or as may be amended in the future), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the U.S. DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

56. Notice to Third-Party Participants (All Contracts)

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 292 of 339
--	--------------------------------------	-------------------------	--------------------------------

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

57. Changes to Federal Requirements (All Contracts)

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement issued annually by FTA as entered into by the Commission and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.

The Contractor agrees to include this clause in each third-party subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

58. Access to Third-Party Contract Records (All Contracts)

- A. **Record Retention.** The Contractor shall retain and shall require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to data, documents, reports, statistics, sub-agreements, leases, Subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.334. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after date of termination or expiration or final payment of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.
- C. **Access to Records.** The Contractor agrees to provide sufficient access to the FTA and its Contractors, the Contracting Officer, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives, to inspect and audit records and information, including such records and information the Commission or its Third-Party Participants may regard as confidential or proprietary, related to the performance of this Contract, as reasonably may be required, in accordance with 2 CFR § 200.337.
- D. **Access to the Sites of Performance.** The Contractor also agrees to permit the same access to sites of performance under this Contract, as reasonably may be required, in accordance with 2 CFR § 200.337.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 293 of 339
--	--------------------------------------	-------------------------	--------------------------------

- E. **Commonwealth of Virginia.** The Commonwealth of Virginia and any other public entity providing funding for this Contract shall have the same rights as provided to the parties named herein.

59. Disputes (*applicable if over \$100,000*) (All Contracts)

Except as otherwise provided in this Contract, any dispute arising under or related to this Contract which is not disposed of by agreement will be decided by the Director of Procurement. The Contractor must submit in writing its Request for Relief from any such dispute to the Director of Procurement within fifteen (15) days of when the Contractor knew or should have known of such dispute. The Request for Relief must contain all facts and supporting documents, if any, in support of the Contractor's position. The Contractor agrees that any facts or documents not referenced by it in the Request for Relief may not be subsequently raised or relied on by the Contractor in any way in any subsequent legal or administrative proceeding. The Director of Procurement will reduce his/her decision to writing and deliver a copy to the Contractor within thirty (30) calendar days from the date of receipt of the Request for Relief. The decision of the Director of Procurement will be final and binding unless determined by a court of competent jurisdiction to have been either fraudulent or arbitrary and capricious. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Director of Procurement's decision. Satisfaction of the dispute resolution process in accordance with this Section shall be a condition precedent to the Contractor filing a subsequent legal or administrative action against the Commission.

60. Termination for Default (*applicable if over \$10,000*) (All Contracts)

The Commission may, subject to the provisions herein, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

- A. The Contractor is in material breach of any provision of this Contract;
- B. The Contractor makes a general assignment of this Contract for the benefit of creditors;
- C. The Contractor repeatedly fails to make prompt payment to Subcontractors or for material or labor; or
- D. The Contractor disregards laws, regulations, ordinances, the orders of a legal authority, or the instructions of the Commission; and the Contractor has not remedied the breach within ten (10) days after receiving written notice from the Commission.

In addition to its right to terminate the Contract for the reasons set forth above, if the Contractor fails to perform any of the other provisions of this Contract, or refuses or fails to perform the Work or any separable part, with the diligence that will ensure its completion in accordance with its terms or within the time specified in this Contract including any extension, and does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 294 of 339
--	--------------------------------------	-------------------------	--------------------------------

writing), the Commission may, by written notice to the Contractor and with copy to surety, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, the Contractor and its sureties will be liable for any damage to the Commission resulting from the Contractor's refusal or failure to complete the Work within the specified time or for liquidated damages for delay if liquidated damages are allowable by this Contract. This liability includes any increased costs to cover incurred by the Commission in completing the Work.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the Commission's convenience pursuant to these General Conditions.

The rights and remedies of the Commission in this Article are in addition to any other rights and remedies provided by law or under this Contract.

In the event the Commission terminates this Contract in whole or in part, the Commission may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor will be liable to the Commission for any excess costs for such similar supplies or services incurred by the Commission, including but not by way of limitation the costs of re-procurement; provided, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Article.

Except with respect to defaults of Subcontractors, the Contractor will not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the reasonable anticipation and control, and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity or the Commission in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case the failure to perform must be beyond the reasonable anticipation and control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the reasonable anticipation and control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor will not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to fulfill its contractual obligations.

If this Contract is terminated, title and possession of any completed or partially completed Work that has been paid for by the Commission, including any supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights that the Contractor has specifically produced or specifically acquired for the performance of this Contract, will pass to the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 295 of 339
--	--------------------------------------	-------------------------	--------------------------------

Commission. The Contractor shall protect and preserve such completed or partially completed Work and deliver the same to the Commission on reasonable demand.

61. Termination for Convenience (*applicable if over \$10,000*) (All Contracts)

The Commission may terminate this Contract in whole or in part at any time and in its sole discretion. The Commission will deliver a written Notice of Termination to the Contractor specifying the extent to which performance of the Work under the Contract is terminated, and the date upon which such termination becomes effective.

After receipt of a Notice of Termination, the Contractor shall promptly proceed with the following:

- A. Stop the Work on the date and to the extent specified in the Notice of Termination;
- B. Place no further orders or Subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work which is not terminated;
- C. Terminate all orders and Subcontracts to the extent that they relate to the performance of the Work terminated;
- D. Assign to the Commission, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title and interests of the Contractor under the orders and Subcontracts so terminated, in which case the Commission will have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and Subcontracts;
- E. Settle all outstanding liabilities and all claims arising out of such termination of orders and Subcontracts, with the approval or ratification of the Contracting Officer, to the extent he/she may require; the approval or ratification shall be final for purposes of this Article;
- F. Transfer title and possession of any completed or partially completed Work that has been paid for by the Commission, including any supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights that the Contractor has specifically produced or specifically acquired for the performance of this Contract;
- G. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Commission has or may acquire an interest; and
- H. Complete performance of such part of the Work not terminated by the Notice of Termination.

After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one (1) year from the effective date of termination. Upon failure of the Contractor to submit his termination claim within the time

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 296 of 339
--	--------------------------------------	-------------------------	--------------------------------

allowed, the Contracting Officer may determine on the basis of information available, the amount, if any, due the Contractor because of the termination and will pay the amount determined.

In the event of the failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid the Contractor, the Contractor may submit a Request for Relief in accordance with the General Conditions. In any event, the total sum to be paid to the Contractor will not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Costs claimed, agreed to, or determined shall be in accordance with the applicable Contract cost principles and procedures in 2 CFR Part 200 in effect on the date of this Contract.

Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Commission, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

62. Energy Conservation (All Contracts)

In accordance with the FTA's Master Agreement, the Contractor agrees to comply with mandatory energy standards and policies relating to energy efficiency which are contained in the state energy conservation plan for the Commonwealth of Virginia, which is issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321, *et seq.*). Performance of an energy assessment is required for any building constructed, reconstructed, or modified with Federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 662, Subpart C.

The Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provision.

63. Civil Rights Laws and Regulations (All Contracts)

Upon entering into a Contract with the Commission, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

A. Federal Equal Employment Opportunity (EEO) Requirements

These include, but are not limited to, the following:

- i. Nondiscrimination in Federal Public Transportation Programs. A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving FTA financial assistance because of race,

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 297 of 339
--	--------------------------------------	-------------------------	--------------------------------

color, religion, national origin, sex, age, or disability. 49 U.S.C. 5332(b). This antidiscrimination provision also applies to employment and business opportunities and is in addition to Title VI of the Civil Rights Act of 1964. 49 U.S.C. 5332(f).

- ii. Title VI of the Civil Rights Act. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*, and DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21. In addition, FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” 10-01-12, provides FTA guidance and instructions for implementing DOT’s Title VI regulations.
- iii. Nondiscrimination on the Basis of Sexual Orientation and Gender Identity. IIJA 60307(a) adds sexual orientation and gender identity as bases on which a person must not be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving FTA financial assistance.
- iv. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.* and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR. Part 25 prohibit discrimination on the basis of sex. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.
- v. Prohibition Against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, including subsequent amendments and related executive orders, prohibits discrimination in employment on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), or national origin. Through FTA’s Master Agreement § 12(d) (May 2, 2024), the Contract agrees to comply with Title VII.
- vi. Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 *et seq.*, and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625, also prohibit employment discrimination against individuals on the basis of age. In

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 298 of 339
--	--------------------------------------	-------------------------	--------------------------------

addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

- vii. Environmental Justice. Executive Order No. 12899, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. 4321 note, and DOT Order 5610.2C, “U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” May 16, 2021, protect minority populations and low-income populations against disproportionately high and adverse effects of Federally assisted programs. FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” (October 1, 2012), and FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients” (August 15, 2012), also provide FTA guidance and instructions for implementing the DOT Order 5610.2C. Through the FTA Master Agreement § 26(c) (May 2, 2024), the Contractor agrees to comply with environmental justice requirements.
- viii. Limited English Proficiency (LEP). Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. 2000d-1 note, and DOT, “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” December 14, 2005, clarifies the responsibilities of the Commission and assists them in fulfilling its responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” also provides FTA guidance and instructions for implementing the DOT Policy Guidance.
- ix. Nondiscrimination on the Basis of Disability. The Contractor agrees to comply and assures the compliance of each third-party subcontractor at any tier of the Contract, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - a. *Section 504 of the Rehabilitation Act of 1973, as amended (Section 504)*. 29 U.S.C. 794, prohibits discrimination on the basis of disability under any program or activity receiving Federal Financial Assistance.
 - b. *The Americans with Disabilities Act of 1990, as amended (ADA)*. 42 U.S.C. 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services, of public entities, as well as imposes specific requirements on public and private providers of transportation.
 - c. *DOT Public Transportation Regulations implementing Section 504 and the ADA*. These regulations include DOT regulations, “Nondiscrimination on the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 299 of 339
--	--------------------------------------	-------------------------	--------------------------------

Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Joint Architectural and Transportation Barriers Compliance Board (U.S. Access Board)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Examples of requirements include, but are not limited to, the following:

1. Design and Construction. Accessibility requirements for the design and construction of new transportation facilities;
 2. Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
 3. Complementary Paratransit Service. Requirements that public entities providing fixed-route service, provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;
 4. Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.
- x. Electronic Reports and Information. Reports and other information prepared in electronic format developed in connection with this Contract that are to be provided to the FTA, among others, whether as a contract end item or in compliance with contract administration provisions, must comply with Section 508 of the Rehabilitation Act of 1973, as amended, ensuring accessibility for individuals with disabilities. Compliance is governed by the U.S. Access Board’s regulations, which align with the most current version of the Web Content Accessibility Guidelines (WCAG).

The Commission is an Equal Opportunity Employer. As such, it agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Commission agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3), currently in effect or as may be amended in the future, by not using any Federal assistance awarded by the FTA to support procurements using exclusionary or discriminatory specifications.

- i. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 300 of 339
--	--------------------------------------	-------------------------	--------------------------------

In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- ii. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- iii. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
- iv. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- v. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal law, and statutory and public policy requirements: including, but not limited to, those

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 301 of 339
--	--------------------------------------	-------------------------	--------------------------------

protecting free speech, religious liberty, public welfare, the environment, a prohibiting discrimination.

B. Commonwealth of Virginia Anti-Discrimination

By submitting its bid or proposal, the Contractor certifies to the Commission that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to this Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Commission. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in i. and ii. below apply:

- i. During the performance of this Contract, the Contractor agrees as follows:
 - a. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. If the Contractor employs more than five (5) employees, the Contractor shall (1) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (2)

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 302 of 339
--	--------------------------------------	-------------------------	--------------------------------

post the Contractor's sexual harassment policy in (A) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (B) the Contractor's employee handbook.

- e. The requirements of these provisions i. and ii. are a material part of the Contract. If the Contractor violates one (1) of these provisions, the Commission may terminate the affected part of this Contract for breach, or at its option, the whole Contract. Violation of one (1) of these provisions may also result in debarment from State contracting regardless of whether this specific Contract is terminated.
- f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the Contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this Contract.
- ii. The Contractor shall include the provisions of i. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

64. Equal Employment Opportunity (All Contracts)

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 303 of 339
--	--------------------------------------	-------------------------	--------------------------------

employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- D. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Commission's Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the Commission and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor shall include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 304 of 339
--	--------------------------------------	-------------------------	--------------------------------

65. Nondiscrimination Under Federal Grants (All Contracts, except Professional Services)

No otherwise qualified handicapped individual in the United States, as defined herein, shall solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

66. No Federal Government Commitment or Liability to Third Parties (All Contracts)

The Commission and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Commission, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

67. Program Fraud and False or Fraudulent Statements or Related Acts (All Contracts)

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include this provision in each subcontract financed in whole or in part with Federal assistance provided by the FTA, and to require Subcontractors to do likewise. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 305 of 339
--	--------------------------------------	-------------------------	--------------------------------

68. Suspension and Debarment (*applicable if over \$25,000*) (All Contracts)

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200, which adopts and supplements the U.S. OMB “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180. These provisions apply to each Contract at any tier of \$25,000 or more, and to each Contract at any tier for a federally required audit (irrespective of the Contract amount), and to each Contract at any tier that must be approved by an FTA official irrespective of the Contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded Contract and are not presently declared by any Federal department or agency to be:

- A. Debarred from participation in any federally assisted Award;
- B. Suspended from participation in any federally assisted Award;
- C. Proposed for debarment from participation in any federally assisted Award;
- D. Declared ineligible to participate in any federally assisted Award;
- E. Voluntarily excluded from participation in any federally assisted Award; or
- F. Disqualified from participation in any federally assisted Award.

A covered transaction (see 2 CFR §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Commission. If it is later determined by the Commission that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Commission, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, while this offer is valid and throughout the period of any Contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 306 of 339
--	--------------------------------------	-------------------------	--------------------------------

69. Notice to FTA and U.S. Inspector General of Fraud, Waste, and Abuse or Other Legal Matters (applicable if over \$25,000) (All Contracts)

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Commission, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Commission is located. The Contractor must include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 CFR §§ 180.220 and 1200.220.

- A. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement between the FTA and the Commission, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- C. The Contractor must promptly notify the Commission, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement with the Commission involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

70. Solid Wastes (EPA-selected items \$10,000 or more) (All Contracts except Professional Services and Rolling Stock)

Under 2 CFR § 200.323, the Commission and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 307 of 339
--	--------------------------------------	-------------------------	--------------------------------

1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeds \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

71. Clean Air Act and Federal Water Pollution Control Act (*applicable if over \$150,000*) (All Contracts)

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 – 7671q), as amended and the Federal Water Pollution Control Act (33 U.S.C. § 1251 – 1387), as amended. Violations must be reported to the FTA and the Regional Office of the Environmental Protection Agency (EPA).

A. Clean Air Act

- i. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to the Commission, Federal Emergency Management Agency (FEMA), and the appropriate EPA Regional Office.
- iii. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA.

B. Federal Water Pollution Control Act

- i. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- ii. The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to the Commission, FEMA, and the appropriate EPA Regional Office.
- iii. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 308 of 339
--	--------------------------------------	-------------------------	--------------------------------

72. Restrictions on Lobbying (*applicable if over \$100,000*) (All Contracts)

A. Conditions on Use of Funds

- i. No appropriated funds may be expended by the Commission on a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification that the person has not made, and will not make, any payment prohibited by paragraph (i) of this section.
- iii. Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (i) of this section if paid for with appropriated funds.
- iv. Each person who requests or receives from an agency a commitment provided for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- v. Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of *Congress* in connection with that loan insurance or guarantee.

B. Certification and Disclosure

- i. Each person shall file a certification, such as a disclosure form, if required, with each submission that initiates agency consideration of such person for:
 - a. Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 309 of 339
--	--------------------------------------	-------------------------	--------------------------------

- b. An award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- ii. Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
 - a. A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - b. A Federal loan or a commitment providing the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (i) of this section.

- iii. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (i) or (ii) of this section. An event that materially affects the accuracy of the information reported includes:
 - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
 - iv. Any person who requests or receives from a person referred to in paragraphs (i) or (ii) of this section:
 - a. A subcontract exceeding \$100,000 at any tier under a federal contract;
 - b. A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a federal grant;
 - c. A contract or subcontract exceeding \$100,000 at any tier under a federal loan exceeding \$150,000; or,
 - d. A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

- v. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (i) or (ii) of this section. That person shall forward all disclosure forms to the agency.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 310 of 339
--	--------------------------------------	-------------------------	--------------------------------

- vi. Any certification or disclosure form filed under paragraph (v) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.
- vii. For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within thirty (30) days.
- viii. No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

73. Buy America Domestic Preference (All Contracts except Professional Services)

To the extent applicable to the performance of this Contract, the Contractor must agree to comply with Buy America Domestic Preference, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7.

Except as the Federal Government determines otherwise in writing, the Contractor agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- A. **Buy America.** The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 CFR Part 661, to the extent consistent with 49 U.S.C. § 5323(j).
- B. **Build America, Buy America Act.** Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Commission acknowledges that this Contract is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 311 of 339
--	--------------------------------------	-------------------------	--------------------------------

Contractor shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

- i. Steel and Iron. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in maintenance facilities, rail lines, and bridges. These items include but are not limited to structural steel or iron, steel or iron beams and columns, running rail, and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock (49 CFR 661.5(b)–(c)).
- ii. Manufactured Products. For a manufactured product to be considered produced in the United States: (1) all the manufacturing processes for the product must take place in the United States and (2) all the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents (49 CFR 661.5(d)).
- iii. Construction Materials. Construction materials used in an FTA-funded project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, 70911 – 70927 (2021), as implemented by OMB guidance to Federal awarding agencies on the Buy America Preference at 2 CFR 184.6. Additional information is available on the FTA Buy America website.

C. General Waivers

General waivers from the Buy America requirements may be used without submitting a waiver request to FTA. General waivers are listed at Appendix A to 49 CFR 661.7 and on FTA’s Buy America website. General waiver requirements are reviewed carefully to ensure that waivers are applied appropriately. FTA general waivers include waivers for:

- i. Nonavailable Articles. This waiver incorporates all waivers published in 48 CFR 25.104, which establishes excepted articles, materials, and supplies for the Buy American Act of 1933 (41 U.S.C. 10a-d), as the waivers may be amended from time to time.
- ii. Microprocessors. FTA has issued a general public interest waiver from the Buy America requirements to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.
- iii. Small Purchases. FTA has issued a general public interest waiver that exempts “small purchases” from Buy America requirements at 49 U.S.C. 5323(j). The term “small

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 312 of 339
--	--------------------------------------	-------------------------	--------------------------------

purchase” means a purchase of not more than \$150,000 (49 U.S.C. 5323(j)(13)). FTA bases the exemption on the total amount of the contract or subcontract, including labor and options, and not just the value of the goods purchased (FTA’s Guidance Letter on Buy America Small Purchase Waivers (Sept. 16, 2016)). **This waiver does not apply to construction materials.** Note that this small purchase waiver is not related to the micro-purchase or simplified acquisition thresholds that determine procurement processes.

- iv. De minimis costs and Small Grants Waiver. DOT has issued a Departmentwide waiver of the Buy America requirements for iron, steel, manufactured products, and construction materials under a single financial assistance award for which:
 - a. The total value of the non-compliant products is no more than the lesser of \$1,000,000 or five percent (5%) of total applicable costs for the project; or
 - b. The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u), and 49 CFR § 661.11.

The Contractor must submit the appropriate Buy America certification to reflect that it will comply with such applicable law, regulations, guidance, and contractual obligation. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as non-responsive. More information may be found at the FTA’s Buy America webpage at <https://www.transit.dot.gov/buyamerica>.

74. Access Requirements for Individuals with Disabilities (All Contracts except Professional Services)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with all applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 313 of 339
--	--------------------------------------	-------------------------	--------------------------------

- A. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA), “49 CFR Part 37;
- B. U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance,” 49 CFR Part 27;
- C. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 38;
- E. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
- F. U.S. General Services Administration (GSA) regulations, “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity (EEO) Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
- H. U.S. Federal Communications Commission (FCC) regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 CFR Part 64, Subpart F;
- I. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
- J. FTA regulations, “Transportation of Elderly and Handicapped Persons,” 49 CFR Part 609; and
- K. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the FTA, modified only if necessary to identify the affected parties.

If applicable, plans for facility construction and/or facility alterations that are described in the Scope of Work detailed under this Contract have been designed with the intent of ensuring, to the maximum extent feasible, that the facility, or alterations thereof, shall be accessible to persons with disabilities including individuals who use mobility aids. The Contractor agrees to make each modification detailed in the project plans in a manner that assures that the area constructed or alterations to any area within the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If any aspect of the plans or specifications

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 314 of 339
--	--------------------------------------	-------------------------	--------------------------------

for this project appear to be inconsistent with the above regulations or any guidance issued by the Access Board, it is essential that the Contractor notify the Project Manager designated by the Commission about any such concern as soon as practicable.

75. Cargo Preference – Use of United States-Flag Vessels (*applicable for Contracts involving equipment, materials, or commodities which may be transported by ocean vessel*) (All Contracts except Professional Services)

The Contractor agrees as follows:

- A. To use privately owned United States-Flag commercial vessels to ship at least fifty percent (50%) of any equipment, materials, or commodities procured, contracted for, or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessels, shall be transported on privately owned United States-flag commercial vessels, if available pursuant to 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” and 46 CFR Part 381;
- B. To furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the Commission (through the prime Contractor in the case of Subcontractor bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- C. To include these requirements in all Subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

76. Fly America (*applicable for foreign air transport or travel*) (All Contracts)

A. Definitions. As used in this clause—

- i. “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- ii. “United States” means the fifty (50) States, the District of Columbia, and outlying areas.
- iii. “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 315 of 339
--	--------------------------------------	-------------------------	--------------------------------

- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, the Contractor, in performing work under this Contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

- E. The Contractor agrees to include the requirements of this Section in all Subcontracts that may involve international air transportation.

77. Socio-Economic Requirements (applicable if over \$100,000) (Construction, Operations and Maintenance, Rolling Stock)

- A. Contract Work and Hours and Safety Standards Act. The Contractor shall comply with all federal laws, regulations, and requirements providing wages and hour protections for all contracts that involve the employment of mechanics or laborers, in accordance with 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer based on a standard workweek of forty (40) hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one (1) and one-half (½) times the basic rate of pay for all hours worked in excess of forty (40) hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must 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

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 316 of 339
--	--------------------------------------	-------------------------	--------------------------------

ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- B. Fair Labor Standards. The Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* applies to employees performing work in connection with Federally funded projects involving commerce.

78. Transit Employee Protective Provisions (applicable to all Contracts involving transit operations) (Operations and Maintenance)

- A. The Contractor agrees to the comply with the following employee protective requirements of 49 U.S.C. § 5333(b):
- i. U.S. DOL Certification. Under this Contract or any amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by the U.S. DOL is a condition of the Contract.
 - ii. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto. The U.S. DOL Special warranty is a condition of the Contract.
 - iii. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. The FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under Title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by the FTA will be incorporated herein as required.
- B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

79. Disadvantaged Business Enterprise Requirements (All Contracts)

- A. This Contract is subject to the requirements of 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.”

It is the policy of the Commission to practice nondiscrimination based on race, color, sex, or national origin in the award and administration of all DOT-assisted Contracts. The

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 317 of 339
--	--------------------------------------	-------------------------	--------------------------------

Commission's DBE Program, as required by 49 CFR Part 26 and as approved by the DOT, is incorporated by reference in this agreement.

- B. The Contractor, Subrecipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Commission deems appropriate, which may include, but is not limited to the following:
 - i. Withholding monthly progress payments;
 - ii. Assessing sanctions;
 - iii. Liquidated damages; and/or
 - iv. Disqualifying the Contractor from future bidding as non-responsible under 49 CFR § 26.13(b).
- C. The Contractor agrees to pay its Subcontractors performing Work related to this Contract for satisfactory performance of that Work within ten (10) days after the Contractor's receipt of payment for that Work from the Commission. The Contractor agrees further to return retainer payments to each Subcontractor within thirty (30) days after the Subcontractor's Work is satisfactorily completed and corresponding retainage is released by the Commission. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Commission. This clause applies to both DBE and non-DBE Subcontractors.
- D. Throughout the term of this Contract, the Contractor shall have a continuing obligation to attain the DBE goal it committed to in its offer, as may be adjusted to reflect modifications to the Scope of Work from time to time. Failure to do so may result in the imposition of sanctions up to and including termination for default.
- E. If the Contractor fails or refuses to comply with the terms of this Program, as it is set forth in such Contractor's Contract, the Commission will issue an order stopping all or part of payment and/or Work until satisfactory action has been taken. If the Contractor still fails to comply, the Commission may issue a termination for default proceeding.

Virginia's Small, Women and Minority Owned Business Certifications (SWaM/MBE/WBE) ARE NOT an acceptable substitution for the DBE requirement.

The Contractor shall submit the required Appendix A, Form E, Contractor Monthly Report of DBE Participation, on a monthly basis directly to the Commission's DBE Program Manager. As part of the flow down requirements, the Contractor shall require that all DBE Subcontractors submit the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 318 of 339
--	--------------------------------------	-------------------------	--------------------------------

required Appendix A Form E-2, DBE Subcontractor Monthly Report, directly to the Commission's DBE Program Manager on a monthly basis.

80. Technical Restrictions on the Acquisition of Property and Services (All Contracts)

A. Intelligent Transportation Systems

An Intelligent transportation system (ITS) includes electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. Property and services shall comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. 517(d) and FTA notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives the FTA may issue. Additional information regarding ITS is included in Circular 5010.1F.

B. Use of \$1 Coins

To comply with Section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. 5112(p), FTA assisted property that requires the use of coins or currency in public transportation service or supporting services must be fully capable of accepting and dispensing \$1 coins.

If the solicitation documents identify this Contract as subject to the Policy, or if the Contractor has reason to believe that the Policy applies to its services hereunder, the Contractor shall be responsible, in consultation with the Commission, for determining what, if any Work performed, or products supplied, under this Contract are subject to and conforming to all requirements of that Policy as applicable.

81. Federally Imposed Tariffs (All Contracts)

In the event that the President of the United States, the United States Congress Customs and Border Protection, or any other federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in the Contractor's costs to a level that renders performance under the Contract impracticable, the Commission may agree to an increase to the purchase price for the affected good. No increase in purchase price may exceed twenty-five percent (25%) of the additional tariff imposed on the goods imported or purchased by the Contractor that are provided to the Commission under this Contract.

Prior to the Commission agreeing to a price increase pursuant to this Section, the Contractor must provide to the Commission the following documentation, all of which must be satisfactory to the Commission:

- A. Evidence demonstrating: (i) the unit price paid by the Contractor as of the date of award for the good or raw material used to furnish the goods to the Commission under this Contract, (ii) the applicability of the tariff to the specific good or raw material, and (iii) the Contractor's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 319 of 339
--	--------------------------------------	-------------------------	--------------------------------

sufficient in detail and content to allow the Commission to verify that the tariff is the cause of the price change.

- B. A certification signed by the Contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by the Commission at a lower cost from a different source located outside of the country against which the tariff has been imposed.
- C. A certification signed by the Contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Contractor would otherwise be unable to perform under this Contract without such price increase.
- D. As requested by the Commission, written instructions authorizing the Commission to request additional documentation from individuals or entities that provide the goods or the raw materials to verify the information submitted by the Contractor.

If the Commission agrees to a price increase pursuant to this Section, the parties further agree to add the following terms to this Contract:

- A. During the Term and for five (5) years after the termination of this Contract, the Contractor shall retain, and the Commission and its authorized representatives shall have the right to audit, examine, and make copies of, all of the Contractor's books, accounts, and other records related to this Contract and the Contractor's costs for providing goods to the Commission, including, but not limited to those kept by the Contractor's agents, assigns, successors, and Subcontractors.
- B. Notwithstanding anything to the contrary in this Contract, the Commission shall have the right to terminate this Contract for the Commission's convenience upon fifteen (15) days' written notice to the Contractor.
- C. In the event the import duty or tariff is repealed or reduced prior to termination of this Contract, the increase in the Commission's Contract price shall be reduced by the same amount and adjusted accordingly.
- D. Any material misrepresentation of fact by the Contractor relating in any way to the Commission's payment of additional sums due to tariffs shall be fraud against the taxpayers of the Commonwealth of Virginia and subject the Contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

82. Prohibition on Certain Telecommunications and Video Surveillance Equipment or Services (All Contracts)

The Commission is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain covered telecommunications equipment or services;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 320 of 339
--	--------------------------------------	-------------------------	--------------------------------

- B. Extend or renew a Contract to procure or obtain covered telecommunications equipment or services; or
- C. Enter into a Contract (or extend or renew a Contract) to procure or obtain covered telecommunications equipment or services.

As described in section 889 of Public Law 115-232, “covered telecommunications equipment or services” means any of the following:

- A. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- B. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- C. Telecommunications or video surveillance services provided by such entities or using such equipment.
- D. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system in the performance of this Contract.

In implementing the prohibition under section 889 of Public Law 115-232 heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained. See section 889 of Public Law 115-232 and 2 CFR § 200.471.

83. Safe Operation of Motor Vehicles (All Contracts)

- A. **Seat Belt Use.** In compliance with Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-leased vehicles, or personally operated vehicles, and to include this provision in each third-party

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 321 of 339
--	--------------------------------------	-------------------------	--------------------------------

subcontract involving this Contract. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the Commission.

- B. **Testing While Driving and Distracted Driving.** Consistent with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. 402 note, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, the Contractor agrees to adopt and enforce workplace safety policies and initiatives for its employees and other personnel to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third-party subcontract involving this Contract.

84. Prompt Payment (All Contracts)

The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than thirty (30) days after the Contractor’s receipt of payment for that work. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Contract is satisfactorily completed.

85. Trafficking in Persons (All Contracts)

The Contractor agrees that it and its employees that participate in this Contract, may not:

- A. Engage in severe forms of trafficking in persons during the period of time that the Contract is in effect;
- B. Procure a commercial sex act during the period of time that the Contract is in effect; or
- C. Use forced labor in the performance of the Contract or subcontracts thereunder.

86. Federal Tax Liability and Recent Felony Convictions (All Contracts)

- A. The Contractor certifies that it:
 - i. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
 - ii. Was not convicted of the felony criminal violation under any Federal law within the preceding twenty-four (24) months.
- B. If the Contractor cannot so certify, the Recipient will refer the matter to the FTA and not enter into any Third-Party Agreement with the Third-Party Participant without the FTA’s written approval.
- C. The Commission requires the Contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub-agreement.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 322 of 339
--	--------------------------------------	-------------------------	--------------------------------

87. Substance Abuse (Construction, Operations and Maintenance)

Applicable to: Third-party Contractors who perform safety-sensitive functions in Transit Operations for Sections 5307, 5309, and 5311 projects must comply with FTA’s substance abuse management program under 49 CFR Part 655, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.” Under 49 CFR § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or Contractors:

- A. Operating a revenue service vehicle, including when not in revenue service;*
- B. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- C. Controlling dispatch or movement of a revenue service vehicle;*
- D. Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used in revenue service; and*
- E. Carrying a firearm for security purposes.*

Additionally, third-party Contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 CFR Part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs.”

A. Drug-Free Workplace (*applicable if over \$10,000*)

The Contractor agrees to:

- i. Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8102 et seq.;*
- ii. Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR Part 32; and*
- iii. Follow and facilitate compliance with U.S. OMB regulatory guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.*

B. Alcohol Misuse and Prohibited Drug Use

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 U.S.C. § 5331, 49 CFR Parts 40 and 655, and agrees to produce any documentation necessary to establish its compliance, and permit any authorized representative of the United States Department of Transportation or its operating administrators, the State Oversight Agency of Virginia, or the Transportation District Commission of Hampton Roads (Hampton Roads Transit), to inspect the facilities and records associated with the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 323 of 339
--	--------------------------------------	-------------------------	--------------------------------

implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance before March 1 and to submit the Management Information System (MIS) reports before March 1 to the Commission's Drug and Alcohol Program Manager. The Contractor further agrees to submit for review and approval before March 1 a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to provide evidence of the use of a certified laboratory, substance abuse professional, or a Medical Review Officer/Consortium.

88. Patent Rights and Rights in Data (*applies ONLY to research projects financed by the FTA for experimental, developmental, or research work*) (Professional Services)

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Commission intellectual property access and licenses deemed necessary for the Work performed under this Contract and in accordance with the requirements of 37 CFR 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 FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the FTA, until such time as the FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any Contract with an academic institution.

For the purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- A. The Federal Government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its federal license to any other party.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 324 of 339
--	--------------------------------------	-------------------------	--------------------------------

- i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- B. Unless the FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit the FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- C. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Federal Government.
- D. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- E. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract Work.
- F. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

89. Seismic Safety (applicable to Contracts for the construction of new buildings or additions to existing buildings) (Professional Services)

The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under this Contract

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 325 of 339
--	--------------------------------------	-------------------------	--------------------------------

including Work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

90. Rights to Inventions Made Under a Contract or Agreement (All Contracts)

If the federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the Commission wishes to enter into a Contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Commission must comply with the requirements of 37 CFR 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.

CONSTRUCTION CONTRACT TERMS

The following additional General Conditions apply to construction Contracts.

91. Construction Definitions and Acronyms

Change Notice means a document issued by the Commission’s Project Manager to the Contractor requesting a price proposal for specified changed Work.

Change Request means a document issued by the Contractor to the Commission’s Project Manager requesting that a Change Order be issued.

Construction Manager means the Commission’s authorized representative who is charged with the overall administration of the Project.

Construction Safety Officer means the Commission’s designated safety representative, responsible for overall safety compliance on the Project.

Contractor’s Safety Supervisor (CSS) means the Contractor’s work site safety officer. The “Alternate Safety Supervisor” is the person identified by the Contractor as the only individual who can act on behalf of the CSS if the CSS is going to be absent from the work site.

Final Acceptance means written notice by the Commission acknowledging that the Contractor has fulfilled all of its obligations under the Contract and that the Commission has accepted the Work as of the date stated in the written notice. Final Acceptance is a condition precedent to Final Payment and defines commencement of the warranty period.

Plans include the drawings, standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details which show the locations, character, dimensions, and details of the Work, and include any documents referenced therein.

Project Closeout means the process by which the Contractor documents fulfillment of all obligations under the Contract. This process follows Substantial Completion and precedes Final Acceptance.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 326 of 339
--	--------------------------------------	-------------------------	--------------------------------

Punch List means a list or lists of items to be furnished and/or Work to be performed by the Contractor to finally complete the Work.

Substantial Completion means completion of the Work, or a designated portion thereof, to a point where the Commission certifies that the Work or the designated portions can be used for the purpose for which it was intended, whether or not minor portions of the Work, or corrections to any portions of the Work, remain to be completed. Substantial Completion does not relieve the Contractor of its obligation to finally complete the Work in a timely fashion. Items remaining to be completed after Substantial Completion shall be documented in a Punch List.

Supplier means any person, firm, partnership, corporation, or other entity that provides materials, including those fabricated to a special design, but usually provides no labor at the work site other than delivery.

Work Site means the area enclosed by the Limit of Work indicated on the Plans and the boundaries of local streets and public easements in which the Contractor is to perform under the Contract.

Working Drawings means the drawings prepared by the Contractor which depict the sequence, methods, materials, details of construction or procedures for accomplishing a portion of the Work, including, but not necessarily limited to, falsework, shoring, concrete formwork, and excavation plans.

92. Bond Requirements (applicable to all construction or facility improvement Contracts or Subcontracts exceeding \$250,000)

Unless otherwise stated in the Special Provisions, the Contractor shall upon execution of the Contract, furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder, as required, in a form and with a surety listed in the Comptroller General's List of Approved Sureties (OMB Circular 570) that is authorized to do business in Virginia. Unless otherwise specified in the Contract Documents, the Bid, Performance and Payment Bonds required hereunder shall be as follows:

- A. A bid guarantee from each Bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100% of the Contract price. A "performance bond" is one executed in connection with a Contract to secure fulfillment of all the Contractor's requirements under such Contract.
- C. A payment bond on the part of the Contractor for 100% of the Contract price. A "payment bond" is one executed in connection with a Contract to assure payment as required by the

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 327 of 339
--	--------------------------------------	-------------------------	--------------------------------

law of all persons supplying labor and material in the execution of the work provided for in the Contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within ninety (90) days after the bid opening without the written consent of the Commission, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent the Commission's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense the Commission for the damages occasioned by default, then the bidder agrees to indemnify the Commission and pay over to the Commission the difference between the bid guarantee and the Commission's total damages so as to make the Commission whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

A. Performance Guarantee

A Performance Guarantee in the amount of 100 percent of the Contract value is required by the Commission to ensure faithful performance and to secure fulfillment of all Contractor obligations under the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit, issued by a fully qualified surety company acceptable to the Commission and listed as a company current authorized under 31 CFR Part 22 as possessing a Certificate of Authority as described thereunder, and made payable to the Transportation District Commission of Hampton Roads, shall be provided by the Contractor, and shall remain in full force and effect for the entire term of the Contract, including option terms or extensions, if any. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Commission within ten (10) business days from Contract execution.

The Commission may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. The Commission may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 328 of 339
--	--------------------------------------	-------------------------	--------------------------------

Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Commission if:

- i. A bank in good standing issues it. The Commission will not accept a Letter of Credit from an entity other than a bank.
- ii. It is in writing and signed by the issuing bank.
- iii. It conspicuously states that it is an irrevocable, non-transferable, “standby” Letter of Credit.
- iv. The Commission is identified as the Beneficiary.
- v. It is in an amount equal to 100 percent of the Contract value. This amount must be in U.S. dollars.
- vi. The effective date of the Letter of Credit is the same as the effective date of the Contract.
- vii. The expiration date of the Letter of Credit coincides with the term of the Contract.
- viii. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Commission and the Contractor for the work stipulated herein.

The issuing bank’s obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank’s representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

B. Payment Bond

A Payment Bond in the amount of one hundred percent (100%) of the Contract value is required by the Commission to assure payment as required by law of all persons supplying labor and materials in execution of the Work under the Contract. The bond may be issued by a fully qualified surety company acceptable to the Commission, listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder, and made payable to the Transportation District Commission of Hampton Roads.

The Commission must give its prior written consent to any substitution of surety and maintains the right to reject a proposed substitution.

93. Construction Contract Work Hours and Safety Standards Act (applicable if in excess of \$100,000 that involve the employment of mechanics or laborers)

The Contractor shall comply with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 – 3708, as supplemented by DOL regulations at 29 CFR Part 5.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 329 of 339
--	--------------------------------------	-------------------------	--------------------------------

- A. **Overtime requirements.** The Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard workweek 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 one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surrounding or under working conditions which are unsanitary, hazardous, or dangerous.
- B. **Violation: liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth herein, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required.
- C. **Withholding for unpaid wages and liquidated damages.** The Commission shall upon its own action of upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided as provided in the clause set forth herein.
- D. **Subcontracts.** The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this Section.

94. Davis-Bacon Act (applicable to prime construction, alteration, or repair Contracts over \$2,000)

The Commission shall place a copy of the current prevailing wage determination in the solicitation. The decision to award a Contract will be conditioned upon the acceptance of the wage determination.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 330 of 339
--	--------------------------------------	-------------------------	--------------------------------

Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144 and 3146-3148 as supplemented by DOL regulations at 29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The 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 or she is otherwise entitled.

95. Copeland Anti-Kickback Act - Sections 1 and 2 [applicable to construction Contracts (Section 1) and all prime construction, alteration, or repair Contracts over \$2,000 (Section 2)]

- A. **Section 1.** The Contractor and any Subcontractor are prohibited from inducing by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works that are financed in whole or in part by the United States, to give up any part of the compensation to which he or she is otherwise entitled.
- B. **Section 2.** The Contractor shall submit a weekly statement of compliance to the Commission with respect to the wages paid each employee performing covered work during the preceding week.
- C. The Contractor shall adhere to U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States,” 29 CFR Part 3.

96. Quality Control/Quality Assurance

Materials furnished, and Work performed by the Contractor shall conform to details shown on the Plans, and requirements given in the Technical Specifications.

The Contractor has primary responsibility for inspection and testing of all materials required in the performance of this Contract. The Commission or its designee will independently perform check testing and periodic inspections to verify the adequacy of the Contractor’s quality controls or for any other purpose and will bear the cost of such testing and inspection. The Commission reserves the right to reject materials on the basis of the Commission’s instituted inspection and testing.

Materials furnished, or Work performed which does not comply with Contract requirements will be considered non-conforming. Work considered non-conforming includes, but is not limited to:

- A. Work done or products incorporated beyond lines shown on the Plans or established by the Commission;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 331 of 339
--	--------------------------------------	-------------------------	--------------------------------

- B. Work done or products incorporated contrary to the Commission's instructions;
- C. Work changed or added without the Commission's written authorization;
- D. Work which includes incorporation of unapproved substitutions;
- E. Work performed or materials furnished without the required testing, inspection, or other conformance documentation or without required warranties; and
- F. Work or materials not in conformance with the Contract requirements.

When non-conforming Work is discovered, the Commission may:

- A. Reject the materials or workmanship or require its correction. The Contractor shall satisfactorily correct rejected workmanship or satisfactorily replace rejected materials at the Contractor's own expense and promptly segregate and remove rejected materials from the work site and properly dispose of them.
- B. If Contractor fails to promptly replace rejected materials or correct rejected workmanship, the Commission may:
 - i. By Contract or otherwise, remove and replace such rejected materials or workmanship, correct such materials or workmanship, and dispose of all rejected materials and workmanship so removed, charging the costs thereof to the Contractor;
 - ii. Terminate the Contractor's right to proceed in accordance with General Condition, Termination for Default and Contractor and its sureties shall be liable for any costs and damages incurred; or
 - iii. Accept the materials or workmanship as suitable for the intended purpose, document the basis of such acceptance, and deduct an equitable amount from the Contract price for uncorrected Work.

97. Differing Site Conditions

The Contractor represents that it prior to entering this Agreement, it was provided with an opportunity to conduct a reasonable site inspection. The Contractor shall immediately notify the Commission of any site conditions not reasonably discoverable by a site inspection(s), i.e., hazardous materials; subsurface, or latent physical conditions at the site differing materially from those indicated in the Contract, or unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work provided for in the Contract.

98. Retainage

The Commission will pay the approved invoice, less five percent (5%) for retainage, except as provided under Reduction of Retainage, within thirty (30) days after its receipt by the Commission.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 332 of 339
--	--------------------------------------	-------------------------	--------------------------------

All retainages will be held by the Commission until the time for final payment and the Commission has received consent of surety.

99. Reduction of Retainage

The Commission will withhold five percent (5%) retainage until the Contractor successfully achieves Substantial Completion on the Contract. Following Substantial Completion, the Commission may, at its sole discretion, elect to withhold retainage in an amount equal to twice the amount of the estimated value of all uncompleted Work, including warranty, and pay the Contractor the balance of withheld retainage. The remainder of withheld retainage will be paid after Final Completion. In the event that the Commission and the Contractor agree to have the Punch List or other Work performed by parties other than the Contractor, the cost of such Work will be subtracted from the amount of retainage due the Contractor.

100. Cooperation with Other Contractors

The Contractor shall confer with and coordinate through the Commission's Project Manager, this Contract's Work with that of any other Commission Contractors as well any other entities or Contractors working in close proximity to or on the work site. At the Commission's Project Manager's request, the Contractor shall plan and execute its construction operations in a manner that will afford other Contractors access to the work site. The Contractor shall cooperate with others while on adjoining or overlapping Work as requested. Such cooperation may include participating in a Beneficial Occupancy/Substantial Completion inspection before allowing the other Contractor access within the Contract limits.

101. Variation in Estimated Quantity

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit priced item varies by more than 25% above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon request of either party in accordance with General Condition 2, Changes. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 125% or below 75% of the estimated quantity.

For an actual quantity exceeding 125% of the estimated quantity, the unit price shall be adjusted only for the quantity in excess of 125% of the estimated quantity. For an actual quantity, less than 75% of the estimated quantity, the unit price shall be adjusted for the total actual quantity of Work performed. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time.

102. Prosecution and Progress of Work

- A. **License, Permits, Fees, and Construction Notices.** The Contractor shall be fully responsible for identifying, securing, and paying for all necessary licenses, fees, inspections, waivers, utility connection fees, building and other permits, and similar

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 333 of 339
--	--------------------------------------	-------------------------	--------------------------------

authorizations from governmental and utility authorities, required to fulfill the Contract requirements and the Contractor's obligations.

- B. **Standard Work Week.** The Contractor shall comply with all applicable statutes, regulations, rules, ordinances, or other such measures which limit, restrict, or regulate the times of day and/or days of the week when any activities required by this Contract can be performed.
- C. The Contractor is responsible for applying for and obtaining any waivers or variances necessary for the Work at its own expense except for those specifically identified in this Contract as provided by the Commission.
- D. The Contractor's compliance with such restrictions shall not be the basis of any claim for extensions of time or additional compensation unless the Commission has expressly stated in this Contract that waivers, variances, or other authorizations will apply to the Contractor's activities, or specific portions thereof, and such waivers, variances, or other authorizations are unavailable at the specified date or are subsequently withdrawn and such unavailability or withdrawal did not result from some act or omission by the Contractor.
- E. **Maintenance of Traffic.** The Contractor shall be responsible for mitigating impact to traffic.
- F. **Noise and Vibration Control.** The Contractor shall comply with all applicable local, state, and federal laws, ordinances, and/or regulations regarding control of noise and vibration. The Contractor is responsible for applying for and obtaining any noise variances necessary for the Work at its own expense.

103. Final Payment and Release of Liens/Claims

Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify the PM in writing. Upon receipt of the Contractor's notice of Final Completion, the PM or his/her designee shall inspect the Work and within fifteen (15) days after receiving the Contractor's notice of Final Completion, either finally accept the Work or notify the Contractor in writing of Work yet to be performed on the Contract. Upon receipt of the Commission's written Final Acceptance of the Work, the Contractor shall invoice the Commission for any amounts due under the Contract including retainage. The Commission shall pay the Contractor within thirty (30) days after receipt of the approved final invoice.

Neither the final payment nor any remaining retainage shall become due until the Contractor submits to the Commission:

- A. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;
- B. Consent of surety to final payment; and

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 334 of 339
--	--------------------------------------	-------------------------	--------------------------------

- C. If required by the Commission, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, to the extent and in the form designated by the Commission.

If, after Substantial Completion of the entire Contract, Final Completion is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, the Commission, without terminating the Contract, will pay the balance due for that portion of the Work that is eligible for Final Completion. If the remaining balance of Work is less than the retainage stipulated in the Contract, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work eligible for Final Completion shall be submitted by the Contractor prior to payment. Payment under this Article will be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims regarding any Work not eligible for Final Completion.

The making of final payment by the Commission will constitute a waiver of claims by the Commission except those arising from:

- A. Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
- B. Latent defects in the Work or failure of the Work to comply with the requirements of the Contract;
- C. Any misrepresentations or falsifications by the Contractor; or
- D. Terms of all warranties required by the Contract.

Acceptance of final payment by the Contractor, a Subcontractor, or a Supplier will constitute a waiver of claims by the payee except those previously made in writing and identified by the payee as unsettled at the time of application for final payment. Such waivers will be in addition to the waiver provided in this Section.

Notwithstanding the provisions herein, the risk of loss of all materials incorporated in the Work shall remain with the Contractor until Final Completion and Final Acceptance by the Commission, to the extent loss or damage was not caused by the Commission or its representatives.

104. Veterans Hiring Preference

The Contractor shall give hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction Work required under the Contract. This section shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 335 of 339
--	--------------------------------------	-------------------------	--------------------------------

**105. Special Equal Employment Opportunity Provisions for Construction Contracts
(applicable to construction Contracts in excess of \$10,000 if DOL EEOC regulations at 41
CFR Part 60 apply)**

Except as otherwise provided under 41 CFR Chapter 60, the Contractor agrees, for all Contracts that meet the definition of “federally assisted construction Contract” in 41 CFR Chapter 60, as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor’s legal duty to furnish information.
- D. The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 336 of 339
--	--------------------------------------	-------------------------	--------------------------------

- E. The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government Contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor shall include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions shall be binding upon each Subcontractor or Vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Commission further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the Commission so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The Commission agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 337 of 339
--	--------------------------------------	-------------------------	--------------------------------

may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Commission further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Commission agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from the Commission; and refer the case to the Department of Justice for appropriate legal proceedings.

106. Seismic Safety (applicable to Contracts for the construction of new buildings or additions to existing buildings)

The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under this Contract including Work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

ROLLING STOCK CONTRACT TERMS

The following additional General Conditions apply to construction Contracts.

107. Accessibility

Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and U.S. Access Board/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

108. Transit Vehicle Manufacturer Compliance with DBE Requirements

Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR § 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements. With FTA's prior approval, the Commission may

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 338 of 339
--	--------------------------------------	-------------------------	--------------------------------

establish a project-specific goal for DBE participation in the procurement of transit vehicles (e.g., ferry vessels) from specialized manufacturers when a TVM cannot be identified.

109. Bus Testing (applicable to all Contracts for the acquisition or lease of any new bus model, or any bus model with a major change in configuration or components)

The Contractor (Manufacturer) agrees to comply with the Bus Testing requirements under 49 U.S.C. § 5318 and the FTA’s implementing regulation at 49 CFR Part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, as defined by CFR Part 665.5, and that the bus model has achieved a passing score. Upon completion of the testing, the Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the Commission.

110. Buy America – Rolling Stock (applicable to all Contracts for the acquisition of rolling stock)

For purposes of Buy America, rolling stock includes “all individual items identified as rolling stock in 49 CFR § 661.3 (e.g., buses, vans, cars, railcars, trolley buses, ferry boats, as well as vehicles used for support services), train control, communication, and traction power equipment that meets the definition of end product at 49 CFR § 661.3 (e.g., a communication or traction power system, including manufactured bimetallic power rail).” See 49 CFR § 661.3 Appendix A. Requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(c), 49 U.S.C. § 5323(u), and 49 CFR § 661.11 and provide that Federal funds may not be obligated unless rolling stock is manufactured in the United States and have a seventy percent (70%) domestic content. These regulations require, as a matter of responsiveness, that the Contractor submit to the Commission the appropriate Buy America certification with all offers where FTA funds are provided, except those subject to a general waiver or less than \$150,000. Offers that are not accompanied by a completed Buy America certification will be deemed non-responsive.

A. Domestic Content

Rolling stock must have a minimum amount of domestic content, and final assembly of the rolling stock must occur in the United States. The minimum amount of domestic content varies by year.

B. Purchaser’s Requirements Certification

The Commission must certify a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock (49 CFR 663.37). The following procurements are exempt from this requirement:

- i. Ten (10) or fewer buses;

TITLE Procurement Policy and Procedures Manual	NUMBER PRO-001 Rev. 16	DATE 5/1/2025	Page Page 339 of 339
--	--------------------------------------	-------------------------	--------------------------------

- ii. Twenty (20) vehicles or fewer serving rural (other than urbanized) areas or urbanized areas of 200,000 people or fewer; or
- iii. Any number of primary manufacturer standard production and unmodified vans, if after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

111. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases (applicable to all Contracts for the acquisition of rolling stock)

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and the FTA's implementing regulation at 49 CFR Part 663. The Contractor shall comply with the Buy America certification(s) submitted with its offer. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR Part 663 and related FTA guidance.

112. Federal Motor Vehicle Safety Standards (FMVSS) (applicable to all Contracts for the acquisition of rolling stock)

The Contractor (whether manufacturer or dealer) certifies that the vehicles to be supplied under the Contract shall conform to all applicable Federal Motor Vehicle Safety Standards of the U.S. Department of Transportation, National Highway Traffic Safety Administration, and are certified by installation of the required certification plate.

113. Limitation on Certain Rolling Stock Procurements (applicable to all Contracts for the acquisition of rolling stock)

The Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

114. Rolling Stock Waivers (applicable to all Contracts for the acquisition of rolling stock)

A Contractor seeking a waiver must demonstrate the necessity of the waiver to the satisfaction of the Commission, the FTA, and the Made in America Office of OMB. The Made in America Office will review the proposed waiver to determine if it is consistent with applicable law and policy (see OMB's October 25, 2023, M-24-02 Memorandum for Heads of Executive Departments and Agencies). The Contractor shall not assume a waiver will be granted. The FTA may issue a waiver from Buy America requirements on one (1) of three (3) grounds:

- A. If the FTA Administrator determines a waiver is in the public interest;
- B. When U.S. manufacturers do not produce products in a sufficient and reasonably available amount or of a satisfactory quality; or
- C. When including domestic material will increase the cost of the overall project by more than twenty-five percent (25%) (49 U.S.C. 5323(j)(2)).