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|  HAMPTON ROADS TRANSIT POLICY AND PROCEDURES MANUAL | NUMBER PRO-001 Rev. 13 | EFF. DATE 04/15/2024 |
| | SUPERSEDES PRO-001 Rev. 12 – August 1, 2023 | |
| RESPONSIBLE DEPARTMENT Procurement | KEY SUBJECT Procurement, Contracts | |
| TITLE Procurement Policy and Procedures Manual | | |
| APPLIES TO All Departments | APPROVAL(S) Luther / Burns / Harrell | |

HAMPTON ROADS TRANSIT

PROCUREMENT POLICY AND PROCEDURES MANUAL

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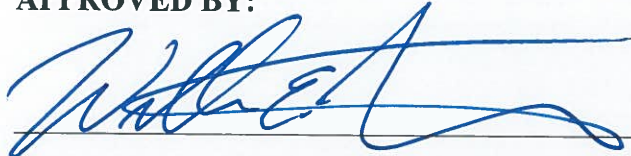
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Approvals

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; the Federal Transit Administration Circular 4220.2F; 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

4/11/2024
Date

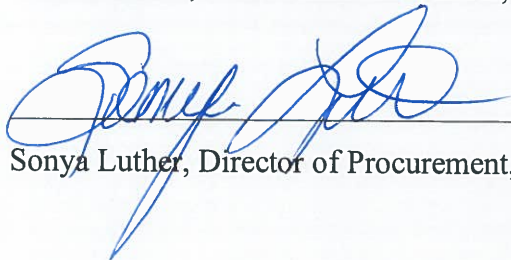
RECOMMENDED BY:



Conner Burns, Chief Financial Officer, Hampton Roads Transit

4.11.2024

Date



Sonya Luther, Director of Procurement, Hampton Roads Transit

4/11/2024

Date

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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 |

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|----|------------|---------|---|-------------------|
| 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 |

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Purpose

The purpose of this Manual is to provide guidance and direction for the conduct of contractual actions in accordance with all applicable laws, regulations, Hampton Roads Transit (HRT) policies, and sound business practices.

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 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.

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

Best Value: The overall combination of quality, price, and material requirements for solicited services that in total are optimal to the agency.

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.

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.

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 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 Offeror will proceed with the Work. If the Bidder does not proceed, HRT is due from the guarantor the difference

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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.

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.

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.

Budget Check: Documented verification of funding for a procurement.

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

Cardinal Change: A significant change in the Work that causes a major deviation from the original scope of the Contract, 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.

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.

CFR: Code of Federal Regulations.

Change Order (CO) or Modification (Mod): A written document signed by the Contractor and executed by the agency, which alters the scope of the Work to be performed by the Contractor, changes the schedule for performance of the Work, or makes any other change to the Contract, with or without a change in price.

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

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

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- 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, or agents other than the contractual relationship established under the Contract.

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 and completion of work.

Contracting Officer: A procuring official who has delegated authority, usually 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.

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.

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

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” (<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>). When only non-

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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.

Emergency: 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.

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 change 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 the Underlying Agreement; or
- Another applicable federal mandate.

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 the Contractor’s obligations under the Contract.

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.

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

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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 includes the following:

- Computer hardware (such as workstations/desktop computers, laptops, notebooks, tablets, servers)
- Computer software
- Operating systems
- Telephones
- 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 Bids (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 solely on price, with no consideration of a bid’s quality beyond meeting the minimum requirements established in the IFB.

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 in order 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.

Joint 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

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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.

Micro-Purchases: A method of procurement without obtaining competitive quotations for goods and services valued at \$10,000 or less. See OMB Memorandum M-18-18, and in OMB Changes to 2 CFR Part 200. For FTA funded projects, the 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.

Micro-Purchase Threshold: The dollar amount at or below purchases of property or services utilizing micro-purchase procedures may be utilized. Generally, the micro-purchase threshold for federally funded procurement activities does not exceed the amount set by the FAR at 48 CFR Part 2, Subpart 2.1 or the VPPA.

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 issuance of an NTP shall be at the Contractor's risk.

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

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.

Price Analysis: The process of examining and evaluating of 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 conference, questions and responses to questions, bid opening/receipt of proposals, responsiveness and

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responsibility review, technical evaluation, negotiations, best and final offers, Operations and Oversight Committee presentation, Commission presentation and approval, and issuance of Notice-to-Proceed.

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.

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 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.

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, obtaining budget checks, verification of receipt of goods and services, verification of receipt and accuracy of invoices, and payment.

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.

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 the details on the items or services that are to be purchased, such as the types of goods, quantity, and price. In simple terms, it is the Contract drafted by the Procurement Department when purchasing goods or services from a seller.

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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 Proposals (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.

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 assure 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.

Rolling Stock: Vehicles used to transport passengers and includes 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 and Risk Management: The Safety and Risk 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 evaluates the safety aspects of services, equipment, and other materials obtained, HRT includes safety requirements in technical specifications and Contracts.

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

Security and Emergency Preparedness: The Department of Security and Emergency Preparedness is charged with the organization's physical security and emergency management 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 and emergency preparedness management requirements.

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

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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.

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

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.

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 Contract 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 finally complete the Work in a timely fashion. Items remaining to be completed after Substantial Completion are documented in a Punch List.

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

Supplier: A person or entity that provides supplies, materials, or equipment, but usually does not

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provide labor on HRT property other than delivery.


U.S.C.: United States Code.

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.

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|  HAMPTON ROADS T R A N S I T POLICY AND PROCEDURES MANUAL | NUMBER PRO-001 Rev. 13 | EFF. DATE 04/15/2024 |
| | SUPERSEDES PRO-001 Rev. 12 – August 1, 2023 | |
| RESPONSIBLE DEPARTMENT Procurement | KEY SUBJECT Procurement, Contracts | |
| TITLE Procurement Policy and Procedures Manual | | |
| APPLIES TO All Departments | APPROVAL(S) Luther / Burns / Harrell | |

PART A – POLICY

I. Applicability and Governance

These policies apply to all Commission Contracts and purchases, except as specifically excluded herein.

- A. 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), Sections 317 – 327; 2 CFR Part 180; 49 CFR Part 26; the Federal Transit Administration (FTA) Circular 4220.2F; FTA’s Master Agreement, and the Virginia Public Procurement Act (VPPA) Title 2.2, Chapter 43, Code of Virginia. In all procurements utilizing any amount of Federal funds, federal requirements 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 General Counsel, when necessary, to update the General Conditions with required clauses and their applicability.
- B. If no applicable State law or Federal law or regulation exists regarding a particular aspect of procurement, then Federal Contract law principles defined in the Federal Acquisition Regulations (FAR) may be applied.
- C. 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 C4220.1F, 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.

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II. Standards of Conduct

These Standards of Conduct govern the performance of HRT employees who are engaged in, or are otherwise involved in, the award or administration of a Contract, 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, Article 6, Ethics in Public Contracting.

- A. **Personal Conflicts of Interest.** As provided in the Common Grant Rules (2 CFR Parts 200 and 1201 and the FTA Master Agreement), no employee, officer, agent, or board member, may participate in the selection, award, or administration of a Contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, or Commission member, or any member of his or her immediate family, his or her partner, or an organization which 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, the firm considered for a Contract.
- B. **Gifts.** HRT's officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to sub-agreements. 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.
- C. **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, shall apply.
- D. **Conflict of Interest Certification.** On an annual basis, HRT requires that all employees 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).

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III. Contracting Authority

- A. The Commission’s President/CEO is the Commission’s Contracting Officer.
- B. The Commission’s President/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 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.

IV. 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. Written 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, including but not limited to 2 CFR § 200.318, FTA C4220.1F, and §§ 4367 and 4377 of the VPPA, as they may be amended from time to time.

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.

D. Efficient and Economic Purchasing

Proposed procurements will be reviewed to avoid unnecessary, duplicative, or repetitive purchases to the greatest extent feasible and consistent with good procurement practices. Consideration should be given to consolidating or breaking out procurements to obtain more economic pricing. Where appropriate, analysis will be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.

To foster greater economy and efficiency, intergovernmental agreements, Contracts, and schedules of the General Services Administration (GSA) and the Commonwealth of Virginia may be used as permitted and appropriate. Competition requirements are met with documented procurement actions using strategic sourcing, shared services, and other similar procurement

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arrangements. However, this does not preclude the requirement to consider other competitive sources of supply or services or to determine price reasonableness.

E. 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)
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

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16. Translation services

17. Training (provided the training has been pre-approved)

18. Property leases

F. Value Engineering

The Commission will utilize value-engineering clauses for construction and other capital projects of sufficient size to offer reasonable opportunity for increased efficiency. Value engineering is a systematic and creative analysis to ensure that the project is designed and constructed to perform its essential functions in the most cost-effective manner. The process may include consideration of life-cycle costing, and intangible or indirect benefits such as sustainability.

G. Records

HRT shall maintain records detailing the history of procurements in a manner consistent with the size, complexity, and cost of the Contract. See Appendix C, Forms, for a complete listing of records to be maintained. At a minimum, these records shall include the following:

1. The rationale for the method of the procurement
2. Selection of Contract type
3. Reasons for Contractor selection or rejection
4. The basis for the Contract price

H. 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 C4220.1F. 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.

I. Contract Period

The period of Contract performance for rolling stock and replacement parts shall not exceed five (5) years for bus and seven (7) years for rail, inclusive of options, as defined in FTA C4220.1F. 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

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business with the Commission, and the relative benefit to the Commission of a longer or shorter Contract term.

V. **Full and Open Competition**

A. **Restrictions on Competition**

All procurement transactions totaling \$10,000 or higher will be conducted, to the greatest extent practicable, in a manner providing full and open competition, without providing an unfair competitive advantage to any potential vendor. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

1. Unreasonable requirements placed on firms in order for them to qualify to do business;
2. Unnecessary or excessive experience, excessive bonding, insurance, warranty, or similar requirements which affect an otherwise qualified firm's ability to compete. Such requirements must also be established in a manner consistent with protection of the Commission's interests;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive awards to any person or firm on retainer Contracts;
5. Organizational conflicts of interest;
6. Specifying only a "brand name" product, without specifying that equivalent products will be accepted and providing salient characteristics or other descriptive information sufficient to allow bidders to identify and propose such equivalent products;
7. The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent Contractor; and
8. Any arbitrary action in the procurement process.

B. **Organizational Conflicts of Interest**

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

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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:

1. The employee being also employed by a bidder, Offeror, or Contractor involved in the procurement transaction.
2. 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%).
3. 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 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.

C. Geographic Preferences

Procurement transactions will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids or proposals, except in those cases where applicable statutes or regulations expressly mandate or permit geographic preference (i.e., Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58). This does not preempt State or local licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the Contract.

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D. Selection Procedures

The Commission will have written selection procedures that ensure fair, unbiased evaluation of competing offers for all types of competitive procurement transactions.

VI. Methods of Procurement

A. General Standards

Every competitive solicitation above the small purchase threshold shall adhere to the following standards:

1. It shall be publicized in a manner intended, at a minimum, to notify potential sources in the Commission's service area of the nature and type of the solicitation and the date for responses. It may also be advertised regionally or nationally as appropriate.
2. 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.
3. 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 comprehensible 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 deemed necessary by the Commission.
4. The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to the Commission's needs.
5. 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. Should the amendment substantially change the terms of the solicitation, the period for receipt of offers shall be extended to allow Offerors to change their proposals accordingly.

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6. A determination shall be made by the Contracting Officer that the apparent successful offer is responsive (i.e., complies with all material elements of the solicitation), and that 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). The Contracting Officer shall also determine that the price(s) are fair and reasonable.

B. Informal Procurement Methods

1. Micro-Purchases

Micro-purchases are those purchases in which the aggregated dollar amount does not exceed \$10,000. Purchases below that threshold may be made without obtaining competitive quotations but shall provide for competition whenever practicable. Award may be made if it is determined that the price is fair and reasonable based on research, experience, purchase history, or other information and documents, and that there are no significant differences in quality or price among available vendors. Typically, this would involve items sold “off-the-shelf” to the general public or a specific market. Documentation for a non-competitive micro-purchase need only include a notation that the price is fair and reasonable and the reason for the determination. The determination may be recorded on preprinted forms or a checklist on the receipt. Micro-purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and requirements may not be split to avoid a competitive solicitation process. The Davis Bacon Act (40 U.S.C. § 3141 et seq.) applies to construction micro-purchases in excess of \$2,000.

2. Small Purchases

Small purchase procurements are relatively simple and informal solicitations for services, supplies, or other property in which the aggregate dollar amount is more than \$10,000, but does not exceed the limits currently described in § 2.2-4303G of the VPPA, as follows:

- i. 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;
- ii. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000; and
- iii. Professional services provided the aggregate sum of all phases is not expected to exceed \$80,000; or
- iv. As otherwise defined by the Commission (\$100,000 for goods and services other than professional services and \$30,000 for professional services).

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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.

If small purchase procedures are utilized, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate and as required by 2 CFR § 200.320. 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 wherever practicable, and to obtain quotes from at least four (4) vendors. Both the solicitation and quotes should be written in either electronic or hard copy form.

C. **Formal Procurement Methods**

1. Competitive Sealed Bidding

Bids in excess of \$100,000 are publicly solicited through a formal Invitation for Bids (IFB) with a firm fixed-price Contract (lump sum or unit price) being awarded to the lowest-priced responsive bid from a responsible bidder. 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. The price reasonableness analysis shall consider whether bids are materially unbalanced. Public notice of the IFB shall be posted to HRT's website at least ten (10) days prior to the date set for the bid opening.

Competitive 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. In order for sealed bids to be feasible, the following conditions should be present:

- i. A complete, adequate, and realistic specification or purchase description is available;
- ii. Two (2) or more responsible bidders are willing and able to compete effectively for the business; and
- iii. The procurement lends itself to a firm fixed price Contract and the selection of the successful bidder can be made principally on the basis of price.

All bids will be publicly opened at the time and place prescribed in the IFB. Bidders shall be afforded a suitable opportunity to examine all bids received after they are opened.

When specified in bidding documents, factors such as discounts, transportation costs, value analysis, and life cycle costs must be considered in determining the low bid. Payment discounts shall be requested or considered only when prior experience indicates that the Commission is able to avail itself of such discounts.

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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 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.

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.

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, 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.

Any or all bids may be rejected if there is a sound, documented business reason.

2. Two-Step Sealed Bidding

Two-step sealed bidding is a procurement method involving the submittal of un-priced technical proposals in the first step and a sealed bid submittal in the second step.

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.

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The first step requires Offerors to submit technical proposals for evaluation, generally under the procedures for competitively negotiated procurements. 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. At the end of this step, each Offeror offering an acceptable technical solution is invited to submit a sealed bid to provide the goods or services defined in its technical proposal as negotiated. The award is based upon the lowest responsive price from a responsible Offeror.

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.

3. Competitive Negotiation

The competitive negotiation procurement process is conducted through a formal Request for Proposals (RFP). This method of procurement is generally utilized when conditions are not appropriate for the use of sealed bids. The process for procuring A&E services, or for other types of professional services in excess of \$80,000 if federal funds are not involved, varies, and is described below. This method cannot be used for the acquisition of construction service except under very limited instances defined in VPPA § 2.2-4303D, and with a written determination made in advance by the Commission.

Public notice of the RFP shall be posted to HRT's website at least ten (10) days prior to the date set for receipt of proposals.

The competitive negotiation method of procurement is appropriate when the Contracting Officer determines that the following conditions exist:

- i. A complete, adequate, and realistic specification or purchase description is not available;
- ii. Two (2) or more responsible Offerors are willing and able to compete effectively for the award;
- iii. The selection of the successful Offeror requires consideration of factors other than price; and
- iv. Discussions with Offerors are anticipated to be needed.

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Either a fixed price or cost reimbursable type Contract may be awarded.

Each RFP will include a description of the factors, in addition to price, by which proposals will be evaluated. Evaluation factors and subfactors will be listed in order of their relative importance. For RFPs other than small purchases, technical and pricing proposals shall be submitted in separate volumes.

Prior to the receipt of proposals, the Contracting Officer, in consultation with the Project Manager, will establish the method by which technical and price evaluations of the proposals received will be conducted and one (1) or more awardees selected. The evaluation process shall be confidential, and each participant shall sign a confidentiality agreement prior to distribution of the proposals. Technical evaluations shall be conducted prior to distribution of the pricing proposals to ensure that non-technical considerations do not affect the technical evaluations. The process and outcome of the evaluations shall be fully documented.

Unless the technical and price evaluators agree that only one (1) proposer is capable of receiving an award, discussions and negotiations shall be conducted with all proposers found to be capable. In cases where there are a large number of qualified proposers, a preliminary round of discussions may be used to reduce the number of candidates. Each RFP shall include a statement that the Commission may award one (1) or more Contracts on the basis of initial proposals received, without discussions other than requests for clarifications, which are information exchanges that are conducted to eliminate minor uncertainties or irregularities in a proposal and do not give an Offeror the opportunity to revise or modify its proposal.

Because the object of negotiations is to reach an agreement, concessions/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 very important that the negotiator takes stock of the strong and weak issues to be presented; the important and irrelevant, and the major and minor points to concede. "Issues" in this Section means the ability 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.

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). This is where the total price approach will permit the Contractor to concede on a crucial point without loss of dignity.

The award will be made to the responsible firm whose proposal is most advantageous to the Commission, price and all other factors considered. Award may be made either to the proposer whose technically acceptable proposal offers the lowest price, or to the proposer

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whose proposal offers the “best value” to the Commission, defined as the greatest business value based upon an analysis of a tradeoff of qualitative technical factors and price/cost to identify the best combination of technical merit and price. If an award is made without negotiations, the Contract file must be documented that all costs and profit have been analyzed and considered fair and reasonable. Regardless of the method used, the solicitation must contain language which establishes and defines the basis on which the award will be made.

4. Architectural and Engineering

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 § 1102, and 49 U.S.C. § 5325(b), when contracting for A&E services, which are defined 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;
- 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. To the extent that this determination is not consistent with the VPPA, the Commission hereby determines that acceptance of Federal funds and compliance with the Federal standard is in the public interest even though the Federal limitation of the use of qualification-based procurement procedures is inconsistent with § 2.2-4301 of the Act.

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5. Design-Build

The Commission shall, unless otherwise required by Commonwealth law (§ 2.2-4380 of the VPPA), procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act, when the preponderance of the Work to be performed is considered to be for architectural and engineering (A&E) services. Qualifications-based competitive proposal procedures will not be used to procure design-build services when the preponderance of the Work to be performed is not of an A&E nature.

D. **Non-Competitive Procurements**

Non-competitive (Sole Source) procurements are accomplished through solicitation and acceptance of a proposal from only one (1) source, for the acquisition of property or services in which the aggregate dollar amount exceeds the micro-purchase threshold. 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 subparagraph.

Procurement by non-competitive proposals may be utilized when only one (1) source is practicably available, and the award of a Contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one (1) of the following circumstances applies:

The item is available only from one (1) responsible source because:

1. Unique or Innovative Concept. It involves 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 recipient only from one (1) source and has not in the past been available to the recipient from another source.
2. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
3. 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.
4. Unacceptable Delay. In the case of a follow-on Contract for the continued development or production of a highly specialized award to another Contractor would result in unacceptable delays in fulfilling the recipient's needs.
5. Emergency. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

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6. Authorized by the FTA. Utilization of non-competitive proposals under circumstances including a consortium, joint venture, team, or partnership, or FAR Standards Part 6.3.
7. Inadequate Competition. After solicitation of a number of sources, competition is determined inadequate, and an evaluation of the specifications determines they are not unduly restrictive of competition.
8. Time Extension. Contract time extension 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, if applicable.
9. 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.
10. Capital Maintenance Item. The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced, and no other sole source justification applies. The Commission must first certify to the FTA in writing that the manufacturer or supplier of the capital maintenance item is the only source for the item and that the price is no higher than the price paid by like customers.

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 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.

A cost analysis is required for each sole source acquisition that exceeds \$100,000.

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HRT shall publish 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.

In case of emergency, a Contract may be awarded without competitive sealed bidding, or competitive negotiation. A written determination of the basis for the emergency must be provided and the Commission must be notified of the award. HRT shall publish a written notice stating that only one (1) source was determined to be practicably available during the pendency of the emergency, 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, on the day 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.

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. A procurement may be conducted on an emergency basis if the 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 XI below.
2. 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.
3. 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.

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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 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. 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.

G. Time and Material Contracts

Time and Material Contracts are to be used only after a documented determination that no other type of Contract is suitable. Such Contracts will specify a ceiling price that the Contractor shall not exceed except at its own risk. 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. Utilization of time and material Contracts require a high degree of oversight in order to obtain reasonable assurance that the Contractor is using efficient methods and effective cost controls. Upon completion of price determination, the Contract shall be modified to a firm fixed price.

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H. Information Technology Procurements

Information Technology procurements are to be requisitioned and approved only through the Technology department.

I. Safety Related Procurements

All safety related procurement requests must be reviewed and approved by the Chief Safety Officer or designees.

J. Security Related Procurements

All security related procurement requests must be reviewed and approved by the Chief Security Officer or his/her designee(s).

K. 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 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.

2. Cooperative Procurement

i. *Definitions*

In this Subsection the term **cooperative procurement Contract** means a Contract entered into between a state government or eligible nonprofit entity and one (1) or more vendors; and under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants.

The term **eligible nonprofit entity** means a nonprofit cooperative purchasing organization that is not HRT; or a consortium of entities.

The terms **lead nonprofit entity** and **lead procurement agency** mean an eligible nonprofit entity or a state government, respectively, that acts in an administrative capacity on behalf of each participant in a cooperative procurement Contract.

The term **participant** means a grantee (HRT) that participates in a cooperative procurement Contract. The term **participate** means to purchase rolling stock and related equipment under a cooperative procurement Contract using assistance provided under 49 U.S.C. Chapter 53.

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ii. General Rules

- a. Procurement is not limited to intrastate participants. HRT may participate in a cooperative procurement Contract without regard to being located in the same state as the parties to the Contract.
- b. Participation by HRT in a cooperative procurement Contract is voluntary.
- c. The lead procurement agency or lead nonprofit entity for a cooperative procurement Contract shall develop the terms of the Contract.
- d. A cooperative procurement Contract may be for an initial term of not more than two (2) years; may include not more than three (3) optional extensions for terms of not more than one (1) year each; and may be in effect for a total period of not more than five (5) years, including each extension.
- e. A lead procurement agency or lead nonprofit entity, as applicable, that enters into a cooperative procurement Contract may charge the participants in the Contract for the cost of administering, planning, and providing technical assistance for the Contract in an amount that is not more than one percent (1%) of the total value of the Contract; and may incorporate the cost into the price of the Contract or directly charge the participants for the cost, but not both.

3. State Cooperative Procurement Schedules

i. Authority

A state government may enter into a cooperative procurement Contract with one (1) or more vendors if:

- a. The vendors agree to provide an option to purchase rolling stock and related equipment to the State government and any other participant; and
- b. The State government acts throughout the term of the Contract as the lead procurement agency.

ii. Applicability of Policies and Procedures

In procuring rolling stock and related equipment under a cooperative procurement Contract under this Subsection, a state government shall comply with the policies and procedures that apply to procurement by the state government when using non-Federal funds, to the extent that the policies and procedures are in conformance with applicable Federal law.

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4. Joint Procurement Clearinghouse

- i. *In General.* A mechanism which allows grantees to work together to purchase rolling stock and identify joint procurement participants.
- ii. *Information on Procurements.* The clearinghouse includes information on bus size, engine type, floor type, and any other attributes necessary to identify joint procurement participants.
- iii. *Limitations*
 - a. Access. The clearinghouse is only accessible to the FTA and grantees.
 - b. Participation. HRT is not required to submit procurement information to the database.

5. Leasing Arrangements

- 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.

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- 1) Lease requirements. 49 CFR Part 639, or any successor regulation, and implementing guidance applicable to leasing shall not apply to a capital lease.
- 2) Buy America. The requirements under 49 U.S.C. § 5323(j) shall apply to a capital lease.

iv. *Capital Leasing of Certain Zero Emission Vehicle Components*

a. Definitions

- 1) In this paragraph the term **removable power source** means a power source that is separately installed in, and removable from, a zero emission vehicle; and
 - 2) May include a battery, a fuel cell, an ultra-capacitor, or other advanced power source used in a zero emission vehicle; and
 - 3) The term **zero emission vehicle** has the meaning given the term in 49 U.S.C. § 5339(c).
- b. Leased power sources. Notwithstanding any other provision of law, the cost of a removable power source that is necessary for the operation of a zero emission vehicle shall not be treated as part of the cost of the vehicle if the removable power source is acquired using a capital lease.
- c. Eligible capital lease. HRT may acquire a removable power source by itself through a capital lease.
- d. Procurement regulations. For purposes of this Section, a removable power source shall be subject to 2 CFR § 200.88.
- e. Buy America. The requirements of 49 U.S.C. § 5323(j) applies to all procurements under this Section.

6. 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 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

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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 the FTA C4220.1F, "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 relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in an entity other than in itself. All elements of the procurement should be subject to the review and approval of all participants. Each participant should have the right to take part in the evaluation and selection process."

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.

7. 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 VI (D), Non-Competitive Procurements, constitute sole source awards, and the Contracting Officer must be able to justify the use of a non-competitive award (i.e., a sole source procurement) before it enters into a Contract.

8. 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;
- ii. That the original Contract provisions comply with all applicable Federal requirements; and

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- 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.

9. 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*. All FTA assistance for procurements must be limited to property and services HRT will use in the near future. See the most recent version of FTA Circular 5010.1, "Grant Management Requirements," for additional information.
- 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

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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 achieve a passing score on eight (8) performance measures in order to be eligible for FTA funding.
- vii. *In-State Dealers.* HRT may not limit its bus procurements to its in-State dealers, 49 U.S.C. § 5325(i). Although the FTA respects State licensing requirements, the FTA is prohibited by law from providing assistance to support bus procurements that have the result of limiting competition to entities that have been able to obtain a state license.
- 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)(1)(A), HRT may enter into a multiyear Contract to acquire buses or replacement parts with options not exceeding a total of five (5) years to buy additional buses or replacement parts. Under 49 U.S.C. § 5325(e)(1)(B), HRT may enter into a multiyear Contract to acquire railcars or replacement parts with options not exceeding a total of seven (7) years to buy additional railcars or replacement parts 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 its “material requirements” at 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 for rolling stock or replacement parts for five (5) or seven (7) years

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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 Reviews for Rolling Stock*. 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.

VII. Contract Cost and Price Analysis

A. Requirement

A cost or price analysis must be performed for every procurement action exceeding \$100,000, including Contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. See 2 CFR § 200.323 and FTA C4220.1F, Chapter VI, Paragraph 6. FTA’s “Pricing Guide for Grantees” provides guidance in performing the appropriate degree of cost or price analysis.

B. 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.

C. Cost Analysis

A cost analysis must be performed when the Offeror is required to submit the elements of the estimated cost (i.e., labor hours, overhead, materials, etc.).

A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements, Contract modifications, change orders, and exercise of options, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set forth by law or regulation.

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Adequate price competition may be determined to exist when the perception of competition exists, even if only (1) one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.

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 amount of subcontracting, the quality of its record of past performance, 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 would be allowable under 2 CFR Part 200 Subpart E – Cost Principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

D. Price Analysis

A price analysis looks at the price as a whole without examination of its various components and is usually performed by comparing prices to those from other comparable procurements.

A price analysis may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed Contract price.

VIII. Bonding Requirements

A. Construction

HRT shall specify a bonding policy in compliance with FTA requirements for construction or facility improvement Contracts which adequately protects the Commission and FTA interests, and is in compliance with the VPPA, §§ 2.2-4336 through 2.2-4338.

B. Non-Construction

For non-construction Contracts, bonding requirements are discouraged except where applicable law or regulations provides for such bonding or HRT determines that such a requirement is necessary as part of the risk management plan for a project.

IX. Payment Provisions

A. Advance Payments

The use of FTA funds for payments in advance of the incurrence of costs by the Contractor is generally prohibited, without prior written approval from the FTA. The FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as public utility connections and services, subscriptions

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to publications, software licenses, construction mobilization costs, and transportation. FTA approval of such advance payments is required when the amount exceeds \$100,000. HRT should not make advance payments using other funds (including local match funds) except where it is customary in the industry or there are sound business reasons (e.g., to enable a more cost-effective pricing structure) for doing so; in the latter case, the file shall be documented to fully justify the advance payment.

B. Progress Payments

Progress payments are to be made only for costs incurred in the performance of the Contract. When progress payments are used, the Commission must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction Contracts may be made on a percentage of completion basis; this method may not be used for non-construction Contracts.

X. 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. 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 anticipated 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.

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.

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XI. Contract Approval Requirements

A. Commission Approval

No Contract for goods and services, other than professional services, may be awarded without the advance written approval of the HRT Board of Commissioners if the aggregate or the sum of all phases is expected to exceed \$100,000.

B. Professional Services

No Contract for professional services may be awarded without the advance written approval of the HRT Board of Commissioners if the aggregate or the sum of all phases is expected to exceed \$30,000.

C. Modifications

In accordance with the VPPA § 2.2-4309, no fixed-price Contract may be increased by more than twenty-five percent (25%) of the amount of the Contract or \$50,000, whichever is greater, without the advance written approval of the HRT Board of Commissioners.

D. 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.

E. Emergency Authorizations

The President and CEO may authorize Contracts or Contract modifications beyond the above limit of his/her authority in emergency situations. 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 seriously threaten either the health or safety of any person, the preservation or protection of property, or the continuation of necessary Commission functions.

1. In cases requiring emergency action 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.
2. 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.
3. 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.

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Any authorization by the President and CEO under this paragraph shall be supported by written documentation identifying the reasons for the action, documented communication to the Commission and, shall be subject to confirmation by the Commission at its next meeting.

XII. Contract Award Announcement

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.

XIII. 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 do 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.

XIV. 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.

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

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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.

XV. 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).

XVI. 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.

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PART B-- PROCEDURES

I. Applicability

A. Procurement Policy

These procedures implement the policies established in Part A – Policy of the Procurement Manual (“Policy”), as approved by the Board of Commissioners of the Transportation District Commission of Hampton Roads (“Commission”). They apply to all Contracts and purchases of the Commission, except as specifically excluded in the Policy. The Transportation District does business under the name Hampton Roads Transit (HRT).

B. Governing Law

HRT’s procurement actions are primarily governed by the Code of Federal Regulations (CFR), Title 2, Subtitle A, Chapter II, Part 200, the Federal Transit Administration (FTA) Circular 4220.1F (C4220.1F), and the Commonwealth of Virginia’s Public Procurement Act (VPPA), Title 2.2, Chapter 43, Code of Virginia. In all procurements utilizing any amount of Federal funds, Federal requirements will generally supersede state law. Where no Federal funds are involved, procurement actions will be governed by applicable state law. References to statutes or regulations herein shall be deemed to refer to any subsequent revisions or amendments that may be enacted from time to time.

C. Federal Contract Law

FTA procurement requirements are set forth in 2 CFR Part 1201, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” and are included in the FTA Master Agreement (published as of October 1 of each year). These requirements are further expanded in the current edition of 2 CFR 200 and FTA Circular 4220.1 (currently 4220.1F). If the above federal documents do not address a specific situation, guidance may be drawn from the Federal Acquisition Regulations (FAR), decisions of the Controller General of the United States, and other federal and state precedents.

D. Contracts Outside the Scope of this Policy

1. Other Acquisitions

This policy will not apply to transactions as defined in Section XV of Part A. However, the Procurement Department may be asked to aid such actions.

2. Revenue Contracts

A revenue Contract is one in which the Commission 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 Commission property.

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Such Contracts 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 (i.e., where there are several potential competitors for a limited opportunity, such as advertising space associated with Commission assets). Nonetheless, where the nature of an opportunity allows reasonably unlimited access for all competitors, the opportunity should be made available to all such parties, without restriction.

II. Contracting Authority

A. The Contracting Officer

The President/Chief Executive Officer (President and CEO) is HRT's Contracting Officer.

B. Delegation of Contracting Authority

The 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 not be re-delegated without the approval of the President and CEO.

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.

III. General Procurement Standards

A. 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. Non-Competitive Procurements

The following non-competitive procurements exceeding \$100,000 are to be posted to the agency website. The procurement file must include documented justification for the lack of competition.

- i. Sole Source
- ii. Single Source
- iii. Emergency

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B. Competition

All procurement transactions are to be conducted in a manner intended to maximize full and open competition. 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 the HRT website's procurement page for downloading. The advertisement and 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.

C. Standards of Conduct

HRT maintains a written code of conduct as part of its Procurement Policy and Procedures Manual and Conflict of Interest Policy (PRO-002, Rev. 3). 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 the requirements of 2 CFR §§ 200.112 and 200.318, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), and Article 6, Ethics in Public Contracting (§ 2.2-4367 et seq.) of the VPPA.

C4220.1F requires that employees of agencies such as HRT who are involved in the award or administration of Contracts involving federal funds conform to written standards of conduct that provide:

1. No employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for the award.
2. Officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to Subcontracts; an FTA-funded agency such as HRT has set minimum rules for acceptance of gifts.
 - i. 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

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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).

- ii. 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.
- iii. 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.

The Commission is also subject to applicable provisions of § 18.2-446 et seq. of the Code of Virginia dealing with bribery. Among the actions prohibited are for a public employee having official responsibility for a procurement action, or a member of the employee’s immediate family, or the employee’s partner to be employed in a capacity involving personal and substantial participation in a procurement transaction, own or have more than a five percent (5%) interest by or in a bidder, Offeror, or Contractor; or to have a pecuniary interest arising from a procurement transaction; or is negotiating or has an arrangement concerning prospective employment with a bidder, Offeror, or Contractor.

D. Efficient and Economic Purchasing

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. Where appropriate, analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.

E. 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, in competitive procurements, 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

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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.

F. Value Engineering

Value engineering is a method of reviewing the specification for a construction and other capital project to identify opportunities for increased efficiency. Value engineering is a systematic and creative analysis to ensure that the project is designed and constructed to perform its essential functions in the most cost-effective manner. 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.

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.

G. Records

The Procurement Department shall maintain records detailing the history of a procurement in a manner consistent with the size, complexity, and cost of the Contract, 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 required. See Appendix B, Checklists, for details regarding records to be included in the Contract file.

H. Use of Existing Contracts

1. General Services Administration and Virginia Purchasing Schedules

Both the U.S. General Services Administration (GSA) and the Commonwealth of Virginia maintain Contract schedules for various commodities and services. Some of these are established on a competitive basis, and some are simple listings of products available from vendors in the field. HRT may use Commonwealth Contracts of this type in accordance with the governing law and regulations of the agency establishing them. At present, HRT is barred from using most GSA schedules, except to acquire information technology (IT) and to purchase products and services to facilitate recovery from a major disaster. **Any purchase from another agency’s Contract requires that the Contract be modified to include all FTA terms and conditions (Contract clauses and required vendor certifications).** Use of a federal or Commonwealth supply schedule which is not the result of a competitive process does not meet the FTA requirement for competition. In such cases, HRT must seek proposals from a reasonable number of firms on the schedule and

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determine the firm offering the best value. Compliance with Buy America must be determined prior to issuing an order, and a waiver sought from the FTA if the product is non-compliant.

2. Exercising Options in Other Agency Contracts

The term “piggybacking” is often used to describe one transit agency’s use of another transit agency’s existing Contract when the awarding agency’s Contract did not originally envision its use by the piggybacking agency. A number of FTA requirements must be met before such a Contract may be used. The FTA requires that the existing Contract contain an assignability clause and all required FTA Contract clauses and certifications; these clauses cannot be added by HRT as part of its use of the existing Contract. All quantities acquired by assigned Contract rights must be within the original Contract quantities (including options) and acquired within the term of the existing Contract. HRT must determine that the agency with the Contract complied with all FTA requirements relating to competition and performance of a cost or price analysis. HRT must also perform its own cost or price analysis to determine that the prices it will pay are fair and reasonable. HRT’s procurement staff will obtain all appropriate documentation from the original awarding agency and are retained in the procurement file for that acquisition. Piggybacking should not be confused with a joint acquisition, where HRT is a named party in the original solicitation.

3. Types of Options

Generally, there are three (3) types of options which may be included in a solicitation:

- i. *Options for additional quantities.* Options for additional quantities may be utilized when HRT anticipates that quantities of the same goods or services beyond those specified may be required within the time period of the Contract, conditioned upon unsecured funding or potential future events. The additional quantities should be clearly specified and, to the extent reasonably feasible, the timeframe identified. Cost factors such as escalation or quantity discounts should be considered in evaluating the price reasonableness of such options.
- ii. *Options for additional time periods.* Options for additional time periods are often utilized in annual service Contracts, where HRT desires the ability to continue with a Contract beyond the base term of the Contract, conditioned upon satisfactory performance by the Contractor. The total of the option periods should not exceed a reasonable period for the services required, and options cannot be used to perpetuate a Contract with one (1) Contractor to the detriment of reasonable competition. Factors such as escalation and the economic value of prior experience should be considered in evaluating the price reasonableness of such options.

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- iii. *Options for additional or alternative types of goods or services.* Options for additional or alternative types of goods or services may be used where HRT wishes items beyond its estimated capacity to fund the Contract (such as a higher quality of product) or where a future set of services may be needed depending upon the results of the initial Contract scope (such as in preliminary feasibility or design Contracts).

In developing options for a solicitation, the Contracting Officer and the technical participants must consider the benefits and drawbacks of a new solicitation for the optional items, the impact on competition, and the feasibility of obtaining reasonably accurate pricing.

I. Protests

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.

In accordance with Section 200.318(k) of Title 2, Code of Federal Regulations, the Commission alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Commission of any contractual responsibilities under its Contracts. The FTA will not substitute its judgment for that of the Commission unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or Federal authority that has proper jurisdiction.

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 General 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

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- 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 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 protestor, the same information must be provided, plus a statement defining the relationship between the protestor 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

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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 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 protestor'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

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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.

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 and advise the FTA of the status and the resolution thereof in accordance with Circular 4220.1F, Chap. VII, Sec.

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1.a(2).

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 his/her 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 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:

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- 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 protestor 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.

9. Protests Filed with FTA

The FTA has developed an appeals process for reviewing protests of a recipient’s procurement decisions. Prospective protesters who qualify as an “interested party” under the FTA’s procedures should consult the protest procedures described in the current version of FTA Circular 4220.1, the Common Grant Rule, and other relevant regulations to assess their eligibility to appeal to the FTA, the appropriate time to appeal to the FTA, and whether their protest grounds are within the scope of FTA review.

The Director of Procurement is responsible for compliance with all provisions of FTA protest procedures where a protest involving a Commission acquisition is filed with FTA. The Director of Procurement shall utilize all available resources in responding to such protest and shall obtain the concurrence of the General Counsel in all submissions to FTA.

If required by relevant FTA regulations, the Director of Procurement shall withhold the award pending resolution of a protest filed with the FTA unless the Director of Procurement determines that award is permitted under the FTA protest procedures.

A protest to the FTA does not toll the time limit for a protestor to seek legal action pursuant to VPPA §§ 4360 and 4364.

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10. 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

11. 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 General 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.

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- iv. The Director of Procurement shall obtain concurrence from the General 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.

12. 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 Part B, Section III(I) 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.

J. **Contract Period**

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 renewals, and seven (7) years for rail procurements, as defined in 49 U.S.C. § 5325(e) and C4220.1F. 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

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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. 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.

K. Cost Principles

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Parts 200 and 1201) 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.

L. 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, the matrix contained in C4220.1F, Appendix E, the FTA Master Agreement, in Appendix A to the FTA's Best Practices Procurement and Lessons Learned Manual, and the VPPA.

IV. Full and Open Competition

A. Restrictions on Competition

All procurement transactions over \$10,000 will be awarded competitively, without providing an unfair competitive advantage to any potential vendor. Some of the situations considered to be restrictive of competition include, but are not limited to:

1. Unreasonable requirements placed on firms in order for them to qualify to do business;
2. Unnecessary or excessive experience, excessive bonding, insurance, warranty, or similar requirements which affect an otherwise qualified firm's ability to compete. Such requirements must also be established in a manner consistent with protection of the Commission's interests;
3. Noncompetitive pricing practices between firms or between affiliated companies
4. Noncompetitive awards to any person or firm on retainer Contracts
5. Organizational conflicts of interest;

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6. Specifying only a “brand name” product, without specifying that equivalent products will be accepted and providing salient characteristics or other descriptive information sufficient to allow bidders to identify and propose such equivalent products;
7. The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent Contractor; and
8. Any arbitrary action in the procurement process.

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.

B. Geographic Preferences

Procurement transactions utilizing Federal funds will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids or proposals, except in those cases where applicable Federal statutes or regulations expressly mandate or permit geographic preference (i.e., Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58). This requirement does not exempt Contractors from state or local licensing laws. Geographic location may be a selection criterion in procurements for A&E services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the Contract.

V. 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.

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B. 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 by a brief statement of need.
 - b. Summarize the technical and contractual history of the procurement.
 - 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.

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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:

- 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.

C. **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.

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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 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.

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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 environments 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 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.

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- 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 your 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 your 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.

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.

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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.

D. 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;
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.

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E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

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K. 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

VI. 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. 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

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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;
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 acquisition above \$100,000.00;
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;

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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 \$100,000.00; 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:

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.

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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 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

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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;
- 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.

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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 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.
- 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.

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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 primary cost estimates, the Project Manager may have to rely on the following cost estimation method:

Expert Opinion

- Relies on subject matter experts' opinion of what something should cost.
- 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.

VII. **Methods of Procurement**

A. **General Standards**

Every competitive solicitation expected to exceed \$100,000 shall adhere to the following standards:

1. The intent of advertising a solicitation is to make every reasonable effort to inform potential vendors of the business opportunity. Each such solicitation shall be published in local news media designed to reach the target vendor pool and shall be posted on the

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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
 - 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:

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- 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.
 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

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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 the 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. Micro-Purchases

Micro-purchases are those purchases up to, but not exceeding, \$10,000. Purchases below that threshold may be made without obtaining competitive quotations but shall provide for competition whenever practicable. Award may be made if it is determined that the price is fair and reasonable (based on research, experience, purchase history, or other information and documents), and that there are no significant differences in quality or price among available vendors. Typically, micro-purchases involve items sold "off-the-shelf" to the general public or a specific market. Documentation for a non-competitive micro-purchase need only include a notation that the price is fair and reasonable and the reason for the determination. The determination of price reasonableness will be recorded on a preprinted checklist. The documentation includes a statement that the price paid for items are determined to be fair and reasonable, based on the following:

1. Adequate competition (two or more quotes received, and award made to lowest)
2. Current price lists or off-the-shelf pricing
3. Catalog price
4. Prices found reasonable on recent previous purchases
5. Advertisements
6. Similar items in a related industry
7. Independent price estimate (attach documentation)
8. Other (cite basis)

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Micro-purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers (subject to price reasonableness), and requirements may not be split to avoid a competitive solicitation process. The Davis-Bacon Act (40 U.S.C. § 3141 et seq.) applies to construction micro-purchases in excess of \$2,000.

C. Small Purchases

Small purchases are relatively simple and informal solicitations for services, supplies, or other property in which the aggregated dollar amount is more than \$10,000 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. If small purchase procedures are used, written price or rate quotations must be solicited from an adequate number of qualified sources, ordinarily not less than four (4). The number of sources will depend upon the availability of qualified sources, but the objective should ordinarily be to provide for competition wherever practicable and that competition be sought to the maximum feasible degree. If fewer than four (4) quotes are received, the file should be documented as to the reasons. 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.

D. Competitive Sealed Bidding

1. Bids in excess of the small purchase limit are publicly solicited through a formal Invitation for Bids (IFB) with a fixed-price Contract (lump sum or unit price) being awarded to the lowest-priced responsive bid from a responsible bidder. 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. The price reasonableness analysis shall consider whether bids are materially unbalanced.
2. Competitive 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. This method is utilized when there is a complete, adequate, precise, and realistic description of the solicited items and award may be made on the basis of price and price-related factors alone, without discussions or negotiations with the responsive bidder, other than clarifications regarding issues of responsibility or matters not affecting price, schedule, or quality.
3. All bids will be publicly opened at the time and place prescribed in the IFB. Bidders will be afforded a suitable opportunity to examine all bids received after they are opened.

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4. When specified in the bidding documents, factors such as discounts, transportation costs, value analysis, and life cycle costs must be considered in determining the low bid. Payment discounts shall be requested or considered only when prior experience indicates that the Commission is able to avail itself of such discounts.
5. 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 process, pricing for the options must have been considered during the award of the base Contract.
6. Immediately following the receipt and opening of bids, the Contracting Officer will examine all bids timely received to determine if they are responsive. Responsiveness is determined at the time of bid opening and cannot involve any material or information received thereafter. 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.
7. 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 review Treasury Circular 560 to determine if the surety is acceptable and verify the quality rating and licensing of the insurance provider. The Contracting Officer will also 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. In the event a bidder is determined non-responsive, it shall be notified, and the responsibility of the next-lowest responsive bidder evaluated.

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8. In the event of a tie, where two (2) bidders are determined to be the lowest responsive and responsible bidders, and 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. The coin toss will be witnessed by one (1) or more parties.
9. 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, 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 a part of the negotiation process, modify or alter the scope and specification defined in the IFB in a manner that might have attracted additional bidders if incorporated in the solicitation.
10. A bidder for a construction Contract may withdraw its bid from consideration if the price bid 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, documents, and materials used in the preparation of the bid sought to be withdrawn.
11. 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.
12. 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.
13. 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.
14. Any or all bids may be rejected if there is a sound, documented business reason.

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E. Two-Step Sealed Bidding

1. Two-step sealed bidding is a procurement method involving the submittal of unpriced technical proposals in the first step, and a sealed bid submittal in the second step. The two-step method is generally used when it is not practical to prepare a definitive purchase or Contract description that is suitable for award on price alone. 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.

2. The first step requires Offerors to submit technical proposals for evaluation, generally under the procedures for competitively negotiated procurements. In addition to the normal requirements for an IFB, the solicitation requires that:
 - i. Unpriced technical offers are requested;
 - ii. The procurement is a two-step sealed bid procurement and that priced bids will be considered in the second step and only from those bidders whose unpriced technical offers are found to be acceptable in the first step;
 - iii. Criteria to be used in evaluating the unpriced technical offers;
 - iv. Potential to conduct oral or written discussions regarding the technical offers, to the extent determined to be necessary;
 - v. Statement that bidders 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 from bidders;
 - vi. Bidders may designate those portions of the technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

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- vii. The item being procured will be furnished generally in accordance with the bidder’s technical offer as found to be technically acceptable and will meet the requirements of the solicitation.
- 3. Any amendments issued prior to the receipt of the technical offers are completed as with a “normal” IFB; however, amendments issued following the receipt of the technical offers are issued only to those bidders who submitted technical offers.
- 4. 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.
- 5. 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 bidder’s technical approach. Any bidder 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.
- 6. Based upon the results of Step One, the technical specifications (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.

F. Competitive Negotiation (Sealed Proposals)

- 1. The competitive negotiation procurement process is conducted through a formal Request for Proposals (RFP). This method of procurement is generally utilized when conditions are not appropriate for the use of sealed bids. This method 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. Architectural and Engineering and related services are procured through a variation of the RFP process, as described below.
- 2. The competitive negotiation method of procurement is appropriate when the Contracting Officer determines that the following conditions exist:

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- i. A complete, adequate, and realistic specification or purchase description is not available;
 - ii. Two (2) or more responsible Offerors are willing and able to compete effectively for the award;
 - iii. The selection of the successful Offeror requires consideration of factors other than price; and
 - iv. Discussions with Offerors are anticipated to be needed.
3. Either a fixed price or cost reimbursable type Contract may be awarded under this process.
4. 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.
5. 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 appointed to an outside public agency, and/or any person employed by or otherwise compensated directly or indirectly by an outside public agency.
6. 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

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- complex, high-value procurement with a substantial number of proposers, to be awarded on a “best value” basis.
7. 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.
 8. 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.
 9. 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 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.
 10. 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.
 11. The TEP will meet and review the scoring, and prepare an initial report of the technical strengths, weaknesses, performance risks (if any), and ambiguities in the proposals, and identify any questions or clarifications desired from the proposers.
 12. Concurrently with the technical evaluation, the Contracting Officer will evaluate the price proposals, with assistance from other HRT departments as appropriate, and

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- prepare a spreadsheet of the prices for the items and services being procured, showing the comparative prices being proposed by line item if applicable.
13. At the end of the evaluation process, the TEP will re-score the proposals, using the same evaluation criteria, and scoring. Based upon the results of the scoring, the panel may:
 - i. Eliminate some of the remaining proposals and conduct further discussions with the rest;
 - ii. Determine that all firms are still in the competitive range but that additional discussions are necessary; or
 - iii. Determine that further discussions will not significantly affect the outcome of this procurement.
 14. The TEP will, in consultation with the Contracting Officer, identify those proposers whose technical scores, in combination with the proposed price, 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.
 15. The remaining firms are considered to be in the “competitive range.” The TEP will determine the need and methods of further exploring the quality and pricing on the proposals. The intent of this process is to ensure that each firm’s proposal is 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 proposer information from another proposal, which might give the proposer a competitive advantage.
 16. If the procurement is based on “best value,” as part of this process, price negotiations may be conducted with firms in the competitive range. 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.

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17. 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.
18. The negotiator should recognize that concessions do not necessarily mean HRT's or 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.
19. 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.
20. 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 to 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.
21. 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 prepare a final evaluation report that:
 - i. Describes the technical strengths, weaknesses, and risks (if any) of the proposals in accordance with the technical evaluation criteria;
 - ii. Evaluates the proposals' estimated costs for reasonableness (for cost type Contracts); or prices offered (for fixed price Contracts), and
 - iii. Recommends the "best value" offer (that proposal which offers the best combination of technical merit/performance and pricing.).

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22. The TEP will submit its report to the Contracting Officer, who shall either accept it or return it to the TEP whether it is considered inadequate or not in accordance with the processes and outcome of the solicitation.
23. 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.
24. 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.

G. Architectural and Engineering and Other Professional Services

1. HRT will use qualification-based competitive proposal procedures based on the Brooks Act, 40 U.S.C. Ch. 11, and 49 U.S.C. § 5325(b), when contracting for architectural and engineering (A&E) related services as defined in the Brooks Act and FTA C4220.1F, or its successor.
2. The Brooks Act requires that:
 - i. An Offeror's technical qualifications be evaluated;
 - ii. Price be excluded as an evaluation factor;
 - iii. A pricing proposal be requested from, and negotiations be conducted with, only the most technically qualified Offeror; and
 - 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; if the pool of qualified Offerors is exhausted without an agreement, the solicitation must be canceled.
3. The Brooks Act “qualifications-based” procurement method can only be used for the procurement of A&E services in relation to an intended construction project, which is defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related 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.
4. 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 §§ 2.2-4302.2 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.

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H. Non-Competitive Procurements

1. Non-competitive, or sole source procurements are accomplished through solicitation and acceptance of a proposal from only one (1) source. 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. Guidance as to what is “within the scope” of a Contract may be found in the FTA BPPM, Section 5.1 - Contract Changes. “Tag-ons” are defined by the FTA as additions to the Scope of Work or deliverable items that were not included in the original Contract competition, and which must be treated as sole source additions to the Contract. Tag-ons are not to be treated as changes within the scope of the Contract. Notification of non-competitive procurements exceeding the small purchase threshold will be published on the HRT website.
2. Procurement by non-competitive proposals may be used when only one (1) source is practicably available, and the award of a Contract is infeasible under competitive small purchase procedures, sealed bids, or proposals and at least one of the circumstances identified in Section VI (D), Non-Competitive Proposals (Part A – Policy) applies.
3. 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.
4. 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.
5. 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.
6. For each sole source award above the small purchase limit, the Commission 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, identifying that which is being

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procured, the Contractor selected, and the date on which the Contract was or will be awarded. This notice will be posted in a designated public area (HRT's website) or may be published in a newspaper of general circulation on the day the public body awards or announces its decision to award the Contract, whichever occurs first. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

7. Unless price reasonableness can be determined, a cost analysis must be performed for each sole source Contract award exceeding \$100,000. 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.

I. Emergency Procurements

1. The President/CEO may authorize the award of Contracts or Contract modifications exceeding the threshold for Commission approval in emergency situations.
2. 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 seriously 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 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. 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 Contractor on a not-to-exceed price basis, and will solicit quotes, proposals, or bids to complete the Work at the earliest feasible time.

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- i. Public Notification. The Contracting Officer is not required to publicize the solicitation of a procurement made on an emergency basis.
- ii. Source Selection Method. The procedure used will be selected to ensure that the required goods, service, 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.
- iii. 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.
- iv. Negotiation Procedures. The Contracting Officer will comply with the applicable negotiation procedures contained herein.
 - v. 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.
 - vi. Record of Procurement. The Contracting Officer will ensure that proper records of emergency procurements are maintained.
4. 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.

J. Options

1. An option is a unilateral right in a Contract by which, for a specified time, HRT may elect to purchase additional or alternative 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.
2. 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 bidder). When an option has not been evaluated to

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determine the low bidder for award of the Contract, exercise of the option will be considered a sole source procurement and must be justified as such.

3. 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.
4. 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.
5. 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. This process requires the following to be maintained in the official Contract file:
 - i. A documented determination that the Contract prices remain fair and reasonable at the time the piggybacking takes place.
 - ii. 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.
6. A separate Contract or purchase order should be entered into between the vendor and the Commission.
7. Where purchases are made from state or local purchasing schedules 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.

K. 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. 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 will not exceed except at its own risk, to control cost liability. The Contracting

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Officer must also verify that the Contractor’s accounting system is adequate to properly segregate and bill costs. The Project Manager is required to provide thorough oversight to verify the amount of Work performed and materials used. The official Contract file must also include documented price negotiations, which is to formalize 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 Materials Contract or change order until another type of Contract or change order can be established.

L. 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 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.

M. 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.

N. Design-Build

Design-build 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. Additional elements, such as financing or maintaining the

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project may also be included. Pursuant to FTA requirements, a design-build Contract will be procured in accordance with the procedures for design or construction, whichever has the greatest portion of the overall project value. Design build projects must also comply with the requirements set forth in § 2.2-4303D of the VPPA.

O. **Rolling Stock**

1. Open Market

HRT may only issue solicitations for its current and reasonably expected rolling stock needs. Under no circumstances will HRT add quantities or options to party 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 Purchasing Contracts

Under Section 3019 of the FAST Act, HRT may purchase rolling stock and related equipment from a State cooperative procurement Contract. A “cooperative procurement Contract” means a Contract entered into between a state government or eligible nonprofit entities and one (1) or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants. The Contract term for a cooperative procurement Contract may be for an initial term of not more than two (2) years and may include three (3) optional extensions of one (1) year each. The lead procurement agency or lead nonprofit entity in such a procurement may charge participants in the Contract no more than one percent (1%) of the total value of the Contract.

Under prior law, the FTA referred to these types of State Contracts as “State purchasing schedules” and, as such, were only available to HRT within the Commonwealth of Virginia. Under the FAST Act, HRT may purchase rolling stock and related equipment from any State’s cooperative procurement Contract or schedule.

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. Pursuant to Section 3019 of the FAST Act, HRT may purchase from another State’s schedule.

3. Capital Lease

Federal funds may be used to lease instead of buying rolling stock, and leases are considered third-party Contracts. Notably, Buy America requirements apply to capital leases. The FAST Act made several changes to Federal transit law as it relates to capital

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leases; HRT must reach out to the FTA regional office for assistance if contemplating a capital lease of rolling stock.

4. Joint Procurement

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 participants anticipate needing and may not inflate the maximum quantity of vehicles so that others may “piggyback” on the Contract later. At a minimum, the maximum quantity available under the Contract should bear a reasonable relationship to HRT's number of peak service vehicles.

The parties to a joint procurement can agree to share responsibility for different portions of the process, e.g., one party may prepare the technical specification, and another prepares and conducts the solicitation process. As stated in the FTA C4220.1F, “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 relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in an entity other than in itself. All elements of the procurement should be subject to the review and approval of all participants. Each participant should have the right to take part in the evaluation and selection process.”

Notwithstanding the single Contract award nature of a joint procurement, purchasers in a joint procurement may award individual Contracts for their 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. One approach that has been used for joint bus procurements is for the lead agency to award the basic Contract with pricing, specifications, terms, and conditions, etc., and then to have the participating agencies issue individual purchase orders against the basic Contract as funding becomes available to the agencies during the life of the Contract. The purchase orders would reflect the basic Contract unit prices and reference the basic Contract for other terms and conditions.

5. Exercise of Options

HRT may use its own Contract options with the following limitations:

- i. Consistency with the Underlying Contract.

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- ii. Price.
- iii. Awards Treated as Sole Source Procurements.

6. 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;
- 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.

7. Special Contract Provisions for Rolling Stock

HRT will comply with the requirements of FTA C4220.1F, Chapter IV, Section 2.e., Rolling Stock – Special Requirements when procuring rolling stock. Special requirements include compliance with the following:

- i. Accessibility
- ii. Minimum useful life
- iii. Spare ratios
- iv. Air-pollution and fuel economy
- v. Pre-award Review and Post Delivery Review, to ensure compliance with Buy America Act requirements
- vi. Transit Vehicle Manufacturer Compliance with DBE requirements
- vii. Purchaser’s Requirements certifications
- viii. Federal Motor Vehicle Safety Standards (FMVSS) certifications
- ix. On-Site Inspectors Report

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P. Information Technology

IT 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. Telecommunications devices used to retrieve, store, digitize, or transmit information

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

Q. Safety

The Safety and Risk 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 access 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.

R. Security

Staff assigned to the Department of Security and Emergency Preparedness 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 Security Officer or designee.

VII. Bonding Requirements

A. Construction

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

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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 no federal funds are involved.

FTA requires, for all construction Contracts in excess of the federal Simplified Acquisition Threshold (currently \$250,000), that the Contractor provide a bid bond equal to five percent (5%) of the bid amount; a performance bond for 100% of the Contract price; and a payment bond for 100% of the Contract price.

The VPPA threshold for bid bonds is \$250,000 for transportation related construction and \$500,000 for non-transportation related construction. The VPPA has the same bond value requirement for bid bonds and performance and payment bonds.

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.

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.

VIII. Payment Provisions

A. Advance Payments

The use of FTA funds for payments in advance of the incurrence of costs by the Contractor is generally prohibited, without prior written approval from FTA. The FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as public utility connections and services, subscriptions to

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publications, software licenses, construction mobilization costs and transportation, and rents. FTA approval of such advance payments is required when the amount exceeds \$100,000. The Commission should not make advance payments using other funds (including local match funds) except where it is customary in the industry or there are sound business reasons (e.g., to enable a more cost-effective pricing structure) for doing so; in the latter case, the file shall be documented to fully justify the advance payment. In making this determination, consideration should be given to factors such as the additional cost of requiring a vendor to fund the purchase of costly equipment and materials for a custom-built piece of equipment, and the potential for restricting competition.

B. Progress Payments

Progress payments are to be made only for costs incurred and value received in the performance of the Contract. “Value received” requires that the Commission must obtain title or other adequate security interest in the items paid for in the progress payment, through a bill of sale, a documented security interest sufficient to establish ownership and exclude the items from any bankruptcy or other seizure of assets. In the case of studies or design Contracts, this requirement may be satisfied by receipt and acceptance of a preliminary or final document. A Contract involving progress payments must specify that all documents, designs, working papers and other materials for which a progress payment is made, complete or incomplete, become the property of HRT. Progress payments for construction Contracts may be made on a percentage of completion basis; however, this method may not be used for non-construction Contracts.

XI. Liquidated Damages

A. Risk Management

The Commission 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.

B. Calculation

The amount of liquidated damages must be reasonably calculated to reflect anticipated economic damages that the Commission might suffer should the standards not be met or as the result of an inadequacy or delay in Contract performance. 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.

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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 will 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 damages 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.

X. Receipt and Evaluation of Bids and Proposals

A. 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.

B. 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.

C. Responsiveness Review

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

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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 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.

D. Responsibility Review

A Contractor’s responsibility involves an evaluation of its ability to perform the specified Work, in all respects. This evaluation considers the following:

1. Technical Capacity. 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. Possession of any required licenses should also be verified.
2. Financial Resources. 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. A record of satisfactory performance on prior Contracts of a similar size and nature. 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. 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

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

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.

E. 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.

XI. Contract Cost and Price Analysis

A. Requirement

The Commission must perform a cost or price analysis in connection with every procurement action in excess of \$100,000, including Contract modifications. The method and degree of analysis is dependent on the facts and circumstances of the procurement, but as a starting point, an Independent Cost Estimate must be developed prior to receiving bids or proposals.

B. Independent Cost Estimate

Any cost or price analysis must be based on an independent cost 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 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.

C. Cost Analysis

A cost analysis must be performed when the Offeror is required to submit the elements of the estimated cost (i.e., labor hours, overhead, materials, etc.). The *FTA Pricing Guide for Grantees* also discusses the steps that must be taken to perform a cost analysis and provides guidance as to when to use the cost versus price analysis method.

1. A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements, Contract modifications, and change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis

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- of prices set by law or regulation. Where change orders involve items for which unit prices are included in the Contract, a cost analysis is not required.
2. 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 amount of subcontracting, and industry profit rates in the surrounding geographical area for similar work.
 3. 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.

D. 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.

1. Adequate Price Competition

In order to have adequate price competition, the following conditions must be present:

- i. At least two (2) responsible Offerors respond to a solicitation;
- ii. Each Offeror is able to satisfy the requirements of the solicitation;
- iii. The Offerors independently contend for the Contract that is to be awarded to the responsive and responsible Offeror submitting the lowest evaluated price; and
- iv. 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:

- i. The solicitation was made under conditions that unreasonably deny one or more known and qualified offers an opportunity to compete;
- ii. The low competitor has such an advantage over other competitors that it is practically immune to the stimulus of competition; or
- iii. The lowest final price is not reasonable, and this finding can be supported by facts.

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2. 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.

3. Established Catalog Prices

The idea behind catalog prices is that a 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:

- i. Established catalog prices exist.;
- ii. The items are commercial in nature;
- iii. They are sold in substantial quantities; and
- iv. They are sold to the general public.

4. 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.

5. 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.

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

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7. 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.

XII. Contract Approval Requirements

A. Board of Commissioner Approval

All Contracts for goods or non-professional services in excess of \$100,000, and for professional services in excess of \$30,000, must be approved by the 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 his/her designee prior to award.

C. Director of Procurement Approval

All Contracts beneath the levels stated above and above the micro-purchase limit of \$10,000 shall be approved by the Director of Procurement or his/her designee.

D. Other

Micro-purchases, up to \$10,000, 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.

E. 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. The designation letter shall remain a part of the official Contract file.

F. 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.

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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.

G. 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 § 2.2-4309 of the VPPA, no fixed-price Contract may be increased by more than twenty-five percent (25%) of the 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.

H. Emergencies

The President/CEO may authorize the award of Contract modifications exceeding the threshold for Commission approval in emergency situations.

In such cases, the individual identifying the emergency will notify the President/CEO and/or the Commission, with a copy to the Director of Procurement, as soon as possible. The Director of Procurement will 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 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 Contract modification to the appropriate Contractor on a not-to-exceed price basis, and shall solicit quotes, proposals, or bids to complete the Work at the earliest feasible time.

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

XIII. Contract Award Announcements

Announcement of Contract awards will be made as stated in the solicitation. Awards utilizing Federal funds will be made in accordance with FTA requirements and award notifications will also be posted to HRT's webpage in accordance with VPPA requirements.

XIV. Sound and Complete Agreement

All Contracts require approval in accordance with Section XII, Contract Approval Requirements.

All Contracts will include provisions to define a sound and complete agreement, appropriate to the type and complexity of the project, as described in Part A, Section XIII, Sound and Complete Agreement. At a minimum, these include a well-defined statement of work or specification, delivery schedule, a defined Contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state, or local laws and regulations. Contracts will not incorporate options, except to the extent that options for additional or alternative goods or services are incorporated in the Contract award, and clauses stating the Commission's right to exercise options for additional terms, including any pricing or other definitions of each such option. Contracts will be prepared by the Procurement staff, and reviewed and approved by Procurement management prior to issuance, ensuring that the standard terms and conditions applicable to the type of Contract and any other terms specified were incorporated as a result of a bid package or negotiated as part of an RFP process. HRT will not accept vendor Contract forms, except under unusual conditions and with the prior approval of the Director of Procurement.

XV. Contract Provisions

All Contracts above the small purchase limit shall include all applicable clauses required by federal, state, or local laws and regulations. Such clauses shall include a disputes clause, and the right of the Commission to terminate the Contract for breach or default of the Contractor, and to terminate the Contract for the convenience of the Commission, without liability.

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. See the General Conditions located in Appendix E.

XVI. Disadvantaged Business Enterprise

In accordance with the Commission's Disadvantaged Business Enterprise Policy, and to the extent authorized by applicable federal laws, regulations, or requirements, DBE firms will have an

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opportunity to participate in awards of Contracts and Subcontracts. The DBE office will be involved in the planning of solicitations over \$25,000, in terms of both goal setting and outreach to the DBE community. The Contracting Officer will assist the DBE office in identifying opportunities for DBE participation, and in potential DBE firms.

XVII. Contract Administration Functions

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 is 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.

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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.

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 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.

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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 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 Contracting Officer may delegate certain Contract administration functions to the Project Manager (PM). The delegation must be in writing and must inform the PM what duties and responsibilities are so delegated, and what responsibilities and approval authority are retained by the Contracting Officer.

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.

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.

XVIII. 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 CO:

- A. Changes within the general scope of the Contract; and
- B. Cardinal changes, which essentially add something to the Contract not in the contemplation of the parties at time of execution, or which changes the scope of the Contract so as to create a Contract, and performance requirements, significantly different than those originally agreed upon.

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

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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.

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

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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.

XIX. 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.

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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 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.

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

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APPENDIX A

QUICK REFERENCE METHODS OF PROCUREMENT

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 \$10,000; up to \$2,000 if construction | Exceeds \$10,000 (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 | 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 | N/A | Responsibility Checklist (if exceeding \$25,000) | Responsibility Checklist | Responsibility Checklist | Responsibility Checklist |

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| | | | | | |
|---|---|--|---|--|---|
| 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 | Not Required | Required if \$25,000 or higher | Required | Required | Required if \$25,000 or higher |
| Documentation of Rationale/Basis for Award | Price Reasonableness Determination Form | Historical Data or Written Procurement Summary | Written Procurement Summary | Written Procurement Summary | Written Procurement Summary |

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APPENDIX B

CHECKLISTS

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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. The planned type of Contract can also be added to this checklist. | | | |
| <input type="checkbox"/> Micro-Purchase | <input type="checkbox"/> Competitive Proposals > \$100,000 (RFP) | <input type="checkbox"/> Sole Source | |
| <input type="checkbox"/> Amount < \$10,000 | <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 | |
| <input type="checkbox"/> Amount > \$10,000 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"/> Rolling Stock | |
| <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 | Planned Type of Contract: | | |
| Signature: | | Date: | |

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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

Miscellaneous Documents: _____

Buyer/Contracting Officer's Name: _____ Date: _____

Buyer/Contracting Officer's Signature: _____

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 <input type="checkbox"/> Selection of Contract Type <input type="checkbox"/> Sole Source Justification |
| C | <input type="checkbox"/> | Task Orders | | |
| D | <input type="checkbox"/> | Modifications / Change Orders / Exercise of Option Year | C | <input type="checkbox"/> Procurement Request <input type="checkbox"/> Duplicate Purchase Review <input type="checkbox"/> Lease vs. Buy Analysis |
| | <input type="checkbox"/> | Independent Cost Estimate | D | <input type="checkbox"/> Amendments – Number Issued: |
| | <input type="checkbox"/> | Price Reasonableness Determination | E | <input type="checkbox"/> Solicitation |
| | <input type="checkbox"/> | Cost/Price Analysis | F | <input type="checkbox"/> Cost/Price: <input type="checkbox"/> Independent Cost Estimate <input type="checkbox"/> Price Reasonableness Determination <input type="checkbox"/> Cost/Price Analysis |
| <input type="checkbox"/> | Evaluated Option Quantities | | | |
| E | <input type="checkbox"/> | Required Contractor Certifications | | |
| F | <input type="checkbox"/> | Purchase Order | | |
| G | <input type="checkbox"/> | External Correspondence | G | <input type="checkbox"/> Advertisement Notices and Website Postings |
| H | <input type="checkbox"/> | Internal Correspondence | | |
| 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 | | |
| L | <input type="checkbox"/> | Contract Closeout Documentation | J | <input type="checkbox"/> Questions and Answers |
| M | <input type="checkbox"/> | Contractor Cure Letters/Discussions | K | <input type="checkbox"/> Approved Equal Requests and Responses |
| N | <input type="checkbox"/> | Contract Termination/Stop Work Order(s) | L | <input type="checkbox"/> Bid Opening Record and Attendee List |
| O | <input type="checkbox"/> | Contractor Performance Evaluation | M | <input type="checkbox"/> Offer Evaluation Documentation |
| ROLLING STOCK ONLY: | | | | |
| P | <input type="checkbox"/> | Pre-Award Buy America Review | 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 |
| Q | <input type="checkbox"/> | Post-Delivery Buy America Review | | |
| R | <input type="checkbox"/> | Purchaser's Requirements Certification | | |
| S | <input type="checkbox"/> | Federal Motor Vehicle Safety Standards (FMVSS) Certification | | |
| T | <input type="checkbox"/> | On-Site Inspector's Report | | |
| OTHER | | | | |
| U | <input type="checkbox"/> | Assignability Letter | O | <input type="checkbox"/> External Correspondence |
| V | <input type="checkbox"/> | | P | <input type="checkbox"/> Negotiation Documentation and Best and Final Offers |
| W | <input type="checkbox"/> | | | |
| X | <input type="checkbox"/> | | 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) |
| Y | <input type="checkbox"/> | | | |
| Z | <input type="checkbox"/> | | | |
| | | | | |
| | | | R | <input type="checkbox"/> Approvals: <input type="checkbox"/> Operations and Oversight Writeup <input type="checkbox"/> Commission Minutes <input type="checkbox"/> Request for CEO Approval |
| | | | | |
| | | | S | <input type="checkbox"/> Record of Late Offers and Returns |
| | | | T | |

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| | | | |
|---------------------------------|--|--------------------------------------|--|
| | | | <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:

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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 |

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| | |
|--|---|
| 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 |

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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

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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

| | | | |
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|--|---|
| 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 |

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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)

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| | |
|--|---|
| 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 |

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| | |
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| <p>K. Have you included revisions numbers in the footer of the Scope of Work pages as changes/edits were made to the Scope of Work?</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> |
| <p>L. Have you provided the following information as appropriate to the Procurement Department with this form and your Scope of Work attached?</p> <ul style="list-style-type: none"> • Independent Cost Estimate • Proposed delivery schedule • Proposed bid schedule • Warranty information • Brand name or sole source justification • Proposed evaluation criteria for “best value solicitations” • Proposed list of committee members for RFP procurements • Safety requirements • Plans, drawings, geotechnical reports, etc. | <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> |
| <p><u>Remarks:</u></p> | |

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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

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- 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”

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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 |

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| | |
|-------------|---|
| 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 |

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| | |
|-----------|---|
| 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 |

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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.

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- 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.

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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 | Statement of Basis for Responsibility Determination: |
| Verification of documentation as noted. | |
| Signature of Contract Administrator: Date | |

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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/>

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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: \$ _____

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- 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: _____

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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:

| | | | |
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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 (\$10,000 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 \$10,000)

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: _____

| | | | |
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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: _____

| | | | |
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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?

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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: _____

| | | | |
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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) |
| | _____ Date Requested _____ Date Received |
| | |
| | <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. |
| | _____ Date Requested _____ Date Received |
| | <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). |
| _____ Date Requested _____ Date Received | |

| | |
|--|--|
| <input type="checkbox"/> Buy America Waiver | <input type="checkbox"/> Requested and Received Buy America Waiver: Request and FTA Waiver maintained in procurement file. |
| | _____ Date Requested _____ Date Received |

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| | |
|--|--|
| <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 |
| | Date Requested _____ Date Received _____ |
| | OR |
| | <input type="checkbox"/> The Rolling Stock Is Not Subject to FMVSS |

Reviewed and Accepted By: _____

Signature: _____ **Date:** _____

Title: _____

| | | | |
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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: _____

| | | | |
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Signature: _____ **Date:** _____

Title: _____

| | | | |
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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

| | | | |
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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 |

| | | | |
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APPENDIX C

FORMS

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REQUEST FOR QUOTE (C-1)

| | | | |
|---------------------------------|--|-------------------------------|--|
| HRT Contact Information: | | RFQ Information: | |
| Name: | Your Name | RFQ Issue Date: | |
| Phone No.: | (757) 222-6000 ext. XXXX | RFQ Due Date and Time: | |
| Email: | youremail@hrtransit.org | RFQ Number: | |

INSTRUCTIONS

1. **The HRT RFQ document must be completed in order for the quote to be considered responsive.**
2. **Only YELLOW highlighted fields should be completed. Do not alter any portion of this form.**
3. **All known fees (i.e., core charges, minimum order fees, fuel surcharges) must be included. Freight, shipping, and handling should be included if reasonably known.**
4. **The Purchase Order Terms and Conditions and Payment Invoicing and Guidelines should be reviewed. Payment invoicing and guidelines will be strictly adhered to.**

| | |
|--------------------------------------|--|
| HRT Comments (if applicable): | |
| Required Delivery Date: | |

| | |
|--|--|
| Enter Vendor Name: *REQUIRED* | |
| Vendor Comments (to include lead times and any additional information): | |

Freight, core charges, service fees, etc. must be included.

| Line No. | Part No. | Description | Qty. | Unit of Measure | Unit Price | Total Price | Internal Reference |
|--------------------|------------------|-------------|------|-----------------|------------|-------------|--------------------|
| 1 | | | | | | \$ - | |
| | Fee Description: | | | | | \$ - | |
| 2 | | | | | | \$ - | |
| | Fee Description: | | | | | \$ - | |
| 3 | | | | | | \$ - | |
| | Fee Description: | | | | | \$ - | |
| 4 | | | | | | \$ - | |
| | Fee Description: | | | | | \$ - | |
| 5 | | | | | | \$ - | |
| | Fee Description: | | | | | \$ - | |
| TOTAL PRICE | | | | | | \$ - | |

| | | | |
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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>DO NOT 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>): | |

| | | | |
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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, and Security.*

REQUIRED

| New Contracts | Modification | Task Order | Exercise of Option | Other |
|--|---|--|---|---|
| <input type="checkbox"/> Review of Scope of Work by Technology, Engineering and Facilities, Safety, Maintenance/Rail and Facilities, and Security <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, Maintenance / Rail and Facilities, and Security <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 |

| | | | |
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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:

| | | | |
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Technology/Safety/Security-Preparedness/Engineering and Facilities/Maintenance/Rail and Facilities 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).
- Review Attachment A, Safety Department Review Checklist to determine if the Scope of Work is required to be reviewed by the Safety Department (Chief Safety Officer/Safety Manager).
- Review Attachment B, Department of Security and Emergency Preparedness Review Checklist to determine if the Scope of Work is required to be reviewed by the Security Department (Chief Transit Operations Officer/Security Manager).
- Review Attachment C, Operations Department Maintenance/Rail and Facilities to determine if the Scope of Work is required to be reviewed by the Maintenance/Rail and Facilities Department (Director of Maintenance/Rail and Facilities).

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 to confirm Scope of Work review: | 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 to confirm Scope of Work review: | Date: |

| | |
|---|--|
| Does this procurement request require a safety 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 to confirm Scope of Work review: | Date: |

| | | | |
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| | | |
|--|--|--|
| Does this procurement request require a security/preparedness 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 to confirm Scope of Work review: | | Date: |

| | | |
|--|--|--|
| Does this procurement request require a maintenance/rail and facilities review (reference Attachment C)? | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If yes, has the Director of Maintenance/Rail and Facilities/Delegate reviewed the Scope of Work? | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Director or Delegate Signature to confirm Scope of Work review: | | Date: |

| | | | |
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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.

| | | | |
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ATTACHMENT A, SAFETY DEPARTMENT REVIEW CHECKLIST

In accordance with HRT's Public Transportation 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 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 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 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.
- 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.

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ATTACHMENT B, SECURITY AND EMERGENCY PREPAREDNESS REVIEW CHECKLIST

The Department of Security and Emergency Preparedness, 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 and Emergency Preparedness 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 and Emergency Preparedness for signature:

- Building placement (to include new facilities or amenities).
- Building design (flood mitigation, 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).
- Tool Room, Data Room, and Money Room access card readers and requirements.
- Fueling area(s).
- Windows and door functions/designs.
- Storage of oil and hazardous materials.
- 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.
- 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).
- Efforts that may utilize or generate Sensitive Security Information (SSI).

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ATTACHMENT C, MAINTENANCE/RAIL AND FACILITIES REVIEWCHECKLIST

The Department of Maintenance/Rail and Facilities, to ensure that all external department projects are planned and funded prior to contract award, has developed the below list of items that should be taken into consideration when writing a Scope of Work. The Department of Maintenance/Rail and Facilities 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 Department of Maintenance/Rail and Facilities for signature:

- 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.
- Learning Management System 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.

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- 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.

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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:**

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

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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: | | | \$ |

Equipment Estimate Sheet

| Item Description | Quantity | Unit of Measure <i>(ea., lb., ft., box, gal., etc.)</i> | Unit Price | Total Price |
|--|----------|--|------------|-------------|
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| | | | \$ | \$ |
| Warranty | | | \$ | \$ |
| Training | | | \$ | \$ |
| Handling Fee (if applicable) | | | \$ | \$ |
| Shipping Costs (if applicable) | | | \$ | \$ |
| TOTAL EQUIPMENT ESTIMATE (Rental/Lease Equipment) | | | | \$ |

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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: | | | \$ |

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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.

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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. |

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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*):

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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

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in the ceiling price will only be authorized upon a determination, documented in the 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: _____

| | | | |
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**SOLE SOURCE JUSTIFICATION REQUEST FORM(C-5)
EMERGENCY PROCUREMENT JUSTIFICATION AND AUTHORIZATION (C-6)**

This form must be completed and accompany any requisition or procurement request above \$10,000 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 single/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 does not justify a noncompetitive procurement.
 - Limited availability of federal assistance. Concerns about the amount of federal assistance or future grant funding available to support the procurement do not justify a noncompetitive procurement.
- Impermissible Actions
 - Improper contract expansion. A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond HRT's reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity. 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.

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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.

Unique or Innovative Concept

It involves 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.

Patents or Restricted Data Rights

Patent or data rights restrictions preclude competition.

Substantial Duplication Costs

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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.

Authorized by the Federal Transit Administration (FTA)

Utilization of noncompetitive proposals under circumstances including a consortium, joint venture, team or partnership or Federal Acquisition Regulations (FAR) Standards Part 6.3.

Inadequate Competition

After solicitation of a number of sources, competition is determined inadequate, and an evaluation of the specifications determines they are not unduly restrictive of competition.

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.

The item is an associated capital maintenance item as defined in 49 U.S.C §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced, and no other sole source justification applies. The Commission must first certify to the FTA in writing that the manufacturer or supplier of the capital maintenance item is the only source for the item and that the price is no higher than the price paid by like customers.

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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.

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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 4220.1F 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.

Procurement Policy

- A. *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. A procurement may be conducted on an emergency basis if the 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 below:

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1. 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.
 2. 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 FTA's Emergency Docket.
 3. In cases where a delay in approving a Contract or purchase will cause the Commission to incur substantial additional costs (by delaying a Contractor, for example) or potential liabilities.
- B. *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.
- C. *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.
- D. 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 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 Contractor on a not-to-exceed price basis, and shall solicit quotes, proposals or bids to complete the work at the earliest feasible time.
- E. Any action under this paragraph shall be supported by written documentation identifying the reasons for the action and the measures taken and shall be subject to confirmation by the Commission at its next meeting. Wherever possible, at least two (2) bids will be solicited when emergencies preclude more extensive competition.

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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 4220.1F, Chapter VI, Paragraph 3.i; 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.

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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.

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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) |
|-------------------|-----------------------|-----------------------|------------------|--------------------------------|--------------------------------|-----------------------------|------------------------------|
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Contracting Officer Name: _____ **Contracting Officer Signature:** _____

Witness Name: _____ **Witness Signature:** _____

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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?

5. Were there any issues/problems? How were they resolved?

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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:

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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)

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Additional Questions/Notes:

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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: _____

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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?

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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:

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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.

| Cost Element | Independent Cost Estimate | Offeror’s Proposal | Best and Final Offer (if applicable) | Notes |
|---------------------|----------------------------------|---------------------------|---|--------------|
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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.

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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: _____

Review:

Reviewer's Name: _____ Date: _____

Reviewer's Title: _____

Reviewer's Signature: _____

Approval:

Approver's Name: _____ Date: _____

Approver's Title: _____

Approver's Signature: _____

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APPENDIX D – OTHER RESOURCES

**PROVISIONS, CERTIFICATIONS,
REPORTS, FORMS,
AND OTHER MATRICES**

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PROCUREMENT GOVERNING DIRECTIVES (D-1)

| Governing Directive | Description |
|----------------------------|--|
| 2 CFR 180.300 | Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons |
| 2 CFR 180.300 | Suspension and Debarment Verification |
| 2 CFR 180.310 | Contract Actions for Contractors Suspended or Debarred after Contract Award |
| 2 CFR 200.318 | General Procurement Standards |
| 2 CFR 200.318 (b) | Contract Administration System |
| 2 CFR 200.318 (c)(1) & (2) | Standards of Conduct are Enforced when Necessary |
| 2 CFR 200.318 (c)(1) & (2) | Standards of Conduct are Written |
| 2 CFR 200.318 (c)(1) & (2) | Standards of Conduct Include all Elements |
| 2 CFR 200.318 (d) | Options Based on Foreseeable Need |
| 2 CFR 200.318 (d) | System for Ensuring Most Efficient and Economic Purchase |
| 2 CFR 200.318 (h) | Award to Responsible Contractors |
| 2 CFR 200.318 (k) | Protest Procedures Available to Public |
| 2 CFR 200.318 (k) | Protest Procedures Followed |
| 2 CFR 200.318 (k) | Written Protest Procedures |
| 2 CFR 200.318 (i) | Written Record of Procurement History |
| 2 CFR 200.318 (j)(1) | Time and Material Contracts |
| 2 CFR 200.319 | Competition |
| 2 CFR 200.319 – 326 | Procurement Policies and Procedures Written and Do Not Conflict with Federal Requirements, or Implementation can be demonstrated |
| 2 CFR 200.319 (b) (1) | Unreasonable Qualification Requirements |
| 2 CFR 200.319 (b) (2) | Unnecessary Experience and Excessive Bonding |
| 2 CFR 200.319 (b) (5) | Organizational Conflict of Interest |
| 2 CFR 200.319 (b) (6) | Brand Name Restrictions |
| 2 CFR 200.319 (b) (7) | Arbitrary Action |

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| 2 CFR 200.319 (c) | A&E Geographic Preference |
| 2 CFR 200.319 (c) | Geographic Preferences |
| 2 CFR 200.319 (c) | Procurement Policies and Procedures |
| 2 CFR 200.319 (c) | Procurement Policies and Procedures Require Clear and Accurate Description and Evaluation Factors |
| 2 CFR 200.319 (c)(1) | Clear, Accurate, and Complete Specification |
| 2 CFR 200.319 (c)(2) | Written Procurement Selection Procedures |
| 2 CFR 200.319 (d) | Prequalification System |
| 2 CFR 200.319 (d) | Solicitation Prequalification Criteria |
| 2 CFR 200.320 | Methods of Procurement to be Followed |
| 2 CFR 200.320 (a) | Micro-Purchase Procedures |
| 2 CFR 200.320 (b) | Price Quotations (Small Purchase) |
| 2 CFR 200.320 (b)(2)(iv) | Qualifications Exclude Price (A&E) |
| 2 CFR 200.320 (c), 2 CFR 200.320 (d) | Adequate Competition – Two (2) or More Competitors |
| 2 CFR 200.320 (c), 2 CFR 200.320 (d) | Adequate Number of Sources Solicited |
| 2 CFR 200.320 (c), 2 CFR 200.320 (d) | Advertised/Publicized |
| 2 CFR 200.320 (c) | Bid Opening (Sealed Bid) |
| 2 CFR 200.320 (c) | Discussions Unnecessary (Sealed Bid) |
| 2 CFR 200.320 (c) | Firm Fixed Price (Sealed Bid) |
| 2 CFR 200.320 (c) | Lowest Price (Sealed Bid) |
| 2 CFR 200.320 (c) | Responsiveness (Sealed Bid) |
| 2 CFR 200.320 (c) | Selection on Price (Sealed Bid) |
| 2 CFR 200.320 (c) | Sufficient Bid Time (Sealed Bid) |
| 2 CFR 200.320 (c)(2)(v) | Rejecting Bids (Sealed Bid) |
| 2 CFR 200.320 (d) | Evaluation Factors (RFP) |
| 2 CFR 200.320 (d)(4) | Price and Other Factors (RFP) |
| 2 CFR 200.320 (f) | Sole Source if Other Award is Infeasible |

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| 2 CFR 200.324 | Contract Cost and Price |
| 2 CFR 200.324 | Cost Analysis Required (Sole Source) |
| 2 CFR 200.324 (a) | Cost or Price Analysis |
| 2 CFR 200.324 | Independent Cost Estimate |
| 2 CFR 200.324 | Independent Cost Estimate for Change Orders |
| 2 CFR 200.324 (b) | Profit Negotiation Required |
| 2 CFR 200.324 | Sufficient Independent Cost Estimate |
| 2 CFR 200.324 (d) | Cost Plus Percentage of Cost |
| 2 CFR 200.326 | Bonding Requirements |
| 2 CFR 200.326 | Bid Guarantee, Performance or Payment Bond |
| 2 CFR 200.331 | Subrecipient and Contractor Determination |
| 49 CFR 26 | Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs |
| 49 CFR 26.49 | TVM Certifications |
| 49 CFR 661 | Buy America Requirements |
| 49 CFR 661.6 or 661.12 | Buy America Certification included in Solicitation |
| 49 CFR 661.6 or 661.12 and Public Law 117-58, div. G, Title, IX, sections 70911 – 70927 (2021) | Buy America and Build America, Buy America Act Waivers |
| 49 CFR 661.6 or 661.12 and Public Law 117-58, div. G, Title, IX, sections 70911 – 70927 (2021) | Signed Buy America and Build America, Buy America Act Certifications |
| 49 CFR 663 | Pre-Award and Post Delivery Audits of Rolling Stock Purchases |
| 49 CFR 663, Subpart B | Pre-Award Audits |
| 49 CFR 663, Subpart C | Post-Delivery Audits |
| 49 CFR 663, Subpart D | Certification of Compliance With or Inapplicability of Federal Motor Vehicle Safety Standards |

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| 49 CFR 665 | Bus Testing |
| 49 CFR 665.7 | Bus Testing Report |
| 49 CFR 665.7 | Bus Testing Requirements |
| 31 USC 1352 | Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions |
| 31 USC 1352 | Signed Lobbying Certifications |
| 40 USC 1104 | Negotiation of Contract |
| 40 USC 1104 (b) | Serial Price Negotiations (A&E) |
| 40 USC 3142 | Rate of Wages for Laborers and Mechanics |
| 40 USC 3142 (a) | Micro-Purchase Davis-Bacon |
| 49 USC 5325 | Contract Requirements |
| 49 USC 5325 (e) | Contract Term Limitation – Vehicle |
| Appendix II to 2 CFR Part 200 | Contract Provisions for Non-Federal Entity Contracts Under Federal Awards |
| Appendix II | Clauses Added to Existing Contracts |
| Appendix II | Clauses Included |
| FTA C4220.1F | Third Party Contracting Guidance |
| FTA C4220.1F, IV, 2.b.(3)(b) | Contract Term Limitation for Non-Rolling Stock |
| FTA C4220.1F, IV, 2.b.(5)(c) | Advance Payment Provisions |
| FTA C4220.1F, IV, 2.b.(5)(c) | Change Orders |
| FTA C4220.1F, IV, 2.b.(6)(b)1 | Accounting for Received Liquidated Damages |
| FTA C4220.1F, IV, 2.b.(6)(b)1 | Liquidated Damages Provisions |
| FTA C4220.1F, V, 7.a.(1)(a)(b) | Evaluation of Options |
| FTA C 4220.1F, V, 7.a.(2) | Piggyback Purchase |
| FTA C4220.1F, VI, 2.a.(2)(b) | No Splitting (Small Purchase) |
| FTA C4220.1F, VI, 3.a.(2)(b) | No Splitting (Micro-Purchase) |
| FTA C4220.1F, VI, 3.i.(1)(b) | Exercise of Options |
| FTA C 4220.1F, VI, 3.i.(1)(b) | Single Bid Documentation |

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| FTA C4220.1F, VI, 7.b. | Exercise of Options Evaluated |
| Notice of Policy on the Implementation of the Phased Increase in Domestic Content Under the Buy America Waiver for Rolling Stock and Notice of Public Interest Waiver of Buy America Domestic Content Requirements for Rolling Stock Procurement in Limited Circumstances | <ul style="list-style-type: none"> • Domestic Content for Vehicle Piggyback • Buy America Domestic Content |
| Public Law 117-58, div. G, Title, IX, sections 70911 – 70927 (2021) | Build America, Buy America Act Certification |
| Public Law 117-58, div. G, Title, IX, sections 70911 – 70927 (2021) | Build America, Buy America Act Certification included in Solicitation |

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| 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 | | § 3.1 |
| False or Fraudulent Statements or Claims – Civil and Criminal Fraud | | § 4.e |
| Access to Third Party Contract Records | | § 9.c |
| Changes to Federal Requirements | | § 3.i |
| Civil Rights (Title VI, ADA, and EEO) | | § 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 4220.1F | § 3.i |
| Safe Operation of Motor Vehicles | | § 34 |
| Build America, Buy America Act | When construction materials will be acquired | § 15.b |
| <i>Awards Exceeding \$10,000</i> | | |
| Terminations | If 2 CFR 200.340-343 applies | § 16.d(2) |
| Special EEO Provision for Construction Contracts | Except as otherwise provided, 41 CFR Chapter 60 applies to federally assisted construction Contracts | § 12.d |
| <i>Awards Exceeding \$25,000</i> | | |
| Debarment and Suspension | 2 CFR Parts 180 and 1200 | § 4.h |

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| <i>Awards Exceeding the Simplified Acquisition Threshold (\$250,000)</i> | | |
| Buy America | When tangible property containing steel, iron or manufactured products will be acquired | § 15.a |
| Resolution of Disputes, Breaches, or Other Litigation | | § 39 |
| <i>Awards Exceeding \$100,000 by Statute</i> | | |
| Lobbying | | § 4.c |
| Clean Air | | § 16.d (7) |
| Clean Water | | § 26.d |
| <i>Transport of Property or Persons</i> | | |
| Cargo Preference | 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> | | |
| Construction Employee Protections - Davis Bacon Act | For Contracts exceeding \$2,000 | § 16.d (4) |
| Construction Employee Protections – Contract Work Hours & Safety Standards Act | For Contracts exceeding \$100,000 | § 16.d (5) |
| Construction Employee Protections <ul style="list-style-type: none"> • Sect. 1 Copeland Anti-Kickback Act • Sec. 2 Copeland Anti-Kickback Act | All Contracts >\$2,000 | § 16.d (4) and § 24.a (3) |
| Bonding for construction activities exceeding \$250,000 | 5% bid guarantee 100% performance bond <ul style="list-style-type: none"> • 100% payment bond | § 16.n |
| Seismic Safety | Contracts for construction of new buildings or additions to existing buildings | § 23.b |

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| <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 (excluding Contracts for transportation services) >\$100,000 | § 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 |
| Alcohol Misuse and Testing | Safety sensitive functions | § 35 |
| <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.j |
| Recycled Products | Contracts for items designated by EPA, when procuring \$10,000 or more per year | § 16.d (10) |
| Conformance with National ITS Architecture | Contracts and solicitations for ITS projects | § 16.1 |
| ADA Access | Contracts for rolling stock or facilities construction/renovation | § 12.h |
| Assignability Clause | Procurements through assignments | § 16.a |

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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 | 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 |
| Safe Operation of Motor Vehicles | All | All | All | All | All |
| Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment | All | All | All | All | All |
| Termination | >\$10,000 if 2 CFR 200.340 - 343 applies | >\$10,000 if 2 CFR 200.340-343 applies | >\$10,000 if 2 CFR 200.340 - 343 applies | >\$10,000 if 2 CFR 200.340 - 343 applies | >\$10,000 if 2 CFR 200.340 - 343 applies |
| Civil Rights (Title VI, ADA, EEO, except Special DOL EEO clause for construction projects) | All | All | All >\$10,000 | All | All |
| Special DOL EEO clause for construction projects | | | | >\$10,000 | |
| Disadvantaged Business Enterprises (DBEs) | All | All | All | All | |
| 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 | >\$150,000 |
| Build America, Buy America Act | | | | All | |
| Resolutions of Disputes, Breaches, or Other Litigation | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |

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| Lobbying | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Clean Air | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Clean Water | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Cargo Preference | | | Transport by ocean vessel | Transport by ocean vessel | Transport by ocean vessel |
| Fly America | Foreign air transp./travel | Foreign air transp./travel | Foreign air transp./travel | Foreign air transp./travel | Foreign air transp./travel |
| Davis-Bacon Act | | | | >\$2,000 (also ferries) | |
| Contract Work Hours and Safety Standards Act | | \$100,000 (transportation services excepted) | >\$100,000 | >\$100,000 (also ferries) | |
| Copeland Anti-Kickback Act Section 1 Section 2 | | | | All >\$2,000 (also ferries) | |
| Bonding | | | | \$100,000 | |
| Seismic Safety | A&E for new buildings & additions | | | New buildings & additions | |
| Transit Employee Protective Arrangements | | Transit operations | | | |
| Charter Service Operations | | All | | | |
| School Bus Operations | | All | | | |
| Drug Use and Testing | | Transit operations | | | |
| Alcohol Misuse and Testing | | Transit operations | | | |
| Patent Rights | R & D | | | | |
| Rights in Data and Copyrights | R & D | | | | |
| Energy Conservation | All | All | All | All | All |

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| Recycled Products | | EPA-selected items \$10,000 or more annually | | EPA-selected items \$10,000 or more annually | EPA-selected items \$10,000 or more annually |
| Conformance with ITS National Architecture | ITS projects | ITS projects | ITS projects | ITS projects | ITS projects |
| 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 |

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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 |

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| 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 C4220.1F | Third Party Contracting Requirements | Requirements for Federally funded procurements | FTA C4220.1F |
| 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. |

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APPENDIX E

BOILERPLATE GENERAL CONDITIONS (THIRD PARTY CONTRACT PROVISIONS)

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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 includes 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.

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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.

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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 a 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 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.

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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.

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- 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.

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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.

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 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. 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

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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 Contractor's satisfactory compliance with the terms and conditions of the Contract. 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 Contractor in performing its obligations under the Contract.

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, 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 Contractor's first invoice, 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.

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, Contractor warrants that:

- A. Title to all materials furnished by Contractor or incorporated into the Work by Contractor and covered by the progress payment shall pass to the Commission at the time Contractor receives the progress payment;

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- B. All materials are free and clear of all liens, claims, security interests, or encumbrances; and
- C. No materials have been acquired by 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 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 Contractor's satisfactory compliance with the terms and conditions of the Contract. 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 Contractor in performing its obligations under the Contract.

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, 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 Contractor's first invoice, 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.

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, Contractor warrants that:

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- A. Title to all materials furnished by Contractor or incorporated into the Work by Contractor and covered by the progress payment shall pass to the Commission at the time 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 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 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 Contractor's satisfactory compliance with the terms and conditions of the Contract. 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 Contractor in performing its obligations under the Contract.

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, 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, 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.

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 Contractor and the action taken on the application by the Commission on account of work done by the Subcontractor.

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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 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) Contractor's failure to carry out the Work in accordance with the Contract; (vii) Contractor's failure to comply with any material provision or requirement of the Contract; (viii) Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor; (ix) 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 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.

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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.

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.

IMPORTANT NOTE: Cancellation of insurance will automatically place the Contractor in default. Contractor shall keep proper insurance in full force and effect at all times during the life of the Contract.

Professional Liability (Errors and Omissions) applicable to Professional Services Contracts only: \$1,000,000.

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Worker's 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.

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| Worker's Compensation: | STATUTORY |
| Employer's Liability - Each Accident | \$1,000,000 |
| Disease Policy Limits | \$1,000,000 |
| Disease - Each Employee | \$1,000,000 |

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:

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| 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:

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.

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:

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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.

Special Provisions of Insurance Furnished by Contractor or any Subcontractor

- A. 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.
- B. 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.
- C. 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.
- D. Any Contract of insurance or indemnification naming the Commission, the United States of America or any of its departments, agencies, administrators, or authorities, as an insured, shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that the Commission or the United States of America, et al., are not liable

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in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.

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 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.

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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 Manger 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:

- 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

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- 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 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.

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.

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- 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 ASI 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.

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 then applicable provisions of U.S. Department of Transportation regulations (currently defined in 49 CFR Part 15; 49 U.S.C. § 114(s) and then applicable provisions of U.S. Department of Homeland Security regulations (currently defined in 49 CFR Part 1520). Contractor shall ensure, and require its Subcontractors to ensure, that the requirements of this Section be included in Subcontracts at all tiers.

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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.

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.

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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 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.

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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. 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

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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.

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 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.

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

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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. 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 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.

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.

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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
- 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:

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- 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.

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

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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 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.

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,

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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. 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:
 - 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. 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

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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. 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. 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. Contractor covenants that neither 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 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 Contractor, 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

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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.

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 Contractor fails to assume the defense of the claim, (ii) payment of any settlement agreed to by the Commission and approved by 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.

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 Contractor provides reasonable notice to the Commission of the infringement or any third-party claim that Contractor receives.

To minimize the potential for claim, Contractor may, at its option, either: (i) procure the right for the Commission to continue using the materials, equipment, or services at Contractor's sole expense or (ii) replace or modify, at Contractor's sole expense, the materials, equipment, or services with comparable materials, equipment, or services that is acceptable to the Commission.

Failure by 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 Contractor.

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B. Indemnification for Personal Injury or Property Damage Claims. To the fullest extent possible, 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 Contractor, its agents, employees, subcontractors, suppliers, assigns, subsidiaries and/or affiliates.

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 Contractor fails to assume the defense of the claim; (ii) payment of any settlement agreed to by the Commission and approved by 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. 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 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 Contractor full and complete authority, information and assistance for the claim's defense and settlement; and (iii) not intentionally prejudice 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 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). below:

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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 Contractor or any Subconsultants/Subcontractors. This Agreement shall operate 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. 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. Contractor agrees to include the provision in all its Subcontracts under this Agreement.

49. 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

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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.

50. 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.

51. 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.
- 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.

52. 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.

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53. Compliance with State Law; Foreign and Domestic Businesses Authorized to Transact Business in the Commonwealth of Virginia (All Contracts)

Pursuant to §2.2-4311.2 of the Code of Virginia, 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 as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or otherwise required by law and shall maintain that status for the duration of this Contract. Failure to do so shall render this Contract voidable at the discretion of the Commission.

54. 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.

55. Notice to Third Party Participants

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

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

56. 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. 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.

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57. 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 Contractor 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 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.
- 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.

58. 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

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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.

59. 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 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

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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 Commission. The Contractor shall protect and preserve such completed or partially completed Work and deliver the same to the Commission on reasonable demand.

60. 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

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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 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.

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61. Energy Conservation (All Contracts)

The Contractor agrees to comply with mandatory 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. § 6201).

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.

62. 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. In accordance with 49 U.S.C. § 5332, currently in effect or as may be amended in the future, covering projects, programs, and activities financed under 49 U.S.C Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), age, or disability, and prohibits discrimination in employment or business opportunity.
- ii. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

B. 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.

C. 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

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seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals aged 40 and over on the basis of age. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

- D. **Federal Protections for Individuals with Disabilities.** 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 programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

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.

- A. **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. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. **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 C.F.R. 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

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addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. **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 C.F.R. 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 C.F.R. 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.

D. **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.

E. **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 protecting free speech, religious liberty, public welfare, the environment, a prohibiting discrimination.

In accordance with the Code of Virginia §§ 2.2-4310 – 4311, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a disabled service veteran, 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. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purposes of meeting the requirements of this Section.

63. 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

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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 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.

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- 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.

64. 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.

65. 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.

66. 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 C.F.R. 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

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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.

67. 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.

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

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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.

68. 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

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divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

69. Solid Wastes (EPA-selected items \$10,000 or more) (All Contracts except Professional Services and Rolling Stock)

The Commission 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. The requirements of Section 6002 include procuring only items designated in 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.

70. 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

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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.

71. 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.

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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
 - 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,

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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.
- 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.

72. Buy America Act and Build America, Buy America Act Requirements (All Contracts except Professional Services)

To the extent applicable to the performance of this Contract, the Contractor must agree to comply with 49 U.S.C. § 5323(j) and 49 CFR part 661 and 2 CFR § 200.322 (Domestic preferences for procurements), 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.

Construction materials used in the Project are subject to the domestic preference requirements 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, the U.S. Department of Transportation, and the FTA. The Commission acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

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.

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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 nonresponsive. More information may be found at the FTA's Buy America webpage at <https://www.transit.dot.gov/buyamerica>.

73. 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:

- 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;

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- 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 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.

74. Cargo Preference (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 the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- 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 the preceding paragraph to the Division of National Cargo, Office of Market

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Development, Maritime Administration, Washington, DC 20590 and to the Commission (through the Contractor in the case of a Subcontractor's bill-of-lading); 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.

75. 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.

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]:

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E. The Contractor agrees to include the requirements of this Section in all Subcontracts that may involve international air transportation.

76. Contract Work Hours and Safety Standards Act (applicable if over \$100,000) (Construction, Operations and Maintenance, Rolling Stock)

The Contractor shall comply with all federal laws, regulations, and requirements providing wages and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOT regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

77. 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.

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78. 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 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 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, 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.

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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 required Appendix A Form E-2, DBE Subcontractor Monthly Report, directly to the Commission’s DBE Program Manager on a monthly basis.

79. Conformance with National Intelligent Transportation Systems (ITS) Architecture (applicable if funded in whole or in part by the Highway Trust Fund) (All Contracts)

Intelligent transportation system (ITS) projects shall conform to the National ITS Architecture and Standards to the extent required by 23 CFR § 940, and later published policies or implementing directives the FTA may issue. Conformance with the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architectures should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621)

The Commission has participated in the development of a regional ITS architecture, which is available at <http://local.iteris.com/virginiaitsarchitecture/index.html>.

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.

80. 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 Contractor’s costs to a level that renders performance under the Contract impracticable, the Commission may agree to an increase to the purchase priced 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 Contractor as of the date of award for the good or raw material used to furnish the goods to the Commission under this Contract,

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(ii) the applicability of the tariff to the specific good or raw material, and (iii) 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 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 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 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, Contractor shall retain, and the Commission and its authorized representatives shall have the right to audit, examine, and make copies of, all of Contractor's books, accounts, and other records related to this Contract and 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 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 Contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

81. Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment (*applicable to all Contracts*) (All Contracts)

The Commission is prohibited from obligating or expending loan or grant funds to:

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- A. Procure or obtain;
- B. Extend or renew a Contract to procure or obtain; or
- C. Enter into a Contract (or extend or renew a Contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - i. 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).
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. 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.

The Contractor or Subcontractor shall not provide equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system in the performance of this Contract.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), 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 communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. See Public Law 115-232, section 889 for additional information. See also § 200.471.

82. Safe Operation of Motor Vehicles (All Contracts)

The Safe Operation of Motor Vehicles provisions apply to all federally funded third party Contracts. 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, FTA encourages each third-party Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to

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include this provision in each third-party subcontract involving this project. Additionally, the Commission is required by the FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third-party agreements supported with Federal assistance.

- A. Seat Belt Use. 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. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the Commission.
- B. Distracted Driving. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Work performed under this Contract.

83. 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.

84. 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.

85. 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.

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- 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.

86. 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.

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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 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.

87. 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.

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- 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.
- 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.

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88. 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 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.

CONSTRUCTION CONTRACT TERMS

The following additional General Conditions apply to construction Contracts.

89. 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 includes 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.

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.

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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.

90. 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 percent 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 percent of the contract price. A "payment bond" is one 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 in the contract.

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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 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:

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- 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.

91. 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.

- 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 workweek is permissible provided that the worker is

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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 workweek. 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.

92. 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.

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

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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.

93. 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.

94. 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 adequacy of 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;
- 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.

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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 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.

95. 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.

96. 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. All retainages will be held by the Commission until the time for final payment and the Commission has received consent of surety.

97. 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

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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.

98. 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, 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.

99. 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.

100. Prosecution and Progress of Work

- A. License, Permits, Fees, and Construction Notices. 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 authorizations from governmental and utility authorities, required to fulfill the Contract requirements and Contractor's obligations.
- B. Standard Work Week. 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.

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- D. 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 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 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. Contractor is responsible for applying for and obtaining any noise variances necessary for the Work at its own expense.

101. 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 Contractor's notice of Final Completion, the PM or his/her designee shall inspect the Work and within fifteen (15) days after receiving 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, 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 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
- 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 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

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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 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.

102. 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.

103. 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 will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will 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

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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 will, 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 will 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 provisions 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 will 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.
- E. The Contractor will 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 will 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 will 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,

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1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or as otherwise provided by law.

- H. The Contractor will 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 will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the FTA 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 FTA, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

104. 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.

105. 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(e) 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.

106. Buy America – Rolling Stock (*applicable to all Contracts for the acquisition of rolling stock*)

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

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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 nonresponsive.

107. 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.

108. 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.

109. 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.