 <b>HAMPTON ROADS TRANSIT</b>	<b>NUMBER</b>  <b>PRO- 001 Rev. 2</b>	<b>EFF. DATE</b>  <b>10/04/2012</b>
	<b>SUPERSEDES</b> <b>January 23, 2012</b>	
<b>POLICY AND PROCEDURES MANUAL</b>		
<b>RESPONSIBLE DEPARTMENT</b> <b>Procurement</b>	<b>KEY SUBJECT</b> <b>Procurement, Contracts</b>	
<b>TITLE</b> <b>Procurement Procedures Manual</b>		
<b>APPLIES TO</b> <b>All Departments</b>	<b>APPROVAL(S)</b> <b>Purcell / Li / Harrell</b>	

# HAMPTON ROADS TRANSIT

## PROCUREMENT POLICY AND PROCEDURES MANUAL

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 2 of 217</b>
---	-------------------------------------	---------------------------	------------------------------



This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 3 of 217</b>
---	-------------------------------------	---------------------------	------------------------------


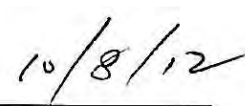
## APPROVALS

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 Virginia Public Procurement Act (VPPA) Title 2.2, Chapter 43, Code of Virginia, and by the Federal Transit Administration (FTA) Circular 4220.1F (C 4220.1F); 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
 
  
 Date

### RECOMMENDED BY:

  
 Henry Li, Chief Financial Officer, Hampton Roads Transit
 
  
 Date

  
 Deborah C. Purcell, Director of Procurement, Hampton Roads Transit
 
  
 Date

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 4 of 217</b>
---	-------------------------------------	---------------------------	------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 5 of 217</b>
---	-------------------------------------	---------------------------	------------------------------

## REVISIONS

REVISION	DATE	SECTION	DESCRIPTION	AUTHORITY
1	1/23/12	Various	PSR updates	FTA
2	10/04/2012	Various	VPPA / Audit updates	VPPA

SOURCE / NETWORK PATH C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx
---

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 6 of 217</b>
---	-------------------------------------	---------------------------	------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 7 of 217</b>
---	-------------------------------------	---------------------------	------------------------------

## TABLE OF CONTENTS

<b>PURPOSE .....</b>	<b>13</b>
<b>DEFINITIONS .....</b>	<b>13</b>

### **PART A - POLICY**

#### TABLE OF CONTENTS FOR PART A

1. APPLICABILITY AND GOVERNANCE .....	21
2. STANDARDS OF CONDUCT .....	21
3. CONTRACTING AUTHORITY .....	22
4. GENERAL PROCUREMENT STANDARDS .....	23
4.1 Competition .....	23
4.2 Standards of Conduct .....	23
4.3 Economic Purchasing .....	23
4.4 Contract Administration .....	23
4.5 Value Engineering .....	23
4.6 Records .....	24
4.7 Intergovernmental Agreements .....	24
4.8 Protests and Disputes .....	24
4.9 Contract Period .....	24
5. FULL AND OPEN COMPETITION .....	24
5.1 Restrictions on Competition.....	24
5.2 Geographic Preferences .....	26
5.3 Selection Procedures .....	26
6. METHODS OF PROCUREMENT .....	26
6.1 General Standards .....	27
6.2 Micro-purchases .....	27
6.3 Small Purchases .....	28
6.4 Competitive Sealed Bidding .....	28

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 8 of 217</b>
---	-------------------------------------	---------------------------	------------------------------

6.5 Two-Step Sealed Bidding .....	30
6.6 Competitive Negotiation .....	30
6.7 Architectural and Engineering (A&E) & Other Professional Services ....	32
6.8 Design-Build .....	33
6.9 Non-Competitive Proposals .....	33
6.10 Options .....	35
6.11 Time and Materials Contracts .....	36
6.12 Information Technology (IT) Procurements .....	36
7. CONTRACT COST AND PRICE ANALYSIS .....	36
7.1 Requirement.....	36
7.2 Independent Estimate .....	37
7.3 Cost Analysis.....	37
7.4 Price Analysis.....	38
8. BONDING REQUIREMENTS.....	38
8.1 Construction .....	38
8.2 Non-Construction .....	38
9. PAYMENT PROVISIONS.....	38
9.1 Advance Payments .....	38
9.2 Progress Payments .....	38
10. LIQUIDATED DAMAGES.....	39
10.1 Risk Management .....	39
10.2 Calculation.....	39
10.3 Measurement .....	39
10.4 Solicitation Requirements.....	39
11. CONTRACT APPROVAL REQUIREMENTS .....	39
11.1 Commission Approval .....	39
11.2 Professional Services .....	39
11.3 Modifications .....	39
11.4 Delegations .....	40
11.5 Emergency Authorizations .....	40



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 9 of 217</b>
---	-------------------------------------	---------------------------	------------------------------

12. CONTRACT AWARD ANNOUNCEMENT .....	40
13. CONTRACT PROVISIONS .....	40
13.1 Sound and Complete Agreement .....	40
13.2 Remedies for Breach.....	41
13.3 Termination .....	41
14. CONTRACTS OUTSIDE THE SCOPE OF THIS POLICY .....	41
14.1 Other Acquisitions .....	41
14.2 Revenue Contracts.....	41
15. DISADVANTAGED BUSINESS ENTERPRISES (DBE) .....	41

## **PART B – PROCEDURES**

### **TABLE OF CONTENTS FOR PART B**

1. APPLICABILITY .....	43
1.1 Procurement Policy .....	43
1.2 Governing Law .....	43
1.3 Federal Contract Law.....	43
1.4 Contracts Outside The Scope Of This Policy .....	43
2. CONTRACTING AUTHORITY .....	44
2.1 The Contracting Officer .....	44
2.2 Delegation of Contracting Authority.....	44
2.3 Legal Counsel .....	44
3. GENERAL PROCUREMENT STANDARDS .....	44
3.1 Public Notice .....	44
3.2 Competition .....	45
3.3 Standards of Conduct .....	45
3.4 Economic Purchasing .....	46
3.5 Specifications .....	47
3.6 Value Engineering .....	47
3.7 Records .....	48
3.8 Use of Existing Contracts .....	48

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 10 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------


3.9 Protests .....	50
3.10 Contract Period .....	57
3.11 Cost Principles .....	58
3.12 Contract Clauses .....	58
4. FULL AND OPEN COMPETITION .....	58
4.1 Restrictions on Competition.....	58
4.2 Geographic Preferences .....	60
5. PROCUREMENT PLANNING .....	61
5.1 Applicability .....	61
5.2 Initiation .....	61
5.3 Scheduling .....	61
5.4 Procurement Plan .....	61
5.5 Scope or Specification .....	62
5.6 Independent Cost Estimate .....	62
5.7 Base Solicitation Document .....	63
5.8 DBE and Risk Management Input .....	63
5.9 Final Review .....	63
5.10 Solicitation Issuance and Distribution .....	63
5.11 Evaluation Panel .....	63
5.12 Vendor's List .....	63
5.13 Planning File Content .....	64
6. METHODS OF PROCUREMENT .....	64
6.1 General Standard .....	64
6.2 Micro-purchases.....	67
6.3 Small Purchases .....	67
6.4 Competitive Sealed Bidding .....	68
6.5 Two-Step Sealed Bidding.....	70
6.6 Competitive Negotiation (Sealed Proposals).....	71
6.7 Architectural and Engineering (A&E) & Other Professional Services ....	76
6.8 Non-competitive Proposals.....	76

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 11 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

6.9 Options .....	79
6.10 Time and Material Contracts .....	80
6.11 Cost Reimbursement Contracts .....	81
6.12 Cost Plus Percent Of Cost Contracts .....	81
6.13 Construction Contracts For Publicly Funded Buildings.....	82
6.14 Design Build .....	82
6.15 Rolling Stock .....	82
6.16 Information Technology (IT) .....	82
7. BONDING REQUIREMENTS.....	83
7.1 Construction .....	83
7.2 Non-Construction .....	83
8. PAYMENT PROVISIONS.....	84
8.1 Advance Payments .....	84
8.2 Progress Payments .....	84
9. LIQUIDATED DAMAGES.....	84
9.1 Risk Management .....	84
9.2 Calculation.....	85
9.3 Measurement .....	85
9.4 Solicitation Requirements.....	85
9.5 Disposition of Recovered Amounts .....	85
10. RECEIPT AND EVALUATION OF BIDS AND PROPOSALS .....	85
10.1 Sealed Bids .....	85
10.2 Competitive Proposals .....	86
10.3 Responsiveness Review .....	86
10.4 Responsibility Review .....	86
10.5 File Content .....	87
11. CONTRACT COST AND PRICE ANALYSIS .....	88
11.1 Requirement .....	88
11.2 Independent Cost Estimate .....	88
11.3 Cost Analysis .....	88

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 12 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

11.4 Price Analysis .....	89
12. CONTRACT APPROVAL REQUIREMENTS .....	89
12.1 Board of Commissioners Approval .....	89
12.2 President/CEO Approval .....	90
12.3 Director of Procurement Approval .....	90
12.4 Delegations .....	90
12.5 Execution .....	90
12.6 Contract Modifications .....	91
12.7 Emergencies .....	91
13. CONTRACT AWARD ANNOUNCEMENTS .....	92
14. CONTRACT PROVISIONS .....	92
14.1 Sound and Complete Agreement .....	92
15. DISADVANTAGED BUSINESS ENTERPRISES (DBE) .....	93
16. CONTRACT ADMINISTRATION FUNCTIONS .....	93
16.1 Contract Solicitation .....	93
16.2 Contract Administration .....	94
16.3 Contract Administration File Documentation .....	94
16.4 Contract Administration File Contents .....	95
16.5 Contract Administration Functions .....	95
17. CONTRACT MODIFICATIONS (CHANGE ORDERS) .....	96
18. CONTRACT CLOSEOUT .....	98
APPENDIX A – Quick Reference Methods of Procurement .....	103
APPENDIX B - Checklists .....	107
APPENDIX C – Forms .....	137
APPENDIX D – General Conditions (Clauses).....	159
APPENDIX E – Other Resources.....	205

 <div>HAMPTON ROADS TRANSIT</div> <b>POLICY AND PROCEDURES MANUAL</b>	NUMBER  <b>PRO- 001 Rev. 2</b>	EFF. DATE  <b>10/04/2012</b>
	SUPERSEDES <b>January 23, 2012</b>	
RESPONSIBLE DEPARTMENT <b>Procurement</b>	KEY SUBJECT <b>Procurement, Contracts</b>	
TITLE <b>Procurement Procedures Manual</b>		
APPLIES TO <b>All Departments</b>	APPROVAL(S) <b>Purcell / Li / Harrell</b>	

## 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 policies, and sound business practices.

## DEFINITIONS

**Advance Payments** – a payment made before 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 Hampton Roads Transit.

**Amendment** - written modifications issued by Hampton Roads Transit 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** - or BAFO is 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 Contract Administrator 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 relevant bonds are Bid Bond, Payment (or labor and material payment) Bond, and Performance Bond. A **Bid Bond** equivalent to five (5) % of the bid price is submitted with a bid. The bid bond ensures that on 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 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**

SOURCE / NETWORK PATH  
C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 14 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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

**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 HRT as an additional insured; this information, and the number and title of the contract involved, should be noted on the certificate. HRT also requires 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.

**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.

**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 the contractor for performance and completion of the Work.

**Contractor** – the person or entity that has been awarded a contract for goods or services.

**Contract Administrator or Contracting Officer** - the person granted authority, or their designee, to act on behalf of the Commission in all contractual matters concerning a

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 15 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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 Contract Administrator.

**Cost Analysis** - the review and evaluation of the contractor's direct cost elements (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.

**Days** are, except as otherwise provided in a contractual document, calendar days, including weekends and holidays.

**DBE** - Disadvantaged Business Enterprise.

**DBE Goal** - is the participation goal established, subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, (<http://www.osdbu.dot.gov/OSDBUSERVICES/DBEPROGRAM/tabid/75/Default.aspx>).

When only non-federal sources fund of the procurement, Virginia's Small, Women and Minority Owned Business Certifications (SWaM/ MBE/ WBE) is an acceptable substitution for FTA's required DBE certification.

**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.

**Final Acceptance** - written notice by HRT acknowledging that a Contractor has fulfilled all of its 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.

**FTA** - Federal Transit Administration.

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

**Independent Cost Estimate** – Hampton Roads Transit'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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 16 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

Information technology is comprised of any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, display, manipulation, movement, control, display, switching, interchange, transmission, or management of data or information. Electronic and information technology includes: 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; office products such as printers, photocopiers, plotters, scanners and fax machines; and video equipment and multimedia products.

**Invitation for Bids (IFB)** - is a formal solicitation seeking offers to provide goods and services at a fixed price. In IFB procurement, 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** – 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 offeror's, 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 offeror's with an unfair competitive advantage.

**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 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.

**Micro-Purchases** - is a method of procurement without obtaining competitive quotations for goods and services valued at \$3,000 or less. See Section 6.3.A of FTA Circular 4220.1F. 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.

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

**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)** - written notice by HRT to a Contractor directing the start of



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 17 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

Work. Any Work performed prior to NTP shall be at the Contractor's risk.

**Offeror** - an individual or entity submitting a formal response to a Request for Quotes, Invitation for Bids, or Request for Proposals.

**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 review and evaluation of the offeror's proposed price, to determine its reasonableness, without consideration of the separate elements of labor, material, equipment, overhead, and profit.

**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 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 responsibility review, technical evaluation, negotiations, best and final offers, Operations and Oversight Committee presentation, Commission presentation and approval, 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 this Contract, and specifically, to meet the specified milestone dates, including updates.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 18 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

**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.

**Planholders List** – (Bidder's List) known prospective offerors who have either downloaded a specified solicitation package from HRT's website or been 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** – written acceptance of an offer in response to a Request for Quote for specified goods and services, at a specified price and delivery schedule.

**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** - a person or entity that has the capability, in all respects, to perform fully the contract requirements and the business integrity and reliability that will assure good faith performance.

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

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

**Sole Source** – a noncompetitive procurement action whereby there is only one known source who can comply with the explicit requirements of a solicitation. Sole source is typically when the goods or services are proprietary to one company and not easily obtained elsewhere. A sole source justification is required. All change orders outside the scope of the original contract are considered a sole source procurement action.

**Sole Source Justification** – written justification for a procurement action, when full and open competition does not exist. The justification must document fully and adequately,

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 19 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

the appropriateness of the decision to solicit an offer from only one 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 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 provide labor on HRT property other than delivery.

**Work** - the furnishing of all of the supervision, labor, Materials, equipment, services, and incidentals necessary to complete the Contract, and the carrying out of any duties and obligations imposed on the Contractor by the Contract.

**Working Drawings** - the drawings prepared by the Contractor which depict the sequence, methods, Materials, details of construction or procedures for accomplishing the Work, including, but not necessarily limited to, false work, shoring, concrete formwork and excavation plans.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 20 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 21 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

## **PART A - POLICY**

### **1. APPLICABILITY AND GOVERNANCE**

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

- 1.1. The Commission's procurement actions are primarily governed by the Virginia Public Procurement Act (VPPA) Title 2.2, Chapter 43, Code of Virginia and by Federal Transit Administration (FTA) Circular 4220.1F (C 4220.1F). 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 F. 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.
- 1.2. 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.
- 1.3. Where the VPPA does not conform to a mandatory provision of Federal law, regulation or other requirements, including but not limited to C 4220.1F, HRT may comply with such federal requirements, notwithstanding the provisions of the VPPA, only upon the written determination of the Commission's President/CEO that acceptance of the grant or contract funds under the applicable conditions are in the public interest.

### **2. STANDARDS OF CONDUCT**

These Standards of Conduct govern the performance of HRT employees who are engaged in or otherwise involved in the award or administration of a contract.

- 2.1 Personal Conflicts of Interest.** No employee, officer, agent, or Commission 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 funded by FTA 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 award.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 22 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

**2.2 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:

**2.2.1** 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).

**2.2.2** 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.

**2.2.3** 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.

**2.3 Violations.** To the extent permitted by Commonwealth of Virginia or local law or regulations, penalties, sanctions, or other disciplinary action for violation of these standards up to and including termination shall apply.

**2.4 Conflicts of Interest Certification.** On an annual basis, HRT requires all employees who participate in the procurement process to sign a certification that they have read, understand, and will comply with HRT's Conflict of Interest Policy.

### **3. CONTRACTING AUTHORITY**

3.1. The Commission's President/Chief Executive Officer (President/CEO) is the Commission's Contracting Officer.

3.2. 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 23 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

#### **4. GENERAL PROCUREMENT STANDARDS**

##### **4.1. 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.

##### **4.2. Standards of Conduct**

The Commission shall maintain a written code of conduct 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 FTA Circular 4220.1F and § 4367 through 4377 of the VPPA, as they may be amended from time to time. This code of conduct is currently located in Section 1 of the HRT Personnel Policies and Procedures Manual.

##### **4.3. Economic Purchasing**

Proposed procurements will be reviewed to avoid 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.

##### **4.4. Contract Administration**

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

##### **4.5. Value Engineering**

The Commission will use 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 24 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

#### 4.6. Records

HRT shall maintain records detailing the history of a procurement 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:

- (a) The rationale for the method of the procurement
- (b) Selection of the contract type
- (c) Reasons for contractor selection or rejection
- (d) The basis for the contract price

#### 4.7. Intergovernmental Agreements

To foster greater economy and efficiency, intergovernmental agreements, contracts, and schedules of the General Services Administration and the Commonwealth of Virginia may be used as permitted and appropriate. However, this does not preclude the requirement to consider other competitive sources of supply or services or to determine price reasonableness.

#### 4.8. Protests and Disputes

The Commission shall maintain written procedures that are consistent with the Virginia Public Procurement Act 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 FTA as set forth in C. 4220.1F. The Commission shall maintain written procedures that are consistent with the Virginia Public Procurement Act for processing and resolving contract claims and disputes in a fair and equitable manner.

#### 4.9. Contract Period

The period of contract performance for rolling stock and replacement parts shall not exceed five years, inclusive of options, as defined in FTA C 4220.1F. The length of all other contracts shall be based upon sound business judgment, including consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with the Commission, and the relative benefit to the Commission of a longer or shorter contract term.

### **5. FULL AND OPEN COMPETITION**

#### 5.1. Restrictions on Competition

All procurement transactions totaling \$3,000.00 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



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 25 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

of the situations considered to be restrictive of competition include, but are not limited to:

- (a) Unreasonable requirements placed on firms in order for them to qualify to do business.
- (b) 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, however, be established in a manner consistent with protection of the Commission's interests.
- (c) Noncompetitive pricing practices between firms or between affiliated companies.
- (d) Noncompetitive awards to any person or firm on retainer contracts.

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 offeror's disclose when they believe there may be a conflict. This gives HRT the opportunity to make the determination and take the necessary action to avoid the conflict. Also, 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 employee being also employed by a bidder, offeror or contractor involved in the procurement transaction; 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; 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 26 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

- (e) 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.
- (f) The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.
- (g) Any arbitrary action in the procurement process.

## 5.2. 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. 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.

## 5.3. Selection Procedures

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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 27 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

## **6. METHODS OF PROCUREMENT**

### **6.1. General Standards**

Every competitive solicitation above the small purchase limit shall adhere to the following standards.

- 6.1.1. 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.
- 6.1.2. Every reasonable effort should be made to encourage the maximum number of responses. Pre-qualification or other methods of restricting responses shall not be used unless required for security or public safety reasons or by law.
- 6.1.3. The solicitation document shall contain, at a minimum, instructions on how the response is to be prepared and submitted; 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); the basis upon which an award will be made; 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; a clear and comprehensible statement of the Commission's needs and the technical requirements to be met by the successful offeror; a set of terms and conditions intended to be used for any resulting contract; and representations and certifications as required by law or deemed necessary by the Commission.
- 6.1.4. The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to the Commission's needs.
- 6.1.5. 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.
- 6.1.6. A determination shall be made by the contracting officer that the apparently 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, and 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 28 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

## 6.2. Micro-purchases

Micro-purchases are those purchases not exceeding \$3,000. 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, 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.

## 6.3. Small Purchases

Small purchase procurements are relatively simple and informal solicitations for services, supplies, or other property that cost more than \$3,000 but do not exceed the limits described in §2.2-4303G & H of the Virginia Public Procurement Act (currently not exceeding \$100,000 for goods and services other than professional services, and \$50,000 for professional services) or as otherwise defined by the Commission; in no case shall small purchase procedures be used for procurements above the Federal simplified acquisition threshold as defined in 41 U.S.C. § 403(11), currently \$100,000. If small purchase procedures are used, price or rate quotations shall be solicited from an adequate number of qualified sources. The number of sources will depend upon the availability of qualified sources, but the objective should ordinarily be to obtain quotes from at least four vendors. For purchases of goods and services, other than professional services expected to exceed \$30,000, written informal solicitation of a minimum of four bidders or offerors is required, pursuant to VPPA §2.2-4303G. Both the solicitation and quotes should be written, in either electronic or hard copy form. Public notice of solicitations for small purchases expected to exceed \$30,000 shall be posted on HRT's website at least 10 days prior to the date set for receipt of offers.

## 6.4. Competitive Sealed Bidding

6.4.1. Bids in excess of \$100,000 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. Public notice of the IFB shall be posted to HRT's website at least 10 days prior to the date set for bid opening.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 29 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

- 6.4.2. 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.
- 6.4.3. 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.
- 6.4.4. A fixed-price contract award will be made in writing to the responsible bidder submitting the lowest responsive bid at the price stated in the bid. 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.
- 6.4.5. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs may be considered in determining the low bid if specified in the solicitation. Payment discounts shall be requested or considered only when prior experience indicates that the Commission is able to avail itself of such discounts.
- 6.4.6. 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.
- 6.4.7. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the instances listed in §2.2-4303(D) 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.
- 6.4.8. 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 30 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

#### 6.5. 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.

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

- (a) 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.
- (b) Definite criteria exist for evaluating technical proposals.
- (c) More than one technically qualified source is expected to be available, and more than one technical solution is considered possible.
- (d) Sufficient time will be available for use of the two-step method.
- (e) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

6.5.2. 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 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. Award is based upon the lowest responsive price from a responsible offeror.

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

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

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

#### 6.6. Competitive Negotiation

6.6.1. The competitive negotiation procurement process is conducted through a formal Request for Proposals (RFP). This method of procurement is

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 31 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

generally used when conditions are not appropriate for the use of sealed bids. The process for procuring architect/engineering services; or for other types of professional services in excess of \$50,000 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 §4303D, and with a written determination made in advance by the Commission.

- 6.6.2. The competitive negotiation method of procurement is appropriate when the contracting officer determines that following conditions exist:
  - (a) A complete, adequate, and realistic specification or purchase description is not available.
  - (b) Two or more responsible offerors are willing and able to compete effectively for the award.
  - (c) The selection of the successful offeror requires consideration of factors other than price.
  - (d) Discussions with offerors are anticipated to be needed.
- 6.6.3. Either a fixed price or cost reimbursable type contract may be awarded.
- 6.6.4. 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.
- 6.6.5. 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 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.
- 6.6.6. Unless the technical and price evaluators agree that only one proposer is capable of receiving an award, discussions and negotiations shall be conducted with all proposers found to be so 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 or more contracts on the basis of initial proposals received, without discussions other than requests for clarifications, which are information exchanges that

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 32 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

6.6.7. 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 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. Regardless of the method used, however, the solicitation must contain language which establishes and defines the basis on which the award will be made.

#### 6.7. Architectural and Engineering (A&E) and Other Professional Services

6.7.1. 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, Chapter 11 of Title 40 of the United States Code, 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. 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.

6.7.2. The Brooks Act requires that:

- (a) An offeror's technical qualifications be evaluated;
- (b) Price be excluded as an evaluation factor;
- (c) A pricing proposal be requested from, and negotiations be conducted only with the most qualified offeror; and
- (d) 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.

6.7.3. This "qualifications-based" procurement method can only be used for the procurement of A&E services where any amount of Federal funds is



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 33 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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 §4301 of the Act.

#### **6.8. Design-Build**

The Commission shall, unless otherwise required by Commonwealth law (§2.2-4308 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.

#### **6.9. Non-competitive Proposals**

6.9.1. Non-competitive (Sole Source) procurements are accomplished through solicitation and acceptance of a proposal from only one 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 subparagraph.

Procurement by non-competitive proposals may be used when only one 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 of the following circumstances applies:

6.9.1.1. The item is available only from one responsible source because:

- (a) 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 source and has not in the past been available to the recipient from another source.
- (b) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 34 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

(c) 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.

(d) 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.

6.9.1.2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

6.9.1.3. FTA authorizes non-competitive negotiations;

6.9.1.4. Other circumstances described in Part 6.3 of the Federal Acquisition Regulations exist;

6.9.1.5. 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; or

6.9.1.6. 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.

6.9.1.7. 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 why 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 35 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

6.9.1.8. The Commission may establish and maintain a listing of sole source items not requiring justification for each purchase, providing (a) that written verification is obtained from the supplier or other authoritative source not less frequently than annually; and (b) 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.

6.9.1.9. A cost analysis is required for each sole source acquisition.

6.9.2. HRT shall publish a written notice stating that only one 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 be also published in a newspaper of general circulation or published on the Department of General Services' central electronic procurement website and other appropriate websites.

6.9.3. 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 HRT shall publish a written notice stating that only one 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, on the day the Commission awards or announces its decision to award the contract, whichever occurs first. Notice may be also published in a newspaper of general circulation or published on the Department of General Services' central electronic procurement website and other appropriate websites.

#### 6.10. Options

6.10.1. 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 36 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

regulations and guidance.

6.10.2. 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. 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.

6.10.3. Exercise of Options

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 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.

6.10.4. 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.

6.10.5. The Commission may exercise options in contracts of other public agencies ("piggybacking") in accordance with FTA regulations and guidance. Use of such options is considered sole source actions and must be documented accordingly.

6.11. 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. Upon completion of price determination, the contract shall be modified to a firm fixed price.

6.12 Information Technology (IT) Procurements

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

## **7. CONTRACT COST AND PRICE ANALYSIS**

7.1. Requirement

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 37 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

## 7.2. 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 estimate must be prepared without knowledge of the contractor's proposed pricing.

## 7.3. Cost Analysis

- 7.3.1. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost.
- 7.3.2. A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements (which include 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.
- 7.3.3. Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.
- 7.3.4. 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 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.
- 7.3.5. 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 contained in Part 31 of the Federal Acquisition Regulations.
- 7.3.6. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 38 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

#### 7.4. Price Analysis

7.4.1. 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.

7.4.2. 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.

### 8. BONDING REQUIREMENTS

#### 8.1. 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 Virginia Public Procurement Act, § §2.2-4336-2.2-4338.

#### 8.2. 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.

### 9. PAYMENT PROVISIONS

#### 9.1. 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. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services and subscriptions. 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 (a) it is customary in the industry, or (b) 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.

#### 9.2. 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-

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 39 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

construction contracts.

## **10. LIQUIDATED DAMAGES**

### **10.1. 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.

### **10.2. Calculation**

The amount of liquidated damages must be reasonably calculated to reflect anticipated damages HRT might suffer as the result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine.

### **10.3. 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.

### **10.4. 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.

## **10. CONTRACT APPROVAL REQUIREMENTS**

### **11.1. 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 \$50,000.

### **11.2. 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.

### **11.3. Modifications**

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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 40 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

the advance written approval of the HRT Board of Commissioners.

#### 11.4. 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.

#### 11.5. Emergency Authorizations

The President and CEO may authorize modifications beyond the above limit of his/her authority:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) In cases where the Commission is unable to take action at its scheduled meeting (due to a lack of a quorum, for example).

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

## 12. **CONTRACT AWARD ANNOUNCEMENT**

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

## 13. **CONTRACT PROVISIONS**

### 13.1. Sound and Complete Agreement

All contracts shall include provisions to define a sound and complete agreement, appropriate to the type and complexity of the project. At a minimum these include a well-defined statement of work or specification, 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.



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 41 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

### 13.2. Remedies for Breach

All contracts in excess of the small purchase limit as defined herein shall include contractual provisions that allow for administrative or legal remedies in instances where contractors violate or breach contract terms.

### 13.3. Termination

Termination for cause and for convenience provisions shall be included in all contracts in excess of \$100,000, including the manner by which termination will be effected and the basis on which a settlement will be accomplished.

## 14. CONTRACTS OUTSIDE THE SCOPE OF THIS POLICY

### 14.1. 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.

### 14.2. 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. In some circumstances involving a revenue-producing activity (e.g., the employment of a contractor to produce revenue) this policy may apply.

## 15. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of HRT that disadvantaged business enterprises (DBEs), as defined in 49 C.F.R. Part 26, shall have an opportunity to participate in awards of its contracts and subcontracts. HRT 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 funded solicitation over \$50,000 and a percentage goal for DBE participation established where appropriate subcontracting opportunities exist.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 42 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 43 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

## **PART B - PROCEDURES**

### **1. APPLICABILITY**

#### **1.1. 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 District, except as specifically excluded in the Policy. The Transportation District does business under the name Hampton Roads Transit (HRT).

#### **1.2. Governing Law**

HRT’s procurement actions are primarily governed by the Commonwealth of Virginia Public Procurement Act (“VPPA”), Title 2.2, Chapter 43, Code of Virginia and by Federal Transit Administration (FTA) Circular 4220.1F. 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.

#### **1.3. Federal Contract Law**

FTA procurement requirements are set forth in C.F.R. Part 18--Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 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 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, decisions of the Controller General of the United States, and other federal and state precedents.

#### **1.4. Contracts Outside the Scope of This Policy**

##### **1.4.1. Other Acquisitions**

This policy will not apply to transactions as defined in §13.1 of Part A – Procurement Policy. However, the Procurement Department may be asked to provide assistance to such actions.

##### **1.4.2. Revenue Contracts**

A revenue contract is one in which the Commission provides access to public transportation assets for the primary purpose of either producing

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 44 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

revenues in connection with a public transportation related activity, or creating business opportunities involving the use of Commission property. 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, for example where there are several potential competitors for a limited opportunity (such as advertising space associated with Commission assets). However, 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.

## **2. CONTRACTING AUTHORITY**

### **2.1. The Contracting Officer**

The President/Chief Executive Officer (President and CEO) is the Hampton Roads Transit Contracting Officer.

### **2.2. 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.

### **2.3. 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.

## **3. GENERAL PROCUREMENT STANDARDS**

### **3.1. Public Notice**

#### **3.1.1. Full and Open Competitive Procurements**

Procurements expected to exceed \$30,000 require public notice, which is to be accomplished by posting onto the Hampton Roads Transit website for at least 10 days prior to receipt of offers. Additionally, notices may be published in general circulation newspaper(s) or other appropriate websites. In addition, offers may be solicited directly from potential contractors.

#### **3.1.2. Non-Competitive Procurements**

The following none competitive procurements exceeding \$30,000 are to be posted to the agency website. The procurement file must include documented justification for the lack of competition.

- Sole Source

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 45 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

- Single Source
- Emergency

### 3.2. 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 cost above 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. In addition, 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.

### 3.3. Standards of Conduct

HRT maintains a written code of conduct as part of its Personnel Policies and Procedures. This sets forth the required standards of conduct relating to all procurement activities. In addition, 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 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 Virginia Public Procurement Act.

FTA Circular 4220.1F 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 which provide:

- 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 award.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 46 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

- 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.
- 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).
- 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.
- 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 the Virginia State and Local Government Conflict of Interests Act (§2.2-3100 et seq.); §18.2-446 et seq. of the Code of Virginia dealing with bribery; and Article 6 of the Virginia Public Procurement Act. 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 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.

#### 3.4. 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 47 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

### 3.5. 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 at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or approved equal" description may be used as a means to define the performance; however, when this method is used, the specification must set forth the salient characteristics that the product must meet, and vendors will be allowed to offer "equal" products meeting the salient characteristics. If only a "brand name" is specified, without the or approved equal provision, the procurement must be processed as a sole source, with the appropriate justifications completed and maintained as part of the official contract record. Specifications for bid solicitations, whether by small purchase or formal procurement, shall be sufficiently detailed to ensure that bidders may submit pricing on an "apples to apples" basis. Specifications or scopes of services for negotiated procurements may be more general and accommodate the possibility of alternative solutions or products.

### 3.6. 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 48 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

unacceptable to HRT.

### 3.7. Records

The Procurement Office 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.

### 3.8. Use of Existing Contracts

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

#### 3.8.2. 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. 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



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 49 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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 procurement staff will obtain all appropriate documentation from the original awarding agency 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.

### 3.8.3. Types of options

Generally there are three types of options which may be included in a solicitation:

#### (a) 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 time frame identified. Cost factors such as escalation or quantity discounts should be considered in evaluating the price reasonableness of such options.

#### (b) Options for additional time periods

Options for additional time periods are often used 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 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.

#### (c) 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 50 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

feasibility of obtaining reasonably accurate pricing.

### 3.9. Protests

#### 3.9.1. 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 interested party shall have the right to protest alleged inequities in the procurement process and to have its issues heard, evaluated and resolved administratively. "Interested party" is defined as an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

#### 3.9.2. Submittal Procedures

An interested party wishing to protest a matter involving a proposed procurement or contract award shall file a written submission with the Director of Procurement by certified mail or other delivery method by which receipt can be verified. Electronic submission of protests is not acceptable unless an original signed copy of the protest is received by the Director within 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 shall include, at a minimum:

- (a) 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;
- (b) Identity of the contact person for the protestor, including name, title, address, telephone, fax and email addresses. If the contact point is a third party representing the protester, the same information must be provided, plus a statement defining the relationship between the protester and the third party.
- (c) Identification of the procurement;
- (d) A description of the nature of the protest, referencing the portion(s) of the solicitation involved;
- (e) Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
- (f) A complete discussion of the basis for the protest, including all supporting facts, documents or data; and
- (g) A statement of the specific relief requested.
- (h) 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 51 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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 chapter 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) in PDF format. In case of a variance in the content of the written and CD submittals, the written version shall prevail.

HRT may decide a protest solely upon the written submission. The protest submission should therefore include all materials necessary to support the protester's position. Additional or supplemental materials may only be submitted at the request of, or with the permission of, the Director of Procurement.

If the procurement uses federal funds, an informal notice of receipt of a protest must be given to the appropriate regional office of the Federal Transit Administration (FTA). The form of notice may be specified by the regional office.

### 3.9.3. Protests of the Solicitation Process

A protest related to the technical scope or specification, terms, conditions, or form of a solicitation must be received no later than ten (10) working days prior to the date established for opening of bids or receipt of proposals; if the protest addresses an amendment to the solicitation, it must be received no later than ten (10) working days prior to the date established for opening bids or receipt of proposals or five (5) working days after the date of issuance of the amendment, whichever is later; in no event, however, may a protest of this nature be submitted after bids or proposals are received. The protest must conform in all respects to the requirements set forth in Section 3.8.2 above.

Upon receipt of such a protest, the Director of Procurement shall notify all prospective offerors and other known interested parties of the receipt and nature of the protest, and shall post a notice of the protest on the Commission's procurement web page. Unless the Director of Procurement determines that delay will be prejudicial to the interest of the Commission or that the protest patently lacks substantial merit, the solicitation process will be extended pending resolution of the protest.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 52 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

Protests will be considered and either denied or sustained, in part or in whole, by the Director of Procurement in writing. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the receipt of bids or proposals in a manner that provides verification of receipt.

A notice of the decision shall be provided to all parties given notice of the protest, and posted to the Commission's procurement web page.

Should the protest be upheld in whole or in substantial part, the contracting officer may either (1) amend the solicitation to correct the document or process accordingly; or (2) cancel the solicitation in its entirety. If the solicitation is amended, the time for receipt of bids or proposals shall be equitably extended to permit all participants to revise their bids or proposals to reflect the decision. If the protest is denied, the solicitation shall proceed as if the protest had not been filed, unless the protester pursues its protest with the Federal Transit Administration (FTA) as defined below, or otherwise appeals the decision of the Director of Procurement, as defined below.

Protests received by the Commission after the time periods specified above shall be considered untimely and may be denied on that basis unless the Director of Procurement concludes that the issue(s) raised by the protest involves substantial prejudice to the integrity of the procurement process.

#### 3.9.4. Protests of the Evaluation Process

All bidders/proposers will be notified of the recommended award, upon a determination by Commission staff of a recommendation to be made to the President/CEO, or the Board of Commissioners, as appropriate. This notice will be transmitted to each proposer at the address contained in its proposal form, and shall be posted on the procurement page of the HRT website. Transmittal may be by electronic means or by hard copy. Any proposer whose proposal is valid at the time of the staff determination may protest the recommended award on one or more of the following grounds:

- (a) That the recommended awardee does not meet the requirements of the solicitation;
- (b) That the bid or proposal recommended for acceptance does not meet the criteria of the solicitation for award;
- (c) That the evaluation process conducted by the Commission is improper, illegal, or the decision to recommend award is arbitrary and capricious.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 53 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

The protest must conform in all respects to the requirements set forth in § 8.3.2 above.

The protest must be received by the Commission at the address specified in the solicitation, no later than five (5) calendar days after the date such notification is publicly posted or sent to the bidder or proposer, whichever is earlier. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the proposer recommended for award in a manner that provides verification of receipt. Such decision shall be final, except as provided in § 3.8.6 below or by applicable law or regulation.

Upon receipt of a protest of this type, the contracting officer shall notify all offerors and any other known interested parties of the receipt and nature of the protest and request an extension of the validity period of their offers, if appropriate. Unless the Director of Procurement determines that delay will be prejudicial to the interest of the Commission or that the protest lacks substantial merit, award will be withheld pending disposition of the protest. Should one or more offerors refuse a requested extension of the validity of an offer, the contracting officer may reject such proposal unless it is determined that the protest can reasonably be resolved and the award process continued without need for such extension. Delay in an award shall be considered prejudicial to the Commission if:

- (a) The equipment, supplies or services are urgently required; or
- (b) Failure to make a prompt award will economically or operationally damage the Commission.

Should the protest be upheld in whole or in substantial part, the contracting officer may either (1) revise the evaluation process to correct the matter protested; or (2) cancel the solicitation in its entirety. In the event that the Commission proceeds with an award for one of the reasons stated above, and the protest is subsequently upheld, the Director of Procurement shall determine whether the performance of the contract will reasonably permit its termination in order to correct the protested matter. Such termination shall be for the convenience of the Commission.

### 3.9.5. Evaluation of Protests

A protest decision should ordinarily be written and published within ten (10) working days of receipt of the protest. The Director of Procurement may extend the response period if additional time is required to gather and evaluate information necessary for the decision or for other good cause. Upon receipt of a protest, the contracting officer shall notify parties involved in the procurement as identified above, and such Commission

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 54 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

personnel or others as may be appropriate or necessary to determine the validity of the protest. A notice of the receipt of a protest should be sent to the FTA regional office, per FTA Circular 4220.1F, Chapter VII, Sec. 1.a(2). Copies of the protest submittal, or portions thereof, may be provided to the notified parties as appropriate.

The Director of Procurement may request additional written information from the protestor or other parties, as necessary to determine the validity of the protest. A formal or informal hearing may be held. If a formal hearing is held, testimony shall be given under oath and a transcript or electronic recording of the proceeding shall be made; the transcript or recording shall be provided to the protestor and made part of the protest record.

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, unless the person furnishing the information consents, in writing, to distribution of the information to other interested parties.

#### 3.9.6. Decision

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 parts:

- I. SUMMARY – Describes briefly 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 55 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

Decisions shall be signed and issued by the Director of Procurement. The decision shall be issued to the protestor; other interested parties shall receive either a copy of the decision or a notice of decision, as appropriate. 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.

Decisions of the Director of Procurement may be appealed to the President/CEO by the protestor within five (5) working days after the decision is issued to the protestor. The appeal shall be in writing, addressed to the President/CEO with a copy to the Director of Procurement, and shall state with specificity the basis for the appeal. The President/CEO or designee shall review the written record of the protest and may conduct such further investigation as is deemed necessary or appropriate to reach a decision. The decision of the President/CEO will ordinarily be issued within fifteen (15) working days of receipt of the appeal; this time period may be extended if necessary to complete an investigation.

The decision of the President/CEO shall be final and conclusive, except for such remedies as state or federal law or regulation may provide.

### 3.9.7. Record of Protest

Upon receipt of a protest involving FTA funded contracts, FTA shall be notified, and shall be kept informed of the status of the protest until resolved.

Protest information to be reported to FTA includes:

1. Subject. A list of protests involving FTA funded contracts or potential contracts that:
  - (a) Have a value exceeding \$100,000, or
  - (b) Involve a controversial matter, irrespective of amount, or
  - (c) Involve a highly publicized matter, irrespective of amount.
2. Details. The following information about each protest:
  - (a) A brief description of the protest,
  - (b) The basis of disagreement, and
  - (c) If open, how far the protest has proceeded, or
  - (d) If resolved, the agreement decision reached, and
  - (e) Whether an appeal has been taken or is likely to be taken.
3. When and Where. The following information about each protest:
  - (a) In its next quarterly FTA quarterly Milestone Progress Report, and

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 56 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

(b) At its next Project Management Oversight review, if any.

4. FTA Officials to be notified. When HRT denies a bid protest, and especially if an appeal to FTA is likely to occur, HRT's FTA Regional Administrator is to be notified, or the FTA Associate Administrator for the program office administering a headquarters project directly..

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:

- (a) the protest, including supporting documentation
- (b) record of determination of protest timeliness
- (c) record of internal distribution of protest
- (d) record of notice to FTA, if federal funds are involved.
- (e) record of internal responses to protest
- (f) record of legal review
- (g) determination and findings, including supporting documentation
- (h) protester response / appeal
- (i) result of appeal
- (j) notice of cancellation of solicitation, if applicable

#### 3.9.8. Protests Filed with FTA

A protestor may file a protest with FTA only after exhausting all administrative remedies provided by the Commission, on the basis described in FTA Circular 4220.1F, Chapter VII, Sec. 1.b.

FTA's review of protests will generally be limited to allegations that (1) the Commission does not have or fails to follow its protest procedures; (2) the Commission failed to review a complaint or protest; or t(3) the issue involves violations of Federal law or regulation. The FTA is not obligated to review any protest.

Protests addressing the Commission's DBE program may be submitted to the U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, in accordance with 49 CFR Part 26 and guidance issued there under.



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 57 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

### 3.9.9. Commission Administration of Protests

The Contracting Officer or an assigned Contracting Officer shall conduct the administrative processing of protests filed with the Commission or with FTA, and shall be responsible for the processing, documenting a protest., and recommending a decision to the Director of Procurement. The Director of Procurement shall request legal counsel to review and advise concerning any legal issues involved in a protest.

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.

### 3.9.10 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 §3.8 of the Procurement Procedures Manual (PPM). The PPM contains rules for the filing and administration of protests. The contracting officer shall furnish a copy of §3.8 upon request. Chapter VII, Sec. 1.b. of Federal Transit Administration (FTA) Circular 4220.1 F addresses protests where federal funds are involved. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure; an alleged failure to follow such procedure; or violations of Federal law or regulation. A protestor must exhaust all administrative remedies with the Commission before pursuing a protest with FTA.

### 3.10 Contract Period

The period of contract performance for rolling stock and replacement parts shall not exceed five years, inclusive of options, as defined in FTA Circular 4220.1F. The length of all other contracts shall be based upon sound business judgment, including consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with the Commission, and the relative benefit to the Commission of a longer or shorter contract term. 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 58 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

date for service contracts.

3.11. Cost Principles

The Federal Acquisition Regulation Part 31 cost principles will be incorporated by reference in all contracts where allowable costs must be determined for payment (e.g., all cost reimbursement contracts), and for negotiating all fixed price contracts and modifications where costs are estimated by the contractor and then negotiated for purposes of establishing a contract price.

3.12. 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 the matrix contained in FTA Procurement Circular 4220.1F ("Circular"), Appendix D, and in Appendix A to the FTA Best Practices Procurement Manual, ("BPPM").

#### 4. FULL AND OPEN COMPETITION

4.1. Restrictions on Competition

All procurement transactions over \$3,000 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:

- (a) Unreasonable requirements placed on firms in order for them to qualify to do business.
- (b) 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, however, be established in a manner consistent with protection of the Commission's interests.
- (c) Noncompetitive pricing practices between firms or between affiliated companies.
- (d) Noncompetitive awards to any person or firm on retainer contracts.
- (e) Organizational conflicts of interest - . Organizational conflicts of interest can cause two distinct problems: bias and unfair competitive advantage. An organizational conflict of interest exists where other activities,

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 59 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

relationships, or contracts of a contractor inhibit, affect or prevent the contractor from rendering impartial assistance or advice to the Commission; 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 offeror's disclose when they believe there may be a conflict. This allows HRT the opportunity to make the determination and take the necessary action to avoid the conflict. Also, 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 conflicts of interest include, but are not limited to:

- 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;
- 3) The employee, or any member of the employee's immediate family has a financial interest arising from the procurement transaction; or
- 4) 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. By implementing mitigation methods, the consequences associated with conflicts of interest may be avoided.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 60 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

Examples of ways to mitigate conflicts of interest include, but are not limited to:

- 1) Removal of the HRT employee from the position causing the conflict;
- 2) Recusal, allowing the employee facing the conflict to abstain from participating in the procurement action causing the conflict.
- 3) A third party becoming involved to make the necessary decision impartially.
- 4) Use of an appropriate special contract clause. These clauses include but are not limited to:
  - i. Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;
  - ii. Software exclusion clauses;
  - iii. Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and
  - iv. Clauses which provide for protection of confidential data and guard against its unauthorized use.
- (f) 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.
- (g) The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.
- (h) Any arbitrary action in the procurement process.
- (i) 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.

#### 4.2. Geographic Preferences

Procurement transactions using 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 61 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

geographic preference. This requirement does not exempt contractors from state or local licensing laws. 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.

## **5. PROCUREMENT PLANNING**

### **5.1. 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, procurement, and budget. For purchases above the small purchase limit, other functions, such as risk management and the DBE office, should be involved.

### **5.2. Initiation**

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.

### **5.3. Scheduling**

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. The Project Manager should submit the completed procurement requisition form, with the required supporting documentation, to the Procurement department. The Director of Procurement should appoint a Contracting Officer for the procurement. The Director will appoint an appropriate Contracting Officer, based upon the required level of skill and expertise needed, and anticipated workloads.

### **5.4. Procurement Plan**

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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 62 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

include:

- (a) Procurement Type (IFB, RFP, etc.)
- (b) Contract Pricing (Firm Fixed Price, Fixed Unit Price, Cost Plus Fixed Fee)
- (c) Any requirement for bonding or liquidated damages
- (d) Procurement Schedule, taking into account the need date, any startup period involved, Commission schedules, and resource availability.
- (e) Involvement by other HRT staff, including the risk management and DBE functions, as well as specialized expertise in other areas that may be required.
- (f) For an RFP, identification of evaluation criteria and sub-criteria, relative weights, and potential evaluation panel members.
- (g) 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.
- (h) Identification of potential markets and vendors, utilizing all available resources, including the internet.
- (i) Identification of the need for advertising in national or specialized trade media, including their advertising lead times and deadlines, to ensure timely publication.
- (j) Identification of any special requirements for a successful procurement, such as an industry review.
- (k) Preliminary cost estimate.

#### 5.5. Scope or Specification

The Project Manager will be responsible for preparing an appropriate scope or specification, submitting the contract requisition, and entering a purchase requisition into the PeopleSoft system. The scope/specification should be transmitted to the Contracting Officer for review when the purchase requisition is initiated.

#### 5.6. Independent Cost Estimate

The independent cost estimate is the first step in determining cost / price reasonableness of a procurement. The Project Manager will be responsible for obtaining an independent cost estimate (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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 63 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

5.7. Base Solicitation Document

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

5.8. DBE 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 Risk Manager for determination of insurance requirements and to the DBE Compliance Officer 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 Manager and DBE Compliance Office with the Project Manager and they should jointly review the insurance requirements and DBE goal for appropriateness and any potential impact on competition.

5.9. Final Review

When consensus is reached upon all elements of the solicitation, the procurement schedule 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.

5.10. 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 timely fashion, and emailed (either the actual solicitation or a notice of its availability) to identified potential vendors. The Contracting Officer shall transmit the solicitation package internally to the Project Manager, Risk Manager, DBE Compliance Officer and any other appropriate HRT staff.

5.11. 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.

5.12. 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 64 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

### 5.13. 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:

- (a) Agreed-upon Procurement Plan
- (b) Approved purchase requisition
- (c) Technical specification (Scope of work)
- (d) Prospective vendors list
- (e) Independent cost estimate
- (f) Insurance requirements
- (g) DBE participation goal
- (h) Other pre-solicitation correspondence
- (i) Determination of solicitation type
- (j) Industry survey / vendor contacts (if applicable)
- (k) Determination of pricing structure
- (l) Solicitation / award schedule

## 6. METHODS OF PROCUREMENT

### 6.1. General Standards

Every competitive solicitation expected to exceed \$30,000 shall adhere to the following standards:

- 6.1.1. 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 procurement page of the Commission's website at least ten days prior to the proposal 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.
- 6.1.2. 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.
- 6.1.3. Every reasonable effort should be made to encourage the maximum number of responses. Pre-qualification 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 pre-qualified for a



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 65 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

specific procurement, the following requirements apply:

- The qualifications standards must be limited to those essential for the procurement
- Any pre-qualification list used is current.
- The prequalification process must include enough qualified sources to provide maximum full and open competition.
- 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.
- Any prequalification testing, or testing of potential approved equal products, must take into account (1) 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 to allowing completion of the testing process for that procurement;; (2) the length of time required to reasonably test the item to verify acceptability; and (3) the cost to HRT of conducting a testing process.

6.1.4. The solicitation document shall contain, at a minimum, instructions on how the response is to be prepared and submitted; 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); the basis upon which an award will be made; 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; a clear and comprehensive statement of the Commission's needs and the technical requirements to be met by the successful offeror; a set of terms and conditions intended to be used for any resulting contract; and representations and certifications as required by law or regulation, or deemed necessary by the Commission.

6.1.5. The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to the Commission's needs. The minimum bid period for competitive procurements will normally be 30 days, except in cases of urgency a shorter time may be specified. In cases

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 66 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

of a resolicitation, a shorter period may also be appropriate, if the changes to the solicitation are not substantial. Whenever a period shorter than 30 days is considered necessary, every effort will be made to contact prospective bidders to ensure they can submit bids or proposals in the desired response time.

6.1.6. 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.

6.1.7. If a question concerning a potential organizational conflict of interest arises, the Contracting Officer shall consider the impact of the conflict upon free and open competition, and consider methods of mitigating the conflict. For example, if a conflict exists as the result of knowledge obtained by the contractor under previous contracts, it may be possible to publish that knowledge to all potential vendors. The solicitation document should make it the affirmative duty of the conflicted firm to identify the conflict and propose mitigation measures, as early in the solicitation process as possible. Potential sanctions, for a firm not notifying the Contracting Officer of a potential conflict should include the rejection of an offer or termination of a contract, if the conflict is discovered after award. . A conflict involving a contractor which has assisted in the preparation of a specification or scope of services cannot be mitigated, and the contractor must be prohibited from participating in the procurement. Any solicitation and resultant contract whose scope includes the preparation of a design or specification for a follow-on procurement must include a notification to this effect.

6.1.8. After the receipt of responses to a solicitation, the Contracting Officer shall make a determination that (1) the apparently successful offer is responsive (i.e. complies with all material elements of the solicitation), (2) the offeror is responsible (i.e. possesses the technical and financial resources to successfully perform the contract, and has a satisfactory record of past performance, compliance with public policy, and integrity), and (3) the offeror is not on the Federal Excluded Parties List System.<sup>1</sup> The Contracting Officer shall also determine that the price(s) offered are fair and reasonable.

---

<sup>1</sup> <https://www.epls.gov>

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 67 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

## 6.2. Micro-purchases

Micro-purchases are those purchases up to but not exceeding \$3,000. 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, 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 may be recorded on preprinted forms or a checklist on the receipt or purchase order. The documentation shall employ terminology similar to the following:

“The price(s) paid for items hereunder are determined to be fair and reasonable, based on the following:

- (a) Adequate competition (two or more quotes received and award made to lowest)
- (b) Current price lists or off-the-shelf pricing
- (c) Catalog price
- (d) Prices found reasonable on recent previous purchases
- (e) Advertisements
- (f) Similar items in a related industry
- (g) Independent price estimate (attach documentation)
- (h) Other (cite basis)

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.

## 6.3. Small Purchases

Small purchases are relatively simple and informal solicitations for services, supplies, or other property that cost more than \$3,000 but do not exceed the small purchase limits established by the HRT Procurement Policy, State law and/or the Federal Simplified Acquisition Threshold, whichever is lowest. If small purchase procedures are used, price or rate quotations shall be solicited from an adequate number of qualified sources, ordinarily not less than four. The number of sources will depend upon the availability of qualified sources, but the objective should ordinarily be to obtain quotes from at least four vendors. If fewer than four quotes are received, the file should be documented as to the reasons therefore. Both the solicitation and quotes

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 68 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

#### 6.4. Competitive Sealed Bidding

- 6.4.1. 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.
- 6.4.2. 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 responsive bidder, other than clarifications regarding issues of responsibility or matters not affecting price, schedule, or quality.
- 6.4.3. 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.
- 6.4.4. A fixed-price contract award will be made in writing to the responsible bidder submitting the lowest responsive bid at the price stated in the bid. 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.
- 6.4.5. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs may 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.
- 6.4.6. 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 69 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

- 6.4.7. Immediately after the receipt and opening of bids, the Contracting Officer shall 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 and which complies with all requirements of the solicitation; it must represent a clear and unequivocal offer to provide the good or services specified at a stated price or prices. Exceptions to the specification or contractual terms, or ambiguous or conditional pricing shall 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.
- 6.4.8. The Contracting Officer, in consultation with other departments involved in the procurement, shall 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 shall 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 shall also review the most current version of the Excluded Parties List System published by the U.S. General Accounting Office. 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. In the event a bidder is determined non-responsive, it shall be so notified, and the responsibility of the next-lowest responsive bidder evaluated.
- 6.4.9. 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 70 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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 that might have attracted additional bidders if incorporated in the solicitation.

- 6.4.10. A bidder for a construction contract may withdraw his 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.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid 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.

Bidder shall give notice in writing of his claim or right to withdraw his bid within two business days after bid opening and shall submit original work papers with such notice.

Verification of the mistake(s) shall be completed and HRT shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid.

#### 6.5. Two-Step Sealed Bidding

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.

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

- (a) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation and

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 71 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

any necessary discussion of the technical aspects of the requirement to ensure mutual understanding between each source and the Commission.

- (b) Definite criteria exist for evaluating technical proposals.
- (c) More than one technically qualified source is expected to be available, and more than one technical solution is considered possible.
- (d) Sufficient time will be available for use of the two-step method.
- (e) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

6.5.2. 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 or more technical solutions acceptable to the Commission. As part of this process, the Contracting Officer will conduct a responsibility review of each proposer 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 proposer's technical approach.

6.5.3. 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. Award is based upon the lowest responsive price from a responsible offeror.

## 6.6. Competitive Negotiation (Sealed Proposals)

6.6.1. The competitive negotiation procurement process is conducted through a formal Request for Proposals (RFP). This method of procurement is generally used 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. Architect/engineering and related services are procured through a variation of the RFP process, as described below.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 72 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

- 6.6.2. The competitive negotiation method of procurement is appropriate when the Contracting Officer determines that the following conditions exist:
- (a) A complete, adequate, and realistic specification or purchase description is not available.
  - (b) Two or more responsible offerors are willing and able to compete effectively for the award.
  - (c) The selection of the successful offeror requires consideration of factors other than price.
  - (d) Discussions with offerors are anticipated to be needed.
- 6.6.3. Either a fixed price or cost reimbursable type contract may be awarded under this process.
- 6.6.4. 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 shall be submitted in separate volumes.
- 6.6.5. The Director of Procurement, in consultation with the Project Manager, will appoint at least three persons 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. Each panel member shall be required to disclose any potential conflict of interest, and may be excluded by the Director of Procurement on that basis. The evaluation process shall be confidential, and each participant shall sign a confidentiality agreement prior to distribution of the proposals. Technical personnel may be from other public agencies or contractors if necessary, providing there is no conflict of interest. The Contracting Officer will chair the TEP, but will not vote except in the event of an unbreakable deadlock. The evaluation process is flexible, depending upon the complexity of the procurement, the number and quality of proposals, and the dollar values involved. The process described below is for a complex, high-value procurement with a substantial number of proposers, to be awarded on a "best value" basis.
- 6.6.6. The Contracting Officer shall determine the method to be used to score technical proposals. The most common methods are adjectival ratings and numerical points. Adjectival ratings typically range



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 73 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

include “Substantially Exceeds Expectations”, “Exceeds Expectations”, “Acceptable”, “Marginal”, and “Unacceptable.” Numerical scores are typically from 5 to 1, with five representing the highest possible rating. Scoring is to be done on the basis of each individual proposal, and not on a comparative basis. TEP members shall not have access to pricing proposals (except for small purchases), to ensure that the judgment is made solely on a technical basis.

- 6.6.7. 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.
- 6.6.8. 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 the work or product specification is not precise and will allow 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.
- 6.6.9. The TEP shall 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 shall include a description of the strengths and weaknesses of each proposal identified for each factor.
- 6.6.10. The TEP shall 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.
- 6.6.11. Concurrently with the technical evaluation, the Contracting Officer will evaluate the price proposals with assistance from other HRT departments as appropriate, and prepare a spreadsheet of the prices for the items and services being procured, showing the comparative

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 74 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

prices being proposed by line item if applicable.

- 6.6.12. 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 shall 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 to five proposals is considered ideal, care should be taken not to eliminate any proposal otherwise qualified for the sake of an arbitrary number.
- 6.6.13. The remaining firms are considered to be in the “competitive range.” The TEP shall 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.
- 6.6.14. 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 price, 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.
- 6.6.15. 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 (1) eliminate some of the remaining proposals and conduct further discussions with the rest; (2) determine that all firms are still in the competitive range but that additional discussions are necessary; or (3) determine that

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 75 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

further discussions will not significantly affect the outcome of this procurement.

- 6.6.16. When the TEP reaches a determination that further discussions are not likely to significantly affect the outcome of the procurement, the Contracting Officer shall 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.
- 6.6.17. Following receipt of BAFOs, the TEP shall 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 (1) describes the technical strengths, weaknesses, and risks (if any) of the proposals in accordance with the technical evaluation criteria; (2) evaluates the proposals' estimated costs for reasonableness (for cost type contracts); or prices offered (for fixed price contracts), and (3) recommends the "best value" offer – that proposal which offers the best combination of technical merit/performance and pricing. The TEP will submit its report to the Contracting Officer, who shall either accept it or return it to the TEP if it is considered inadequate or not in accordance with the processes and outcome of the solicitation.
- 6.6.18. 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; award is made to the firm whose technically-acceptable proposal is offered at the lowest price.
- 6.6.19. The Contracting Officer shall 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 76 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

## 6.7. Architectural and Engineering (A&E) and Other Professional Services

6.7.1. HRT will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for A&E-related services as defined in the Brooks Act and FTA Circular 4220.1F or its successor. The Brooks Act requirements apply only to such services when they are procured in relation to a construction project.

6.7.2. The Brooks Act requires that:

- (a) An offeror's technical qualifications be evaluated;
- (b) Price be excluded as an evaluation factor;
- (c) A pricing proposal be requested from, and negotiations be conducted with, only the most technically- qualified offeror; and
- (d) 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.

6.7.3. 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 are 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.

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

## 6.8. Non-competitive Proposals

6.8.1. Non-competitive (Sole Source) procurements are accomplished through solicitation and acceptance of a proposal from only one

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 77 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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 subparagraph. Guidance as to what is “within the scope” of a contract may be found in the FTA Best Practices Procurement Manual, Section 9.2.1- Contract Scope And Cardinal Changes. “Tag-ons” are defined by 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 purchases threshold shall be published on the HRT website.

6.8.2. Procurement by non-competitive proposals may be used when only one 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 following circumstances applies:

- 6.8.2.1. The item is available only from one responsible source because:
- a. 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.
  - b. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
  - c. 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.
  - d. 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.

6.8.2.2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 78 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

- 6.8.2.3. FTA authorizes noncompetitive negotiations (e.g., in the original grant application and approval process);
- 6.8.2.4. Other circumstances described in Part 6.3 of the Federal Acquisition Regulations exist;
- 6.8.2.5. 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; or
- 6.8.2.6. 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.
- 6.8.2.7. 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 why 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.
- 6.8.2.8. A cost analysis is required for each sole source acquisition.
- 6.8.2.9. 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.
- 6.8.2.10. The Commission may establish and maintain a listing of sole source items not requiring justification for each purchase, providing (a) that written verification is obtained from the supplier or other authoritative source not less frequently than annually; and (b) such list is published in a manner readily

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 79 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

6.8.2.11. For each sole source award above the small purchase limit, the Commission shall, pursuant to §2.2-4303E of the Virginia Public Procurement Act, issue a written notice stating that only one source was determined to be practicably available, 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 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.

6.8.3 Unless price reasonableness can be determined, a cost analysis must be performed for each sole source contract award. 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.

## 6.9. Options

6.9.1. An option is a unilateral right in a contract by which, for a specified time, the buyer 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.

6.9.2. 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 determine the low bidder for award of the contract, exercise of the option will be

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 80 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

considered sole source procurement and must be justified as such.

6.9.3. 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 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.

6.9.4. 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.

6.9.5. The Commission may exercise options in contracts of other public agencies ("piggybacking") in accordance with FTA regulations and guidance. This process requires the following to be maintained in the official contract file:

6.9.5.1. A documented determination that the contract prices remain fair and reasonable at the time the piggy-backing takes place.

6.9.5.2. A documented verification that the contract containing the option was procured in accordance with all FTA requirements, including obtaining copies of the relevant documents from the procuring agency.

6.9.5.3. A separate contract or purchase order should be entered into between the vendor and the Commission.

6.9.5.4. Where purchases are made from state or local purchasing schedules or contracts which do not include all FRTA requirements, the necessary contract terms, 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.

#### 6.10. 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



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 81 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

manner, their use is restricted to situations in which no other type of contract is suitable. Before entering into such a contract, the Contracting Officer must prepare a written justification / documented determination that no other type of contract is feasible. Such contracts will specify a Not-to-Exceed ceiling price (a limitation of funding) that the contractor shall not exceed except at its own risk, to control cost liability. The Contracting 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.

#### 6.11. Cost Reimbursement Contracts

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

6.11.2. Prior to the use of a cost-type contract, the Contracting Officer shall 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 shall 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.

6.11.3. 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 its costs. This type of contract may also provide for other types of fee as incentives for improved performance.

#### 6.12. Cost Plus Percentage Of Cost Contracts

Contracts that 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 (a) profit, (b) indirect costs, (c) or

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 82 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

both, are prohibited by Federal statute and shall not be used.

6.13. 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 Virginia Public Procurement Act.

6.14. 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 project may also be included. Pursuant to FTA requirements, a design-build contract shall 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 Virginia Public Procurement Act.

6.15 Rolling Stock

HRT may enter into a multi-year contract to buy procurement transit vehicles (also referred to as rolling stock), with an option not to exceed five (5) years to buy additional rolling stock or replacement parts. The option(s) must be exercised no later than five (5) years after the date of the original contract.

HRT will comply with the requirements of FTA C 4220.1F, Chapter 4, Section 2.e., Rolling Stock – Special Requirements when procuring rolling stock. Special requirements include compliance with the following:

- a. Pre-award Review and Post Delivery Review, to ensure compliance with Buy America Act requirements.
- b. Transit Vehicle Manufacturer Compliance with DBE requirements \_
- c. Purchaser's Requirements certifications
- d. Federal Motor Vehicle Safety Standards (FMVSS) certifications
- e. On-Site Inspectors Report

6.16 Information Technology (IT)

IT refers to computers, computer hardware and accessories, software and telecommunications devices used to retrieve, store, or transmit information. All IT procurements are to be requisitioned, approved, and maintained by the Technology Department. HRT may use GSA schedules to acquire information technology (IT).

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 83 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

## **7. BONDING REQUIREMENTS**

### **7.1. Construction**

The Commission shall require bid, performance and payment bonds in compliance with (1) requirements for construction-related procurements as defined in FTA Circular 4220.1F, Chapter IV, §2. h, if federal funds are involved, or (2) §§2.2-4336 through 2.2-4339 of the Virginia Public Procurement Act if no federal funds are involved. FTA requires, for all construction contracts in excess of the federal small purchase threshold (currently \$100,000), that the contractor provide a bid bond equal to 5% of the bid amount; a performance bond for 100% of the contract price; and a payment bond equal to 50% of contracts not more than \$1 million; 40% of contracts over \$1 million but not more than \$5 million; and a flat amount of \$2.5 million if the contract value is more than \$5 million.

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, but requires performance and payment bonds equal to 100% of the contract price.

### **7.2. 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 Contract Administrator, the Project Manager, and the Risk Manager. In making such 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 90 days after performing the work may bring an action on the payment bond to recover any amount due him for labor or material.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 84 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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 90 days from the day the claimant

## **8. PAYMENT PROVISIONS**

### **8.1. 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. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services, rents and subscriptions. 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 (a) it is customary in the industry, or (b) 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.

### **8.2. 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; this method may not be used for non-construction contracts.

## **9. LIQUIDATED DAMAGES**

### **9.1. Risk Management**

The Commission shall determine whether to use or not to use a liquidated damages provision or a specific procurement, as part of an overall risk

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 85 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

9.2. Calculation

The amount of liquidated damages must be reasonably calculated to reflect anticipated economic damages that the Commission might suffer 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.

9.3. 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.

9.4. 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.

9.5 Disposition of Recovered Amounts

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

## **10. RECEIPT AND EVALUATION OF BIDS AND PROPOSALS**

10.1. Sealed Bids

Sealed bids must be publically advertised. This includes publishing legal notices, posting the solicitations to HRT's website, and sending the solicitation directly to all known prospective offerors. 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 Contract Administrator should check the mailroom 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 minutes prior to the deadline. The envelope of each bid received should be

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 86 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

#### 10.2. Competitive Proposals

Competitive proposals must be publically advertised. This includes publishing legal notices, posting the solicitations to HRT's website, and sending the solicitation directly to all known prospective offerors. Proposals must be received prior to the exact time specified in the RFP, and the Contract Administrator 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.

#### 10.3. Responsiveness Review

Both bids and proposals are subject to requirements of responsiveness. This review is conducted by the Contract Administrator. Usually the requirement of responsiveness for a bid is more complex than for a proposal. This is because a bid is "locked in" at the time of receipt, and proposals are subject to discussions and negotiations. As a result, many items required with a sealed bid need not be submitted with a proposal. Responsiveness looks at the submittal as of the time it was received, and an offeror cannot later correct a deficiency. Any defect in an area of responsiveness requires the rejection of the bid or proposal. As a result, the contract administrator 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 binds. 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.

#### 10.4. 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:

- Technical Capacity: Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 87 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

- **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.
- **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.
- **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 the small purchase limit shall include documentation that the awardee is not listed on the U.S. General Services Administration's Excluded Parties List System or the Virginia Division of Purchases and Supplies Debarment and Prohibited List as of a date not more than two 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. Because responsibility involves subjective judgment and the evaluation of past events, 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 Contract Administrator.

#### 10.5. File Content

The solicitation (Request for Proposal / Invitation for Bids) file shall include reasonable and adequate documentation of the procurement. File

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 88 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

documentation should be proportional to the size and complexity of the procurement. See the solicitation file checklist (Appendix B-1) for listing of required file contents

## **11.CONTRACT COST AND PRICE ANALYSIS**

### **11.1. Requirement**

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. FTA's "Pricing Guide for Grantees" provides guidance in performing the appropriate degree of cost or price analysis.

### **11.2. 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 Independent Cost Estimating Guide in Appendix B, Checklists, for detailed guidance on developing the independent cost estimate.

### **11.3. Cost Analysis**

A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, 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.

11.3.1. A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements (including 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 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.

11.3.2. 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 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



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 89 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

the surrounding geographical area for similar work.

- 11.3.3. 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 contained in Part 31 of the Federal Acquisition Regulations.

#### 11.4. Price Analysis

- 11.4.1. A price analysis looks at the price as a whole without examination of its various components.

- 11.4.2. Several techniques may be used in performing a price analysis:

- (a) Comparing prices to those obtained for previous procurements
- (b) Comparing prices to those obtained by other agencies for like items
- (c) Comparing the range of prices received for the procurement involved; a price more than 10% higher or lower than the other prices received may raise questions as to whether the bidder interpreted the bid requirements differently than did the other bidders, and may render the bid price unreasonable.
- (d) Requiring each bidder to certify that the prices offered are no higher than those charged other customers for items of similar quality and quantity.

- 11.4.3. 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.

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

## 12. CONTRACT APPROVAL REQUIREMENTS

### 12.1. Board of Commissioners Approval

All contracts for goods or non-professional services in excess of \$50,000 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.

### 12.2. President/CEO Approval

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 90 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

All contracts for goods or non-professional services in excess of \$50,000 and for professional services in excess of \$30,000 must be approved by the President/CEO in writing or his/her designee prior to award.

12.3. Director of Procurement Approval

All contracts beneath the levels stated above and above the micro-purchase limit of \$3000 shall be approved by the Director of Procurement or his/her designee.

12.4. Other

Micro-purchases, up to \$3,000, are 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 People Soft system. After completion of the system approvals, purchase orders shall be signed by the Buyer prior to issuance.

12.4. Delegations

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

12.4.1 Designated contract administrators shall be provided their authority in writing with each assigned contract. The designation letter shall remain a part of the official contract file.

12.5. Execution

12.5.1. 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.

12.5.2. 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 \$50,000 or otherwise requiring approval by the Board of Commissioners shall be signed by the President and CEO, after such preliminary approvals as he or she may direct.

12.5.3. 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 91 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

12.5.4. Signatures on all documents other than purchase orders shall be manual, in ink. Purchase orders may be signed electronically in an automated system, in accordance with electronic signature policy.

## 12.6. 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:

12.6.1. Pursuant to § 2.2-4309 of the Virginia Public Procurement Act, no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the approval of the Board of Commissioners.

12.6.2. 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.

## 12.7. Emergencies

The President/CEO may authorize the award of contracts or contract modifications exceeding the threshold for Commission approval in the following cases:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) In cases where the Board is unable to take action at its scheduled meeting (due to a lack of a quorum, for example).

In such cases, the individual identifying the emergency shall notify the President/CEO, 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 92 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

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 bids will be solicited when emergencies preclude more extensive competition.

### **13. CONTRACT AWARD ANNOUNCEMENTS**

FTA does not require announcements of contract awards utilizing Federal funds; however, when announcements of contract awards using Federal funds are made FTA policy requires that they identify (1) that FTA is or will be providing assistance, (2) the amount of FTA assistance that is provided or expected to be provided, and (3) the Catalog of Federal Domestic Assistance (CFDA) Number of the program that authorizes the Federal assistance. In addition, contracts for federally-assisted construction projects should require the contractor to post the required signage at the jobsite.

### **14. CONTRACT PROVISIONS**

#### **14.1. Sound and Complete Agreement**

All contracts require approval in accordance with Section 12, Contract Approval Requirements.

All contracts shall include provisions to define a sound and complete agreement, appropriate to the type and complexity of the project. 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. For all contracts above the small purchase limit, 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. Contracts shall 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 shall be prepared by the Procurement staff, and reviewed and approved by Procurement management prior to issuance, incorporating the Commission's standard terms and conditions applicable to the type of contract, and any other terms specified in a bid package or negotiated as part of an RFP process. HRT shall not

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 93 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

accept vendor contract forms, except under unusual conditions and with the prior approval of the Director of Procurement.

## **15. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

In accordance with the Commission's Disadvantaged Business Enterprise Policy, DBE firms shall have an opportunity to participate in awards of contracts and subcontracts. The DBE office should be involved in the planning of solicitations over the small purchase limit, in terms of both goal-setting and outreach to the DBE community. The Contracting Officer shall assist the DBE office in identifying opportunities for DBE participation, and in potential DBE firms.

## **16. 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 award, and is concluded at the completion of the warranty period for the equipment, goods and services procured. The contract administrator 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 contract administrator and the project manager is essential to the success of the project.

### **16.1. Contract Solicitation**

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

#### **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 therefore, of 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 94 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

For the procurement of rolling stock, special pre-award and post-delivery reviews to ensure compliance with the Buy America Act are required to be performed and fully documented as part of the official solicitation file. See Appendix B.13. For detailed guidance in the performance and documentation of the reviews, also see the following FTA manuals: Conducting Pre-Award and Post-Delivery Review for Bus Procurements; document FTA-DC-90-7713-93-1, Rev. B, dated May 1, 1995; and Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements, dated May 1, 1995. Links are as follows:

[http://www.fta.dot.gov/laws/leg\\_reg\\_5423.html](http://www.fta.dot.gov/laws/leg_reg_5423.html) for bus procurements; and [http://www.fta.dot.gov/laws/leg\\_reg\\_5424.html](http://www.fta.dot.gov/laws/leg_reg_5424.html) for rail procurements.

#### 16.2. 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.

#### 16.3. 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 therefore, of 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 95 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

#### 16.4. Contract Administration File Contents

The contract file shall 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 Contract File Checklist (Appendix B-2) 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.

#### 16.5. 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 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 contract administrator 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 contract administrator of technical administration files, and relevant correspondence during the performance of the work.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 96 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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.

## **17. CONTRACT MODIFICATIONS (CHANGE ORDERS)**

17.1. 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 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 general types of CO: (1) changes within the general scope of the contract; and (2) 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 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 contract administrator 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, or manufactured products of \$100,000 or higher, a Buy America certification is required.

17.2. 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,



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 97 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

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 is to be treated as a single source, and therefore requires a cost or price analysis. 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 the 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.

- 17.3. 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 Contract Administrator, in consultation with the Project Manager, must investigate whether other sources for the changed work are reasonably available, and document the file accordingly. The same process should be followed for in-scope changes, if the contractor's price cannot be determined to be fair and reasonable. Change orders are subject to negotiation, which should be undertaken jointly by the Project Manager and the Contract Administrator.
- 17.4. Contract Modifications are subject to the approval standards set forth in the policies and procedures, including Commission approval if required.
- 17.5. 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 Contract Administrator, 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 98 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

contractor may spend prior to the issuance of a formal change order.

- 17.6. The Contract Administrator shall maintain a separate file for change orders as part of the procurement record, containing the documentation described in this section.

## **18. 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 Contract Administrator 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-3).

When the PM determines that the work is complete, the PM should notify the Contract Administrator by memorandum. The Contract administrator 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 Contract Administrator should complete a Contractor Performance Evaluation Report, to document the contractor's performance for future source selection decisions. Input from the DBE office, the risk management office, and end users of the product or service should be included in the report. The contractor may be furnished with the report and given an opportunity to submit comments, rebutting statements or additional information. The Contractor's comments should be retained in the report file.

### **(b) Proof of insurance coverage**

For all contracts requiring the Contractor to maintain insurance for its products or services (e.g., professional liability or product liability insurance) beyond the end of the contract term, the contract administrator 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 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 99 of 217</b>
---	-------------------------------------	---------------------------	-----------------------------------

“Consent of Surety” provided by the surety, which must be reviewed by both the Project Manager and the Contract Administrator; 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 contract administrator 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 grantee 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 contract administrator 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:

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

(f) Close-Out Audits

In contracts paid on a cost plus basis, a close-out audit may be required to verify provisional overhead rates used for payments during the course of the contract. In addition, HRT, its auditors or FTA may require an audit to verify the appropriateness of amounts paid 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 conduct the audit; however such audits are dependent upon the availability of staff time; however, the Federal Government maintains a

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 100 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

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 FTA. Any negotiations resulting from such audits must be documented in the contract file and reported to 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 101 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## **APPENDICES**

### **APPENDIX A – QUICK REFERENCE – METHODS OF PROCUREMENT**

### **APPENDIX B – CHECKLISTS**

1. Method of Procurement Decision Matrix
2. Procurement Checklist (Under \$50,000)
3. Solicitation and Contract File Checklist
4. Evaluation Process Checklist
5. Contractor Responsibility Checklist
6. Contractor Reference Verification Checklist
7. Price Analysis (Reasonableness Determination) Price Analysis Checklist
8. Cost Analysis Checklist
9. Price Reasonableness Determination Checklist
10. Piggyback Process Checklist
11. Pre-Award Rolling Stock Reviews
12. Post-Delivery Rolling Stock Reviews
13. Contract Closeout Checklist
14. Protest File Checklist

### **APPENDIX C – FORMS**

1. Request for Quote
2. Procurement Requisition
3. Independent Cost Estimate
4. Time and Material Justification
5. Sole Source or Emergency Procurement Justification
6. Bid Opening Record
7. Contract File Review
8. Record of Procurement History

### **APPENDIX D – GENERAL CONDITIONS (Third Party Contract Provisions)**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 102 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## **APPENDIX E – OTHER RESOURCES**

1. Third Party Contract Provisions
2. Applicability of Third Party Contract Provisions
3. Certifications, Reports and Forms
4. Principal Statutes, Regulations and Resources

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 103 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

# **APPENDIX A**

## **QUICK REFERENCE METHODS OF PROCUREMENT**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 104 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 105 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

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)
<b>Threshold (Including Shipping and Handling)</b>	Up to \$3,000; unless construction up to \$2,000	More than \$3,000 (Construction more than \$2,000) up to \$100,000	>=\$50,000 Requires Commission approval	>=\$50,000 Requires Commission approval	>=\$50,000 Requires Commission approval
<b>Planning</b>	Method of Procurement Matrix	Purchase Requisition, Technical Specification or Scope of Work, cost estimate, DBE Goal if \$25,000 or higher	Procurement Requisition, Address Options, specification, vendor list, independent cost estimate, DBE Goal, Insurance requirements, schedule	Procurement Requisition, Address Options, specification, vendor list, independent cost estimate, DBE Goal, Insurance requirements, schedule	Documented justification, Procurement Requisition, Address Options, Specification or Scope of Work, independent cost estimate, Insurance requirements
<b>Obtain Quotes / Bids / Proposals</b>	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 (if expected to exceed \$30,000, a minimum of four quotes, and posted to website) Established Evaluation Criteria, Factors, and Relative Importance,	Specification Publically Advertised, Website for 10 Days minimum, Adequate number of known suppliers, Formal Sealed Bid, Open Bids Publicly	Scope of Work, Performance or Functional Specification, Publically Advertised, 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
<b>Award Purchase Order / Contract</b>	Single Quote No Competition Required	Requires Competition; Awarded to "Best Value" (usually low bid)	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
<b>Determination of Price Reasonableness</b>	Description of how price is determined fair & reasonable	Price Analysis	Competition / 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
<b>Determination of Responsibility</b>	N/A	Responsibility Checklist	Responsibility Checklist	Responsibility Checklist	Responsibility Checklist
<b>Bonding Requirements</b>	Not Required	Not Required	Required for construction over \$500,000	Usually not Required	Required for construction contracts over \$500,000
<b>Davis-Bacon Wage Rates</b>	construction contracts over \$2,000	construction contracts	construction contracts	construction contracts	construction contracts over \$2,000
<b>Buy America Certification</b>	Exempt	Exempt	Required if over \$100,000	Required if over \$100,000	Required if over \$100,000
<b>Excluded Parties List Verification</b>	Not Required	Required if \$25,000 or higher	Required	Required	Required if \$25,000 or higher

SOURCE / NETWORK PATH  
C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 106 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

<b>Documentation of Rationale / Basis for Award</b>	Price Reasonableness Determination Form	Historical Data or Written Procurement Summary	Written Procurement Summary	Written Procurement Summary	Written Procurement Summary
---	---	--	-----------------------------------	--------------------------------	--------------------------------

SOURCE / NETWORK PATH C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx
---

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 107 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

# **APPENDIX B**

## **CHECKLISTS**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 108 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 109 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

### METHOD OF PROCUREMENT DECISION MATRIX

<b>Project Title:</b>		
<b>Solicitation/ Contract/ PO#:</b>		
<p>To best determine which method of procurement is suitable, classify your situation by checking off the applicable boxes below. The planned type of contract can also be added to this checklist.</p>		
<input type="checkbox"/> <b>Micro-Purchase</b>	<input type="checkbox"/> <b>Competitive Proposals (RFP)</b>	<input type="checkbox"/> <b>Sole Source</b>
<input type="checkbox"/> Amount < \$3,000	<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 known source available
<input type="checkbox"/> <b>Competitive Procurement</b>	<input type="checkbox"/> Two or more responsible offers willing to compete	<input type="checkbox"/> Approved by FTA – Sole Source
<input type="checkbox"/> Amount > \$3,000	<input type="checkbox"/> Discussion needed with offerors after receipt of proposal, prior to award	<input type="checkbox"/> Sole Source Justification approved by Procurement Director or Deputy 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"/> <b>Time &amp; Material Contract (Subset of RFP)</b>	<input type="checkbox"/> Competition is inadequate after public solicitation
<input type="checkbox"/> <b>Sealed Bid (IFB)</b>	<input type="checkbox"/> Fixed price cannot be set for work	<input type="checkbox"/> <b>Emergency Procurement (Subset of Sole Source)</b>
<input type="checkbox"/> Complete & adequate specification or purchase description	<input type="checkbox"/> Complete extent of work unknown, whether time, or material use, or both	<input type="checkbox"/> Emergency action required due to health and safety issue, damage to property, a threat to public safety or the environment, or the disruption of transit service or other essential functions of HRT.  <b>Specify:</b>
<input type="checkbox"/> Two or more responsible bidders willing to compete	<input type="checkbox"/> <b>Two-Step Negotiated Procurement</b>	
<input type="checkbox"/> Selection can be made on basis of price	<input type="checkbox"/> Engineering Services	
<input type="checkbox"/> Procurement suitable for firm, fixed price	<input type="checkbox"/> Architectural Services	
<input type="checkbox"/> No discussion with bidders needed after receipt of offers	<b>Planned Type of Contract:</b>	
Signature:	Date	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 110 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 111 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

PROCUREMENT CHECKLIST (Under \$50,000)	
PURCHASE ORDER NUMBER	
REQUISITION NUMBER	
This form is to be completed, and maintained in the procurement file, for all purchases under \$50K.	
<b>Check all that apply)</b>	
<input type="checkbox"/> Purchase Order	
<input type="checkbox"/> Terms and Conditions	
<input type="checkbox"/> Insurance Certificate (if required)	
<input type="checkbox"/> Fair & Reasonable Form	
<input type="checkbox"/> Copies of all quotes received (in ascending order)	No. of Quotes received _____
<input type="checkbox"/> Copy of solicitation with names of vendors solicited	
<input type="checkbox"/> Sole Source justification (if required)	
<input type="checkbox"/> Copy of requisition (with attachments)	
<input type="checkbox"/> Misc. Documents:	
Buyer Signature:	
Date	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 112 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 113 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

## SOLICITATION AND CONTRACT FILE CHECKLIST

**CONTRACT NUMBER & TITLE:** \_\_\_\_\_

**CONTRACT ADMINISTRATOR:** \_\_\_\_\_

Section 1	CONTRACT FILE DOCUMENTATION	Section 2	SOLICITATION FILE DOCUMENTATION
A	<input type="checkbox"/> Task Orders	A	<input type="checkbox"/> Procurement Summary (over \$50,000)
B	<input type="checkbox"/> Contract Modifications / Change Orders	B	<input type="checkbox"/> Method of Procurement Decision Matrix
C	<input type="checkbox"/> Contract	C	<input type="checkbox"/> Procurement Requisition
D	<input type="checkbox"/> Notice of Award / Notice to Proceed	D	<input type="checkbox"/> Amendments
E	<input type="checkbox"/> PeopleSoft Purchase Order	E	<input type="checkbox"/> Solicitation (IFB, RFP, RFQ)
F	<input type="checkbox"/> External Correspondence	F	<input type="checkbox"/> Independent Cost Estimate and Price Reasonableness Determination
G	<input type="checkbox"/> Internal Correspondence	G	<input type="checkbox"/> Legal Notices and Website Posting
H	<input type="checkbox"/> Cost / Price Analyses (required for each Task Order and Modification)	H	<input type="checkbox"/> Plan Holder's List
I	<input type="checkbox"/> Performance and Payment Bonds	I	<input type="checkbox"/> Pre-Proposal / Bid Conference Attendee List
J	<input type="checkbox"/> Certificate(s) of Insurance	J	<input type="checkbox"/> Pre Proposal / Bid Conference Presentation
K	<input type="checkbox"/> Contract Closeout Documentation	K	<input type="checkbox"/> Questions and Answers (Q&A)
L	<input type="checkbox"/> Contractor Performance Evaluation	L	<input type="checkbox"/> Approved Equal Requests and Responses
	<b>ROLLING STOCK ONLY:</b>	M	<input type="checkbox"/> Bid Opening Record and Attendee List
M	<input type="checkbox"/> Pre-Award Buy America Review	N	<input type="checkbox"/> Offer Evaluation Documentation (EPLS, Va. Debarment and Prohibited List, Tech Review, Financial, Reference Verification, etc.)
N	<input type="checkbox"/> Post-Delivery Buy America Review	O	<input type="checkbox"/> Request for Best and Final Offers and BAFOs
O	<input type="checkbox"/> Purchaser's Requirements Certification	P	<input type="checkbox"/> Record of Late Offers and Return
P	<input type="checkbox"/> Federal Motor Vehicle Safety Standards (FMVSS) Certification	Q	<input type="checkbox"/> Post Opening Survey Documentation
Q	<input type="checkbox"/> On Site Inspector's Report	R	<input type="checkbox"/> Internal Correspondence
R	<input type="checkbox"/> <b>ADDED TO ACCESS DATABASE</b>	S	<input type="checkbox"/> Approvals: O&O, Commission Minutes, Dept. Chief, Legal, CEO (as applicable)

SOURCE / NETWORK PATH  
C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 115 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

## **EVALUATION PROCESS CHECKLIST**

The 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.

### **Review Basics of RFP Evaluation Process with Emphasis on**

- Review "GUIDANCE FOR EVALUATION PANEL MEMBERS" document:
  - ☐ Evaluation Panel members must hold the proposals in strict confidence.
  - ☐ Do not discuss the proposals with anyone except other Evaluation Panel members 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 contact must be documented.
  - ☐ Explore for 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.
- Discuss 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 in writing to the Procurement Lead, who will forward them to the proposers. Written responses are received by the Procurement Lead and are distributed to the Evaluation Team members.
  - ☐ 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 116 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

- ☐ Reference Verification. 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.
- ☐ The Procurement Lead will be responsible for scoring the price component of the RFP.
- Discuss Oral Presentations and Best and Final Offer process
  - ☐ Decide the criteria to use for bringing in proposers for Oral Presentations. Discuss how any Oral Presentations will be scored.
  - ☐ Decide the criteria to use for evaluating Best and Final Offers (BAFO). Discuss how BAFO will be scored.
- 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.
- Prepare and discuss the evaluation panel Report (if applicable)
  - ☐ Explain the purpose and content of the Evaluation Team Report.
  - ☐ Explain who will draft the report.
  - ☐ Explain signature requirements on the report for evaluators.
  - ☐ Explain the process to express disagreement with the report.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 117 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

### CONTRACTOR RESPONSIBILITY CHECKLIST

**SOLICITATION NUMBER:** \_\_\_\_\_

**CONTRACTOR / VENDOR:** \_\_\_\_\_

A contractor review is required, prior to award, to determine that the contractor is responsible and capable to perform the work as specified.

VERIFICATION DOCUMENTATION	NOTES
<input type="checkbox"/> Excluded Parties List System (EPLS)	
<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 Bond, 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	
<b>➤ Is Contractor Deemed Responsible?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
Basis for Responsibility Determination:	
Signature of Contract Administrator	
Date	
Signature of Reviewer:	
Date	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 118 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 119 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

<b>CONTRACTOR REFERENCE VERIFICATION CHECKLIST</b>		
<b>Use the checklist below when contacting references supplied by contractor.</b>		
Company name		
Reference Name		
Date of Reference Verification		
<b>Questions to Ask</b>		
What type of project was performed ?		
When was the project performed ?		
Basis of Award to this company, i.e. Why did you decide to hire this company?		
What was the best aspect about working with this company ?		
Were there any issues / problems? How were they resolved?		
<b>How would you rate this company on a scale from 1 to 5: 1 being the lowest; 5 being the highest? Document responses.</b>		
<b>Performance</b>	<b>Rating</b>	<b>Notes</b>
1. Quality of Work		
2. Ease to Work With		
3. Adherence to Schedule		
4. Adherence to Contract		
5. Value Added		
6. Effectiveness of Communication		
7. Willingness to Work through Problems		
8. Honesty & Trustworthiness		
9. Management of Staff		
10. Delivered what was Promised		
11. Administration (invoicing, etc.)		
12. Change Orders		
<b>Compute total score, maximum score of 60. (12 Questions x 5).</b>		
Excellent		A score between 52 – 60
Good		A score between 40 – 52
Average		A score between 30 – 39
Fair		A score between 20 – 29
Poor		A score below 20

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 120 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 121 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

**PRICE ANALYSIS (REASONABLENESS DETERMINATION)  
PRICE ANALYSIS CHECKLIST**

<b>PROJECT TITLE</b>		
<b>Solicitation / Contract No.</b>		
A price analysis is a review of lump sum pricing to make a determination of reasonableness. It may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed contract price. It does not include a detailed analysis of the cost elements. This worksheet and supporting documentation should be maintained in the official procurement file.		
<input type="checkbox"/> Competition (documentation of at least 2 attached)	No. of Quotes Obtained	
<input type="checkbox"/> Independent Cost Estimate	% Variance	
<input type="checkbox"/> Price is within an acceptable increase	% Increase from Prior	
<input type="checkbox"/> Commercial Catalog / Published Price List	Page Number:	Catalog Date:
<input type="checkbox"/> Comparison of Historical Purchases of Same or Like Item / Services	PO / Contract No.	
<input type="checkbox"/> Comparison of Prices obtained by other Agencies for Like Item / Services	Date Last Purchased	
<input type="checkbox"/> Required Offeror to certify that the price(s) offered are no higher than those charged other customers for items of similar quality and quantity	Price Last Purchased	
<input type="checkbox"/> Action is the result of a competitively bid State or Municipality Contract that has provisions for use by Commonwealth of Virginia agencies and/or political sub-divisions for goods, supplies, or services	State Contract Number:	
	Contract Date:	
<input type="checkbox"/> Price has been established as fair and reasonable through negotiation with awardee. The original price of \$                      was lowered to \$		
<input type="checkbox"/> 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 to be fair and reasonable.		
<input type="checkbox"/> Awardee is Original Equipment Manufacturer and /or only known distributor for this (these) item(s). Pricing quoted to HRT does not differ from those quoted to any other customer.		
<input type="checkbox"/> Other: (List specific reasons, i.e. valid requisition estimate, minimum order quantity, high priority of delivery, etc.)		
Signature:		Date

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 122 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 123 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

### COST ANALYSIS CHECKLIST

<b>PROJECT TITLE</b>	
<b>Solicitation / Contract No.</b>	

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
<b>Labor</b> (Details Attached)			\$
<b>Labor Burden</b> (%)	%		\$
<b>Total Labor</b>	\$		\$
<b>Material</b> (Details Attached)			\$
<b>Material Handling Fee</b>	%		\$
<b>Equipment</b> (Details Attached)			\$
<b>Equipment Markup</b>	%		\$
<b>Other Direct Costs</b> (Details Attached)			\$
<b>Subcontractor Costs</b> (Details Attached)			\$
<b>Subcontractor (markup)</b>	%		\$
<b>Negotiated Profit</b> (Documentation attached)			\$
<b>TOTAL</b>			\$

**Signature:**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 124 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 125 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

PRICE REASONABLENESS DETERMINATION CHECKLIST		
<b>Purchase Order Number</b>		
<b>Requisition Number</b>		
This form is to be completed, and maintained in the procurement file, for all purchases.		
<b>PRICING IS DETERMINED TO BE FAIR AND REASONABLE BASED ON (check all that apply)</b>		
<input type="checkbox"/> Competition (documentation of at least 2 attached, 4 preferred)	No. of Quotes Obtained (See Page 2)	
<input type="checkbox"/> Price is within an acceptable increase	% Increase from Prior	
<input type="checkbox"/> Commercial Catalog / Published Price List	Page Number:	Catalog Date:
<input type="checkbox"/> Comparison of Historical Purchases of Same or Like Item / Services	PO / Contract No.	
<input type="checkbox"/> Comparison of Prices obtained by other Agencies for Like Item / Services	Other Agency	
<input type="checkbox"/> Required Offeror to certify that the price(s) offered are no higher than those charged other customers for items of similar quality and quantity	Date Last Purchased	
	Price Last Purchased	
<input type="checkbox"/> Action is the result of a competitively bid State or Municipality Contract that has provisions for use by Commonwealth of Virginia agencies and/or political sub-divisions for goods, supplies, or services	State Contract Number:	
	Contract Date:	
<input type="checkbox"/> Price has been established as fair and reasonable through negotiation with awardee. The original quote of \$ _____ was lowered to \$ _____		
<input type="checkbox"/> Awardee has shown a high degree of technical competence and adherence to HRT's business performance requirements. Past competitive pricing transactions with this vendor was determined to be fair and reasonable.		
<input type="checkbox"/> Awardee is Original Equipment Manufacturer and /or only known distributor for this (these) item(s). Pricing quoted to HRT does not differ from those quoted to any other customer.		
<input type="checkbox"/> Other: (List specific reasons, i.e. valid requisition estimate, minimum order quantity, high priority of delivery, etc.)		
Buyer Signature:	Date	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 126 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

DOCUMENTATION OF QUOTES		
RFQ ISSUED TO	QUOTE OBTAINED	NOTES

SOURCE / NETWORK PATH C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx
---

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 127 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

### **PIGGYBACK PROCESS CHECKLIST**

**Definition:** Piggybacking is the post award use of a contractual document / process that allows someone who was not contemplated in the original procurement to purchase the same supplies / equipment through that original document / process. To document the substantiation of piggybacking / assignment of an existing agreement, the following is required:

- ☐ 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?
- ☐ Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?
- ☐ Did the contractor submit the certifications required by federal regulations? See BPPM Section 4.3.3.2.
- ☐ Does the contract contain clauses required by federal regulations? See BPPM Appendix A1.
- ☐ 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?
- ☐ If this piggybacking action represents the exercising of an option in the contract, is the option provision still valid?
- ☐ 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.
- ☐ If the contract is for rolling stock or replacement parts, does the contract term comply with FTA's five year term limit?
- ☐ 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?

Procurement Lead Signature:	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 128 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 129 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

## ROLLING STOCK PRE-AWARD REVIEW

<b>Rolling Stock:</b>	
<b>Requisition Number:</b>	

### Pre-Award Review (Before signing a contract with a supplier)

#### **Buy America Certification**

☐ Reviewed and Verified 60 Percent Domestic Content;

**AND**

☐ Reviewed and Verified Proposed U.S. Final Assembly Location, Operations, and Total Cost

**OR**

☐ Requested and Received Buy America Waiver

#### **Purchaser's Requirements Certification**

☐ Checked Bid Specification Compliance with Solicitation Specifications;

**AND**

☐ Completed Manufacturer Capability Study

#### **FMVSS (Federal Motor Vehicle Safety Standards) Certification**

☐ Requested and Received Manufacturer's Letter Stating:  
The Information to be Included on the FMVSS Stickers

**OR**

☐ The Rolling Stock Is Not Subject to FMVSS

**Note: All certifications must be kept on file. Supporting documentation should accompany each certification.**

\_\_\_\_\_  
**Contract Administrator Signature  
Date**

\_\_\_\_\_  
**HRT Official Signature  
Date**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 130 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 131 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

## ROLLING STOCK POST-DELIVERY REVIEW

<b>Rolling Stock:</b>	
<b>Contract Number:</b>	

### Post-Delivery Review (Before using the Rolling Stock in transit service)

#### **Buy America Certification**

☐ Reviewed and Verified 60 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**

☐ 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 (Federal Motor Vehicle Safety Standards) 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.**

\_\_\_\_\_  
**Contract Administrator Signature  
Date**

\_\_\_\_\_  
**HRT Official Signature**

\_\_\_\_\_  
**Date**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 132 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 133 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

### **CONTRACT CLOSEOUT CHECKLIST**

<b>CONTRACT No.</b>			
<b>Contractor:</b>	<b>Substantial Completion Date:</b>		
<b>Closeout Item</b>	<b>Responsible Party</b>	<b>Due Date</b>	<b>Status</b>
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	DBE officer		
Final DBE Form E-2 from DBE Subcontractors	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

SOURCE / NETWORK PATH C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx
---

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 134 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 135 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

## PROTEST FILE CHECKLIST

**SOLICITATION/CONTRACT NUMBER:** \_\_\_\_\_

**CONTRACTOR / VENDOR:** \_\_\_\_\_

Note: *Protests file should be maintained separately from the contract file.*

PROTEST FILE DOCUMENTATION	NOTES
<input type="checkbox"/> Protest	
<input type="checkbox"/> Record of Notification of Protest to FTA	
<input type="checkbox"/> Record of Determination of Protest Timeliness	
<input type="checkbox"/> Record of Internal Distribution of Protest	
<input type="checkbox"/> Record of Notification to Interested Parties	
<input type="checkbox"/> Determination of Findings (with supporting documentation)	
<input type="checkbox"/> Record of Internal Responses to Protest	
<input type="checkbox"/> Record of Decision	
<input type="checkbox"/> Record of Legal Review (if applicable)	
<input type="checkbox"/> Protester Response / Appeal	
<input type="checkbox"/> Record of Result of Appeal	
<input type="checkbox"/> Notice of Cancellation of Solicitation (if applicable)	
<input type="checkbox"/> Record of Notification of Decision to FTA	
<input type="checkbox"/> Other:	
<input type="checkbox"/>	
Notes:	
Signature of Contract Administrator:	Date
Signature of Approver:	Date

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 136 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 137 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

# **APPENDIX C**

## **FORMS**

SOURCE / NETWORK PATH C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx
---

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 138 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

## Request For Quote

# Hampton Roads Transit – Light Rail

3404 Mangrove Ave  
Norfolk, Virginia 23502  
757-222-6113  
Fax 757-222-6049  
mgoode@hrtransit.org

Bidder:  
Estimated Freight:  
Lead Time:

### **BID DETAILS:**

**RFQ Date:** 5T  
**RFQ Due Date:** 5T  
**RFQ Due Time:** 12:00 pm  
**Reference RFQ #:** XXXX

[illegible]

SOURCE / NETWORK PATH  
C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 140 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 141 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

PROCUREMENT REQUISITION			
Project Title		SHADED AREA FOR PROCUREMENT USE ONLY	
Date of Request		Solicitation No.	
Requesting Department		Contract Specialist	
Project Manager		DBE Participation Goal	%
Funding Source			
Requisition Number			
Requested Contract Award Date (see processing times below)			
Budget Checked and Approved		<input type="checkbox"/> Yes <input type="checkbox"/> No (explanation required)	
Prospective Bidders List Attached		<input type="checkbox"/> Yes <input type="checkbox"/> No (explanation required)	
Cost Estimator			
Independent Cost Estimate (ICE)		\$	
NOTE: ICE must be substantiated by providing details and supporting documentation.			
<input type="checkbox"/> New Contract	<input type="checkbox"/> Change Order / Modification	<input type="checkbox"/> Expiring Contract	<input type="checkbox"/> Other _____

Expiring Contract Number:	
People Soft Purchase Order Number:	
Contract Expiration Date:	
Project Manager (if different from above):	
<p><b>Requester</b>, you are required to provide a detailed <u>scope of work</u>, a <u>cost estimate</u>, and a <u>listing of prospective vendors</u> with your requisition.</p> <p>A fully detailed and supported independent cost estimate (ICE) is required prior to bid opening or receipt of proposals. Procurement cannot complete the acquisition or change process without the scope, ICE and supporting documentation, and contract period of performance. You will be notified in writing of any deficiencies upon completion of the review of your data input.</p> <p>A Scope of Work checklist, estimate guide and estimate forms are provided as attachments to assist you in completing the required information.</p> <p><b>Processing Times from receipt of Publication Ready Scope and Estimate (\$50,000 and higher, \$30,000 if for professional services):</b></p>	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 142 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

Request for Proposals, 90 days;  
Sealed Bids, 60 days;  
Change Order / Modifications, 7 days

**Project Title**

**SCOPE OF WORK: Use continuation sheet as required**

SOURCE / NETWORK PATH  
C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 143 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

### INDEPENDENT COST ESTIMATE

<b>Date of Estimate:</b>						
<b>Description of Goods / Services:</b>						
<b>Method of Obtaining the Estimate:</b>						
Published Price List		<input type="checkbox"/>		Independent Third Party Estimate		<input type="checkbox"/>
Past Pricing (include date)		<input type="checkbox"/>		Other (Specify):		<input type="checkbox"/>
Engineering or Technical Estimate		<input type="checkbox"/>				
<b>Total Cost Estimate (Cost Breakdown Below): \$</b>						
<b>Cost of Standard Items</b>						
Product	Cost (\$/ ea) Shipping Included		Cost (\$ / ea) Without Shipping		Notes / Data Source	
<b>Cost of Services, Repairs, or Non-Standard Items</b>						
<b>Item / Task:</b>						
Labor Classification OR Non-Standard Item	Labor Rate	Hours	Materials	Other Direct Costs	Markup (Overhead / Profit / Fee)	Total
<b>Preparer's Signature:</b>						

☐ Check if Continuation Page Applies

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 144 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

INDEPENDENT COST ESTIMATE (Continuation Sheet)						
Cost of Standard Items						
Product	Cost (\$/ ea) Shipping Included		Cost (\$ / ea) Without Shipping		Notes / Data Source	
Cost of Services, Repairs, or Non-Standard Items						
Item / Task:						
Labor Classification OR Non-Standard Item	Labor Rate	Hours	Materials	Other Direct Costs	Markup (Overhead / Profit / Fee)	Total



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 145 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

## TIME AND MATERIAL JUSTIFICATION

<b>Project Title:</b>						
<b>Date:</b>		<b>Contract No.</b>	<b>Change No:</b>			
<b>Basis of Award / Modification:</b>						
Differing Site Condition  <input type="checkbox"/>	Coordination Issue  <input type="checkbox"/>	Change in Scope  <input type="checkbox"/>	Conflict in Drawings  <input type="checkbox"/>	Design Clarification  <input type="checkbox"/>	Info Not on Docs  <input type="checkbox"/>	* Other:  <input type="checkbox"/>
<b>Order of Magnitude Cost:</b>		\$				
* Specify:						
<b>Not to Exceed Ceiling: \$</b>						
<b>Description of Award / Change:</b>						
<b>JUSTIFICATION FOR T&amp;M (Facts and References):</b>						
<b>Recommendation:</b>						
<b>Prepared by:</b>			<b>Concurred by:</b>			
<b>Project Manager</b>		<b>Date</b>	<b>Contract Administrator</b>		<b>Date</b>	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 146 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 147 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

SOLE SOURCE OR EMERGENCY PROCUREMENT ACTION	
Date:	
To:	Procurement Department
From:	
Subject:	<input type="checkbox"/> Sole Source Procurement Justification
	<input type="checkbox"/> Emergency Procurement Justification
Proposed Vendor:	
Nature / Description of Proposed Procurement:	
Basis / Justification:	
Price Estimate:	\$
Funding Source:	
Proposed Vendor's Unique Qualifications:	
Requester:	
Date	
Approval:	
Date	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 148 of 217</b>
---	-------------------------------------	---------------------------	------------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 149 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## BID OPENING RECORD

### SOURCE SELECTION INFORMATION

**Solicitation No. / Title** \_\_\_\_\_

**Bid Opening Date / Time** \_\_\_\_\_

**Below are unofficial, AS READ results at Bid Opening. Bid Results are not official until completion of bid evaluations.**

Bidder	Name of Bidder	Bid Bond	Total Bid	DBE Participation Goal %	Bidder DBE Commitment %	Responsive Bid (Y/N)	Bid Rejected (Reason)
1							
2							
3							
4							
5							
6							
7							
8							
	Procurement Official Signature						
	Date						

SOURCE / NETWORK PATH  
C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 150 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 151 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

<b>CONTRACT FILE REVIEW</b>			
<b>FILE NO.</b>		<b>TITLE:</b>	
<b>Project Manager</b>		<b>Contract Administrator</b>	
<b>Type of Review:</b>			
<input type="checkbox"/>	<b>Pre-Solicitation</b>		
<input type="checkbox"/>	<b>Solicitation</b>		
<input type="checkbox"/>	<b>Pre-Award</b>		
<input type="checkbox"/>	<b>Contract</b>		
<input type="checkbox"/>	<b>Close Out</b>		
<input type="checkbox"/>	<b>Other</b>		
<b>Submitted By:</b>		<b>Date:</b>	
<b>Exceptions:</b>		<b>Corrected</b>	<b>By:</b>
1.		<input type="checkbox"/>	
2.		<input type="checkbox"/>	
3.		<input type="checkbox"/>	
4.		<input type="checkbox"/>	
5.		<input type="checkbox"/>	
6.		<input type="checkbox"/>	
<b>NOTES:</b>			
<b>Approved By:</b>		<b>Date:</b>	

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 152 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 153 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**RECORD OF PROCUREMENT HISTORY**  
**(Required for procurements of \$50,000 or higher; \$30,000 for Professional Services)**

Date: \_\_\_\_\_

RFP / IFB / Contract No. \_\_\_\_\_

Modification No. \_\_\_\_\_

Date of Receipt of Offer \_\_\_\_\_

Date of Public Advertising \_\_\_\_\_

Method of Public Advertising \_\_\_\_\_

**Procurement Method**

This acquisition is being accomplished by (check one):

Full and Open Competition ☐

Other than Full and Open Competition ☐

Reasons for Other Than Full and Open Competition:

\_\_\_\_\_

**Contract Type**

Firm Fixed Price ☐

Fixed Unit Price ☐

Lump Sum ☐

Cost Plus Fixed Fee ☐

Indefinite Delivery Indefinite Quantity (IDIQ) ☐

Agreement ☐

Time and Material ☐

If T&M, List Not-To-Exceed Ceiling Price ☐ \_\_\_\_\_

If T&M, Estimated Date of Final Price Negotiation ☐ \_\_\_\_\_

**Basis for Contractor Selection:**

\_\_\_\_\_

\_\_\_\_\_

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 154 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

Offeror's Name \_\_\_\_\_

Offeror's Address \_\_\_\_\_

Business Size and Type (Small, Large, DBE) \_\_\_\_\_

Offeror's Proposed Price \$ \_\_\_\_\_

### **Procurement Description (Briefly describe the procurement)**

<b>Pricing Structure</b>		<b>Pre-Negotiation Objective</b>
Cost	\$ _____	\$ _____
Fee/Profit	\$ _____	\$ _____
Total Price	\$ _____	\$ _____

Delivery or Performance Period: \_\_\_\_\_

### **Points of Contact:**

Procurement \_\_\_\_\_

Technical \_\_\_\_\_

## **PART A      INTRODUCTION**

1. In this paragraph, 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? What is it for? Quantity? If this is a contract modification, what events or circumstances contributed to the needed change? State HRT's independent estimated cost estimate amount.

2. In this paragraph, address the extent of competition under the acquisition. Is the acquisition being accomplished under full and open competition? If other than full and open, include a statement regarding sole source justification and approval. Additionally, was the requirement publicized in accordance with procurement policy and procedure? (If not, cite the exception.) How many requests for solicitations were received? How many offers were received? What were the results of post opening phone survey?

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 155 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

3. In this paragraph, include your planned negotiation schedule, and identification of HRT's evaluation panel / negotiating team members by name and position.				
<b>Part B</b>	<b><u>SPECIAL FEATURES, REQUIREMENTS AND PRE-NEGOTIATION COMPLIANCE</u></b>			
The following items should be addressed for all negotiated acquisitions:				
1. The use of sealed bid procedures is not appropriate for this acquisition because:				
2. The prospective contractor(s) has/have been determined to be responsible technically and are financially stable.			Yes <input type="checkbox"/>	No <input type="checkbox"/>
The following major subcontractors have been reviewed and found to be technically responsible and are financially stable:				
3. The prospective contractor(s) is/is not on the list of "Excluded Parties List System (EPLS)."			Yes <input type="checkbox"/>	No <input type="checkbox"/>
4. The prospective contractor(s) is/is not on the Virginia list of "Debarred Contractors"			Yes <input type="checkbox"/>	No <input type="checkbox"/>
The following items should be included when applicable:				
5. Pre-contract cost in the amount of \$_____ for the period_____ were approved by (name of individual).				
6. Authority to enter into a contract was approved by (name of individual).				
7. The offeror has submitted "Cost or Pricing Data."			Yes <input type="checkbox"/>	No <input type="checkbox"/>
8. The major subcontractor(s) has / have submitted "Cost or Pricing Data."			Yes <input type="checkbox"/>	No <input type="checkbox"/>
9. The offeror(s) has/have an adequate accounting system as determined by (name of individual). (Cost reimbursement contracts, fixed price, contracts containing progress payment provisions.)			Yes <input type="checkbox"/>	No <input type="checkbox"/>
10. Address any deviations, special clauses or conditions anticipated.				
<b>Part C</b>	<b><u>Cost and Profit / Fee Analysis</u></b>			
Compare in summary the offeror's proposal, the independent cost estimate, audit of offeror's cost, and / or other recommendations, and the pre-negotiation objective.				
Cost Element	Offer's Proposal	Independent Cost Estimate	Pre-Negotiation Objective	Numbered Notes

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 156 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

Direct Labor				
Labor Burden				
Direct Material				
Material Handling				
Other Direct Costs				
Overhead				
Fee				
Total				

The above is an example of the various cost elements that should be reviewed when performing a cost analysis of a proposal. These elements are not to be interpreted as all-encompassing because the cost elements of each offeror may be different.

**PART D**      **TYPE OF CONTRACT CONTEMPLATED**

Explain the type of contract contemplated and the rationale for selection. If this pre-negotiation memorandum is being written for a modification to an existing contract, you must also address the contract type.

**PART E**      **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, and your intended negotiation strategy.

**PART F**      **NEGOTIATION APPROVAL SOUGHT**

Give your specific recommendation similar to the following:

"Approval of this Pre-Negotiation Memorandum is recommended based upon the information set forth herein and authority to negotiate and enter into a contract is requested. It is considered the opinion of the negotiator that HRTs pre-negotiation objectives are realistic and can be achieved."

Prepared By: \_\_\_\_\_

Date: \_\_\_\_\_

(Signature and Title)

Reviewed By: \_\_\_\_\_

Date: \_\_\_\_\_

(Signature and Title)

SOURCE / NETWORK PATH

C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 157 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

Approved By: \_\_\_\_\_

(Name and Title)

Date: \_\_\_\_\_

SOURCE / NETWORK PATH

C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 158 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 159 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## APPENDIX D

### GENERAL CONDITIONS (THIRD PARTY CONTRACT PROVISIONS)

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 160 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 161 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**APPENDIX D  
GENERAL CONDITIONS  
TABLE OF CONTENTS**

<b>Number</b>	<b>Title</b>
1	Definitions and Acronyms
2	Changes
3	Order of Precedence
4	Assignment and Delegation
5	Authority of Owner's Representative
6	Flowdown
7	Subcontracting
8	Disadvantaged Business Enterprise (DBE) Requirements
9	Invoices
10	Payments
11	Withholding of Payments
12	Availability of Funds
13	Conditions Affecting the Work
14	Governing Law
15	Waiver of Conditions
16	Notice of Intent to File a Claim
17	Severance
18	General Insurance Requirements
19	Onsite Safety and Security
20	Environmental, Safety and Health Standards Compliance
21	Hazardous Chemicals and Wastes
22	Environmental Management and Sustainability
23	Warranty
24	Inspection of Services
25	Title and Risk of Loss
26	Delivery
27	Materials and Workmanship
28	Suspension
29	Delay of Work
30	Stop Work Order
31	Disputes
32	Termination for Default
33	Termination for Convenience
34	Conflict of Interest
35	Covenant Against Contingent Fees
36	Gratuities

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 162 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

37	Collusion
38	Indemnification
39	Cost or Pricing Data
40	Drug-Free Workplace
41	Privacy Act
42	Intelligent Transportation Systems (ITS) Requirements
43	Work on Agency Property
44	Ownership of Works and Inventions
45	Notices and Communications
46	Brand Name or Approved Equal
47	Federal Funding and Incorporation of Federal Transit Administration (FTA) Terms
48	Federal Changes
49	Access to Records
50	Federal Energy Conservation Requirements
51	Civil Rights Requirements
52	Nondiscrimination Under Federal Grants
53	No Government Obligation to Third Parties
54	Program Fraud and False or Fraudulent Statements or Related Acts
55	Suspension and Debarment
56	Recycled Products
57	Clean Air and Water
58	Compliance with Federal Lobbying Policy
59	Buy America
60	Seismic Safety
61	ADA Access
62	Cargo Preference
63	Fly America
64	Sensitive Security Information
65	Seat Belt Use
	<b>Construction Contract Terms</b>
66	Construction Definitions and Acronyms
67	Performance and Payment Bond
68	Davis-Bacon, Copeland and Contract Work Hours & Safety Standards
69	Quality Control / Quality Assurance
70	Differing Site Conditions
71	Retainage
72	Reduction of Retainage
73	Cooperation with Other Contractors
74	Variation in Estimated Quantity
75	Prosecution and Progress of Work
76	Final Payment and Release of Liens / Claims

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 163 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## GENERAL CONDITIONS

### 1. DEFINITIONS AND ACRONYMS

**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 HRT, 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. **Contract Administrator** 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 Contract Administrator acting within the limits of authority delegated by the Contract Administrator. The term **Contracting Officer** may also be used to delineate this responsibility.

**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 HRT 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.

**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 HRT's overall objective or endeavor of which this Contract forms a part.

**Project Manager or PM** means either HRT'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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 164 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**Project Schedule** means the schedule prepared by the Contractor and accepted by HRT 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 HRT, establish standards by which the Work shall be judged.

**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.

**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.

**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.

**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

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 shall 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 165 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.

The Contractor must assert its right to an adjustment under this article within three 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 shall have the right to prescribe the manner of the disposition of such equipment or materials.

Failure to agree to any adjustment shall be a dispute under the Disputes article. However, nothing in this article shall 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.

Modifications to the Contract, proposed by Contractor, require a written agreement executed by both parties hereto.

### **3. ORDER OF PRECEDENCE**

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall 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. ENTIRE AGREEMENT**

This Agreement, which includes this contract, any executed modifications thereto, appendices, attachments, regulations referenced herein and any Order issued by HRT hereunder, constitutes the entire agreement of the parties with respect to the subject matter herein. This Contract shall take precedence over any inconsistent terms between the parties, before or after its execution. Quotes, Bids and Proposals are not considered Contracts nor are they incorporated into this Contract, unless explicitly done so by HRT.

### **5. ASSIGNMENT AND DELEGATION**

The Contractor shall neither delegate any duties or obligations under this Contract nor assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title or interest in or to the same, or any part thereof, without previous consent in writing from the Contracting Officer.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 166 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## **6. AUTHORITY OF OWNER'S REPRESENTATIVE**

The Work of the Contract will be conducted under the general direction of HRT'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 Contract Administrator if it significantly affects the contractual terms, or the rights and obligations of the parties thereunder;
- D. Notify the Contract Administrator 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 Contract Administrator as to whether or not Substantial Completion has been attained;
- H. Provide the Contract Administrator 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 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 HRT's Project Manager or inspectors at any time shall not relieve the Contractor from adherence to any requirement of the contract.

## **7. FLOWDOWN**

The Contractor shall ensure appropriate flow-down of applicable contract provisions to appropriate subcontracts of every tier. 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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 167 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## 8. SUBCONTRACTING

HRT 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 HRT and any subcontractor. The Contractor is fully responsible to HRT for the acts and omissions of its subcontractors, vendors, materialmen, and persons directly employed by any of them.

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 HRT, the subcontractor shall be removed immediately upon the written request of HRT, and shall not be employed for any future Work under the Contract. HRT 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. 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 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 HRT is required. Contractor shall furnish HRT 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. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,  
(<http://www.osdbu.dot.gov/OSDBUSERVICES/DBEPROGRAM/tabid/75/Default.aspx>).

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 168 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

Virginia's Small, Women and Minority Owned Business Certifications (SWaM/ MBE/ WBE) ARE NOT an acceptable substitution for FTA's required DBE certification.

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.

The contractor shall submit the required Appendix A, Form E, Schedule of DBE Participation, on a monthly basis directly to HRT's DBE Project Manager. As part of the flow down requirements, Contractor shall require that all DBE subcontractors submit the required Appendix A Form E-2, DBE Subcontractor Monthly Report, directly to HRT's DBE Project Manager on a monthly basis.

## **10. INVOICES**

Mail original and one 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](mailto:acctspayable@hrtransit.org).

The form and content of invoices are subject to review and approval by HRT. 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 of the item/service delivered, sizes and quantities if applicable, unit prices, and extended totals, and any additional information required by HRT. Invoices shall be accompanied by any supporting documentation that may be required by the Commission.

Contractor shall also provide a "Form E – Contractor's Monthly DBE Payment Report," as applicable, with each application for payment under which a DBE goal is established. This form is provided in Appendix A.

## **11. PAYMENTS**

HRT shall pay to 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 HRT of any amount that the Contractor has withheld or retained from Subcontractors or Suppliers until such time that Contractor has determined and certified to HRT that the Subcontractor is entitled to the payment of such amount. If Contractor has made application for payment to HRT and subsequently withholds or retains payments from a Subcontractor, Contractor may be obligated to pay interest to HRT on that amount, in addition to any other remedies HRT may have hereunder.



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 169 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by HRT, shall 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 HRT's Notice to Proceed, and prior to submission of Contractor's first invoice, Contractor shall submit to HRT 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 HRT may require. When accepted by HRT, 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 Bid Price Schedule and any supplementary schedule of values that may be required by the RE.

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 HRT 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 by any other person performing Work at the Work Site or furnishing Materials for the Work under this Contract, that 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.

HRT 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 HRT on account of Work done by the Subcontractor.

## **12. WITHHOLDING OF PAYMENTS**

HRT may withhold all or part of a payment to the extent deemed necessary to protect HRT from loss because of (1) defective work not remedied; (2) third party claims filed, or evidence reasonably indicating that a third party claim will be filed; (3) failure of Contractor to make payments properly to Subcontractors, or for labor, materials, or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the contract price; (5) damage to HRT or another contractor; (6) contractor's failure to carry out the Work in accordance with the Contract; (7) Contractor's failure to comply with any material provision or requirement of the Contract; (8) Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor. (9) Contractor's failure to provide the required progress schedules and record drawings in accordance with the Contract; (10) any sums expended by HRT in

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 170 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

performing any of the Work under the Contract which the Contractor has failed to perform; or (11) liquidated damages.

### **13. AVAILABILITY OF FUNDS**

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 Vendor 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.

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. CONDITIONS AFFECTING THE WORK**

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.

### **15. GOVERNING LAW**

Unless otherwise provided in the Contract Documents, the Contract shall be governed by the laws of the Commonwealth of Virginia to the extent that the procurement conforms to applicable Federal law, including the requirements and standards incorporated in FTA Circular 4220.1F.

### **16. WAIVER OF CONDITIONS**

The waiver of any provision, term or condition in this Contract by HRT 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 shall not be considered a precedent for future waivers.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 171 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## **17. NOTICE OF INTENT TO FILE A CLAIM**

Whenever the Contractor deems a potential claim has arisen, the Contractor shall within five days notify the Contract Administrator 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 fifty thousand dollars (\$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 shall be grounds for denial of such claim.

## **18. SEVERANCE**

If any part of 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.

## **19. GENERAL INSURANCE REQUIREMENTS**

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.

### **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.

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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 172 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

### **COMMERCIAL / COMPREHENSIVE GENERAL LIABILITY:**

The Contractor and any Subcontractor shall provide a valid Certificate of Insurance listing the insurance coverage maintained. The liability insurance maintained by the Contractor and any Subcontractor shall include, at a minimum, the following coverage;

- ☒ Premises - Operations
- ☒ Products - Completed Operations
- ☒ Contractual - This contract

The minimum Limit of Liability shall be:

Bodily Injury (per person / occurrence)	\$1,000,000
Property Damage (per occurrence)	\$1,000,000
Or	
Combined Single Limit per Occurrence	\$2,000,000

If the insurance contract has a Limit of Liability Aggregate, the minimum Aggregate level shall be \$3,000,000 per policy year.

The Selected Contractor and any Subcontractor shall name the following as an Additional Insured:

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:

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:

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 173 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

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

## **20. ONSITE SAFETY AND SECURITY**

Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970, and all applicable Commonwealth of Virginia and local laws, ordinances, and regulations during the performance of construction at the Work Site.

All contractors, subcontractors, and on-site representatives working near moving traffic, on HRT property or public roads, including right of way areas and vehicle yards, are required to wear a Type 2 vest. The vest shall be an outer garment and shall not be

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 174 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

covered by anything, i.e. articles of clothing or a carrying bag, etc. Any substitutions such as Class 2 reflective Tee Shirts or reflective jackets must be pre-approved by HRT's Department of Safety Security and Risk Management.

Upon entry into any HRT facility, all contractors, subcontractors, and on-site representatives must comply with all OSHA Regulations and HRT policies for Personal Protective Equipment (PPE) such as safety glasses, work boots, and protective gloves.

## **21. ENVIRONMENTAL, SAFETY AND HEALTH STANDARDS COMPLIANCE**

The Contractor shall comply with applicable environmental statutes, regulations, and guidelines in performing the Work. The Contractor shall also comply with applicable Occupational Safety and Health Administration (OSHA) standards, regulations, and guidelines in performing the Work. The Contractor shall be responsible for obtaining and posting Material Safety Data Sheets to the full extent required by law.

## **22. HAZARDOUS CHEMICALS AND WASTES**

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 HRT'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, removal and remediation of such releases, including without limitation the payment of any fines or penalties levied against HRT as a result of such release, and shall hold harmless, indemnify, and defend HRT from any claims arising from such release. For purposes of this section only, 'claims' include (1) all notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction; and (2) any claim, cause of action, or administrative or judicial proceeding brought against HRT, 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 HRT.

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 HRT or HRT's Project Manager, and shall not resume work until directed by HRT. Any delay or other costs incurred by the Contractor as a result of such work stoppage shall be compensable hereunder, provided that the Contractor (1) is not responsible for the hazardous materials under this Section; and (2) 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 175 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

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 wastes 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 HRT be identified as the generator of any such wastes. The Contractor shall determine whether any wastes generated during the Work is hazardous waste, and shall notify the HRT Project Manager if Contractor generates any hazardous wastes. HRT reserves the right to a copy of the results of any tests conducted on the wastes, and at HRT's cost, to perform additional tests or examine those wastes prior to disposition. The Contractor shall hold harmless, indemnify, and defend HRT from any claims arising from the disposal of such hazardous wastes regardless of the absence of negligence or other malfeasance by Contractor.

## **23. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY**

HRT recognizes that environmental compliance involves everyone (both internal and external to HRT), 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. HRT has instituted an Environmental Management System (EMS) that complies with the ISO 14001:2004 Standard. As such, it is HRT's responsibility to make sure all of its contractors, suppliers and vendors are informed of its Environmental Management Policy and EMS Procedures. Acceptance of this purchase order constitutes acknowledgement of the information presented herein and included in HRT's Environmental Compliance Contractor Briefing Package and Preconstruction Mitigation Disclosure Form.

## **24. WARRANTY**

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 is one (1) year from final acceptance. Items corrected during the warranty period will have an additional warranty period, from acceptance of the correction.

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 HRT 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 176 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

under this contract will, at time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice to the Contractor of any defect or nonconformance identified by the Commission. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) 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 shall 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 shall 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 shall make an equitable adjustment in the contact price.

In addition to the Contractor's warranty defined herein, warranties provided by a manufacturer shall be passed on to HRT at no additional cost.

## **25. INSPECTION OF SERVICES**

Definition: "Services," as used in this clause, includes services performed, workmanship, and materials, supplies, equipment whether tangible or intangible furnished or utilized in the performance of services.

The Contractor shall provide and maintain an inspection system acceptable to the Commission covering its services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Commission during contract performance and for as long afterwards as the contract requires.

The Commission has the right to inspect all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Commission shall 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 (1) inspected by HRT or its representative and the Contractor is authorized to close the work; or (2) HRT's representative authorizes closure of the work without inspection. Should Contractor fail to afford HRT a reasonable opportunity to inspect the work before closure, it shall 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



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 177 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

- B. Reduce the contract price to reflect the reduced value of the services performed.
- C. 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—
- D. 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
- E. Terminate the contract or the portion affected by the non-performance for default.

## **26. TITLE AND RISK OF LOSS**

Unless this contract specifically provides for earlier passage of title, title to the Work, and any supplies, material or equipment covered by this contract shall pass to the Commission upon formal acceptance, regardless of when or where the Commission takes physical possession.

Unless this contract specifically provides otherwise, risk of loss of or damage to the Work, or supplies, materials and equipment covered by this contract shall remain with the Contractor until, and shall pass to the Commission upon:

- A. Substantial Completion or Final Completion, as specified, of the Work or any identified separable part thereof.
- 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.
- C. Notwithstanding (2) 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 (2) above shall apply.

## **27. DELIVERY**

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.

## **28. MATERIALS AND WORKMANSHIP**

All materials, parts and equipment furnished by the Contractor shall be new, high grade and free from defects. Workmanship shall be in accordance with generally accepted industry standards. The Contractor shall establish and maintain quality assurance policies and procedures to ensure compliance with these specifications. Such policies and procedures shall be subject to review and approval by the Commission.

Any material or equipment not conforming to the requirements of these Contract Documents or found to be damaged or defective at the time of delivery shall be replaced

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 178 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

by the Contractor without additional cost to HRT, including the cost of delay to the Contractor or other contractors.

If the Contractor shall fail to comply promptly with any order of the Contracting Officer to replace or repair damaged or defective material, equipment or work, the Contracting Officer shall, upon written notice to the Contractor, have the authority to deduct the cost of such replacement or repair, including but not limited to its administrative costs for obtaining such replacement or repair and any costs of delay occasioned thereby, from any compensation due or to become due to the Contractor.

HRT shall have the right to correct defective work, which is not remedied by contractor, with other forces at the contractor's expense.

HRT shall have the right to uncover and examine work that has been covered prior to inspection and acceptance. The uncovered work shall be recovered at contractor's expense.

Nothing in this section shall 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.

## **29. SUSPENSION**

HRT 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 HRT 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 shall be made to the extent: (1) that performance is, was or would have been suspended, delayed or interrupted by another cause for which the Contractor is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Contract.

## **30. DELAY OF WORK**

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) shall 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 shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall 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 shall be allowed for any costs incurred more than 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 179 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

as soon as practicable after the end of such delay or interruption, but not later than the date of final payment under the contract.

### **31. STOP WORK ORDER**

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 90 calendar days after the order is delivered to the Contractor or any other date cited in the order, and for any further period to which the parties may agree. Any such order shall 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, minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 calendar days after a stop work order is delivered to the Contractor, or within any extension of that period, the Contracting Officer shall either cancel the stop work order, or terminate the work covered by such order as provided in Section 38, 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 shall 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 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 shall be allowed in arriving at the termination settlement.

### **32. DISPUTES (applicable if over \$100,000)**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Director of Procurement, who shall reduce his/her decision to writing and deliver a copy thereof to the Contractor. The decision of the Director of Procurement shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, the Contractor delivers to the Director of Procurement a written appeal addressed to the Board of Commissioners. The decision of the Board of Commissioners or its duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as to necessarily imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this article, the Contractor shall be afforded an opportunity to be heard

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 180 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Director of Procurement's decision.

This Disputes section does not preclude consideration of questions of law in connection with decisions rendered hereunder. Nothing in this contract, however, shall be construed as making final the decisions of the Commissioners or its representative on a question of law.

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Hampton Roads Transit. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of such decision, the Contractor mails or otherwise furnishes a written appeal to the Commission's Director of Procurement. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Procurement shall be binding upon the Contractor and the Contractor shall abide by the decision.

- A. Performance During Dispute - Unless otherwise directed by the Contract Administrator, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- B. Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- C. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the Commonwealth of Virginia..
- D. Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Commission, its agents, consultants or contractors, or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- E. A dispute between the Contractor and a Subcontractor relating to the amount or entitlement of a Subcontractor to a payment or a late payment interest penalty under a clause included in a Subcontract does not constitute a dispute to which HRT is a party. HRT shall not be included as a party in any such administrative or judicial proceeding involving a dispute.

### **33. TERMINATION FOR DEFAULT (applicable if over \$10,000)**

SOURCE / NETWORK PATH C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx
---

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 181 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

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 HRT; and the Contractor has not remedied the breach within ten (10) Days after receiving written notice from HRT.

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), HRT 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 shall be liable for any damage to HRT resulting from the Contractor's refusal or failure to complete the Work within the specified time, or for liquidated damages for delay, as fixed in the Contract, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by HRT 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 HRT's convenience pursuant to Section 38 of these General Conditions.

The rights and remedies of HRT 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 shall be liable to the Commission for any excess costs for such similar supplies or services incurred by the Commission, including but not by way of limitation the costs of reprocurement; 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 shall 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 182 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

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 shall 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 so terminated, the Commission, in addition to any other rights provided in this article, may require the Contractor to transfer title and deliver to the Commission, in the manner and to the extent directed by the Contracting Officer, any completed supplies, and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Commission has an interest. Payment for completed supplies delivered to and accepted by the Commission shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Commission and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of Section 36, Disputes of these General Conditions. The Commission may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Commission against loss because of outstanding liens or claims of former lien holders.

#### **34. TERMINATION FOR CONVENIENCE** (applicable if over \$10,000)

The performance of work under this contract may be terminated by the Commission in whole, or from time to time in part in accordance with this Section, whenever the Contracting Officer shall determine that such termination is in the best interest of the Commission. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

After receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall proceed with the following regardless of any delay in determining or adjusting any amounts due under this clause:

- A. Stop work under the contract 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 work terminated by the Notice of Termination;

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 183 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

- D. Assign to the Commission, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title, and interests of the Contractor under the orders and subcontracts so terminated, in which case the Commission shall 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 to the Commission and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
  - i. the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination;
  - ii. the completed or partially completed plans, drawings, information and other property, tangible or intangible, which, if the contract had been completed, would have been required to be furnished to the Commission;
- G. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the type referred to in paragraph F above, provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by HRT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by HRT under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by HRT;
- H. 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
- I. 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 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 shall 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 Contracting Officer shall determine, on the basis of available information, the amount if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined on the following basis:

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 184 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

J. For Work performed before the effective date of termination, the total (without duplications of any items) of:

1. The cost of the Work performed;
2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract, if not included in A.1) above; and
3. Profit on A.1) above, as determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been finally completed, HRT shall allow no profit under Article and shall reduce the settlement to reflect the indicated rate of loss.

K. The reasonable costs of settlement of work terminated, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor shall 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. There shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Commission, or sold to a buyer. The payment shall be further reduced by all unliquidated advances or other payments to the Contractor under the terminated portion of this Contract; any claim which HRT has against the Contractor under this Contract; and the agreed price for, or the proceeds of sale of, Materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Condition and not recovered by or credited to HRT.

Costs claimed, agreed to, or determined shall be in accordance with the applicable contract cost principles and procedures in OMB Circular A-87 (2 C.F.R. Part 225) in effect on the date of this contract.

The Contractor shall have the right to appeal, under the General Condition 35, Disputes, from any determination made by the Contracting Officer, except that, if the Contractor has failed to submit its claim within the time provided and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due, the Commission shall pay to the Contractor the amount as determined by the Contracting Officer.

If the termination hereunder is partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination) for reasons arising from the termination, and such equitable adjustment as may be agreed upon shall be made in such price or prices.



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 185 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

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 HRT, 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.

### **35. CONFLICT OF INTEREST**

Neither the Contractor nor any person or company affiliated with it shall have, during the term of this contract and any extensions thereof, any contractual or other financial relationship with the Commission, its members, officers, employees, or agents, with any Commission prime contractor, or with any subcontractor or supplier to any Commission prime contractor other than the contractual relationship established under this contract, as described by law.

Nothing herein shall preclude a contractor from participating in other competitive procurements issued by HRT or its member jurisdictions for work unrelated to this contract, except as prohibited by the Organizational Conflict of Interest stipulations below.

Unless specifically exempted from the conditions of this provision by the Contracting Officer, any HRT contractor, subcontractor, subsidiary, or other entity which is legally related to an entity or party which develops or drafts specifications, requirements, statements of work, invitations for bids, or otherwise is in a position to influence the nature, scope or conditions of a subsequent Commission solicitation or contract which provides an unfair competitive advantage, shall be excluded from competing under such solicitation or receiving such contract. Any violation of this requirement may result in the offending party being denied award of a contract or rescission of a contract if awarded, or other appropriate sanctions by the Commission.

Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his/her sole discretion grant an exception to the requirement above, when in his/her judgment the exception will not create a conflict between the Contractor's duties and obligations under this contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.

If, during the performance of this contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with the provisions above, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Article, the Contractor shall, within ten working days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms above.

If the Contractor fails to comply with the terms of this Article, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 186 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

compliance or, should the non-compliance remain uncorrected at the expiration of ten working days from written notice from the Contracting Officer as provided in (c), above, terminate the contract for default pursuant to the provisions of this contract.

The Contractor in performing this contract shall avoid any conduct which might result in or create for the Commission, its Commissioners, officers, employees or agents any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Commissioner, officer, employee or agent failing to adhere to the Standards of Conduct adopted by the Commission.

Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this contract.

### **36. COVENANT AGAINST CONTINGENT FEES**

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 shall 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.

### **37. GRATUITIES**

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 respect to the performing of such contract is expressly prohibited. Violation of this provision shall be deemed an instance of default hereunder.

### **38. COLLUSION**

If at any time it shall be 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 187 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

appropriate, and the Contractor and its sureties shall be liable to HRT for all loss or damage which HRT may suffer thereby.

### **39. INDEMNIFICATION**

- A. The Contractor shall indemnify and hold harmless the Commission and its officers, agents, and employees against liability, including all costs incurred thereby, for any real or claimed infringement of any United States letters patent arising out of the performance of this contract; or arising out of the manufacture or delivery of supplies under this contract, and for any violation of copyright or other proprietary rights of third parties arising out of any design, report, document or other material, in hard copy or electronic form, provided to the Commission hereunder.. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Commission of the claim, suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:
1. an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the performance of the contract in a manner not recommended by or normally used by the Contractor;
  2. an infringement resulting from addition to, or change in, supplies or components furnished which addition or change was made by others subsequent to delivery or performance by the Contractor; or
  3. a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of court of competent jurisdiction.
- B. The Contractor shall indemnify the Commission and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent arising out of the manufacture or delivery of supplies under this contract, and for any violation of copyright or other proprietary rights of third parties arising out of any design, report, document or other material, in hard copy or electronic form, provided to the Commission hereunder. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Commission of the actual or potential suit or action alleging such infringement violation, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:
1. an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the data, materials or equipment to be used, or directing a manner or performance of the contract not normally used by the Contractor;
  2. an infringement resulting from addition to, or change in, such supplies or components furnished or alteration in any report, document or data furnished which addition, change or alteration was made subsequent to delivery or performance by the Contractor; or

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 188 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

3. a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.
- C. The Contractor will indemnify and hold harmless the Commission, its officers, employees, agents and/or their successors, assigns and/or heirs against any and all liability claims arising for injury, including personal injury to or death of any person or persons, and for any loss or damage to any person or property whatsoever, and for any costs incurred by the Commission thereby, to the extent caused by the negligent performance of this contract, including the acts, errors or omissions of the Contractor, any subcontractor, employee, agent or representative of the Contractor or any subcontractor. Notwithstanding any other obligation or provision herein, Contractor shall not be obligated to indemnify HRT to the extent such loss or liability arises out of or is caused by or results from the negligence or willful misconduct of HRT or its representatives.
  - D. 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.

#### **40. COST OR PRICING DATA**

The Contractor shall submit to the Contracting Officer upon request cost or pricing data for any modification or proposed modification of this Contract, under the conditions described in this Paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is current, accurate, and complete. The contractor shall also certify that costs proposed hereunder are allocable, allowable, and reasonable in accordance with cost principles and practices under Part 31 of the Code of Federal Regulations and OMB Circular A-87 (2 C.F.R. Part 225).

The submittal of certified cost or pricing data shall not be required if the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms "adequate price competition" and "established catalog or market prices of commercial items sold in substantial quantities to the general public" shall be determined by the Contracting Officer.

Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The term "cost" specifically includes the elements of labor, material, overhead and profit incorporated in the Contractor's price. The definition of cost or pricing data embraces more than historical accounting data; it also includes, where applicable, such factors as subcontractor, supplier and vendor quotations, nonrecurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data,

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 189 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future cost or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

If the contractor or subcontractor submits defective cost or pricing data, a reduction in contract price shall be made by that amount deemed defective.

#### **41. DRUG-FREE WORKPLACE**

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.

#### **42. PRIVACY ACT**

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. 552.

#### **43. INTELLIGENT TRANSPORTATION SYSTEMS (ITS) REQUIREMENTS**

In accordance with the FTA National Architecture Policy on Transit Projects (Federal Register: January 2, 2001 (Vol. 66, No. 5, pp. 1455-1459)), which can be accessed at [http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=1455&dbname=2001\\_register](http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=1455&dbname=2001_register), (Policy), ITS projects funded by the Highway Trust Fund and the Mass Transit Fund must conform to a regional ITS architecture. An ITS project is defined as "any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS User Services as defined in the National ITS Architecture". If the project includes ITS components that implement any of the defined User Services it is considered an "ITS Project."

HRT has participated in the development of a regional ITS architecture, which is available at <http://www.hrpdc.org/transport/reports/HR%20Strategic%20Plan%202004.pdf>.

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 HRT, for determining what, if any

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 190 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

work performed, or products supplied, under this contract are subject to the policy and for conforming to all requirements of that Policy as applicable.

#### **44. WORK ON AGENCY PROPERTY**

Contractor shall at all times while on HRT property conform to all rules and requirements established by HRT for visitors, including those addressing access to facilities and office areas, smoking, security, and sustainability. Contractor's personnel, including those of its subcontractors, suppliers, or agents shall comply with all directions and instructions given them by authorized HRT personnel in this respect.

#### **45. OWNERSHIP OF WORKS AND INVENTIONS**

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 HRT shall be the sole property of the Commission, with no rights of ownership in Contractor or any sub-consultants/sub-contractors. This Agreement shall operate as an irrevocable assignment by Contractor and sub-consultants/sub-contractors 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. Contractor and sub-consultants/sub-contractors shall not patent any IP conceived, created or furnished under this Agreement. Contractor and sub-consultants/sub-contractors agree to execute and deliver all necessary documents requested by the Commission to effect 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 sub-contracts under this Agreement.

#### **46. NOTICES AND COMMUNICATIONS**

All notices and other communications concerning this Contract shall be written in English, sequentially numbered, reference the Contract number assigned by HRT, and be in Microsoft Office format, i.e. Word, Excel, or PDF. Notices and other communications may be delivered personally, by facsimile, or by regular, certified, or registered mail. Formal notices and communications are effective when received. Email notices and communications are not considered formal and shall not be considered official unless confirmed in writing by the designated HRT representative and delivered as noted above.

Prior to issuance of Notice to Proceed, all formal communications shall be between HRT and the individual who signed the contract on behalf of the Contractor at the address shown with that signature, to a corporate officer, if Contractor is a corporation, to a general partner, if Contractor is a partnership, or to another individual designated by Contractor in this Contract or in a written notice to HRT.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 191 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

Prior to issuance of Notice to Proceed, HRT's point of contact is the Contracting Officer or duly assigned designee, and a notice or other communication will be effective only if it is delivered to Contract Administrator, Hampton Roads Transit, 3400 Victoria Boulevard, Hampton, Virginia 23661. Following issuance of Notice to Proceed, all communications and notices shall be delivered to the HRT Project Manager at the address designated by HRT.

Prior to commencement of Work on the Project, communications from HRT to Contractor will be effective if delivered to the individual who signed this Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated by Contractor in this Contract or in a written notice to HRT.

After the commencement of Work on the Project, all formal communications shall be between the HRT Project Manager and the Contractor's Project Manager and becomes effective when delivered.

#### **47. BRAND NAME OR APPROVED EQUAL**

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, a vendor 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 will be responsible that the product performs equally with the specified brand named product.

#### **48. FEDERAL FUNDING AND INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The following provisions are required by the U.S. Department of Transportation (DOT), Federal Transit Administration or other public entities providing funding for this Contract, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, effective November 1, 2008, including amendments, modifications, or clarifications thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. 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.

#### **49. FEDERAL CHANGES**

Contractor shall at all times comply with all applicable regulations, policies, procedures and directives of the Federal Transit Administration (FTA), including without limitation those listed directly or by reference in the Master Agreement issued annually by FTA as entered into by the Commission and FTA, as they may be amended or promulgated from

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 192 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **50. ACCESS TO RECORDS**

The Contractor shall maintain records, and the Contracting Officer, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to this Contract, for the purpose of making audit, examination, excerpts and transcriptions. 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.

The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontract, for the purpose of making audit, examination, excerpts and transcriptions. 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.

## **51. FEDERAL ENERGY CONSERVATION REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **52. CIVIL RIGHTS REQUIREMENTS (applicable if over \$10,000)**

**A. Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2002d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**B. Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 193 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 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.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

In accordance with the Code of Virginia, the contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin 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.

### **53. NONDISCRIMINATION UNDER FEDERAL GRANTS**

SOURCE / NETWORK PATH

C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 194 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

No otherwise qualified handicapped individual in the United States, as defined in Section 7(6), 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.

#### **54. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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 HRT, 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 FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **55. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

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, 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 the this contract. 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 under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include this provision in each subcontract, 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.

#### **56. SUSPENSION AND DEBARMENT (applicable if over \$25,000)**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 195 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

## **57. RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **58. CLEAN AIR AND WATER (applicable if over \$100,000)**

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., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. . 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 FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **59. COMPLIANCE WITH FEDERAL LOBBYING POLICY (applicable if over \$100,000)**

In accordance with the certification submitted as part of its offer as accepted by the Commission, Contractor will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall obtain such certifications from its subcontractors and maintain a record thereof.

## **60. BUY AMERICA (applicable if over \$100,000)**

The Contractor agrees to comply with 49 U.S.C. 5323(j), and its implementing regulations at 49 C.F.R. Part 661, any amendments thereto, and any implementing guidance issued by FTA, in accordance with the certifications submitted with its offer as accepted by the Commission, or any approved modification thereto.

## **61. SEISMIC SAFETY**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 196 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

The Seismic Safety requirements apply only 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.

## **62. ADA ACCESS**

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. Full compliance with the provisions of 49 CFR Part 37 is the intent of the facility owner and every aspect of this project, pursuant to this contract, shall be construed as being consistent with this intent and compliant with Subpart C – Transportation Facilities with particular reference to Subsection 37.43 of FTA's regulations pursuant to the Americans with Disabilities Act of 1990 (ADA). If any aspect of the plans or specifications for this project appear to be inconsistent with Subsection 37.9 Standards for accessible transportation facilities or any guidance issued by the Access Board, it is essential that the Contractor notify the project manager designated by HRT about any such concern as soon as practicable.

## **63. CARGO PREFERENCE** (applicable for property transported by ocean vessel)

The contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent 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 20 working days following the date of loading for shipments originating within the United States or within 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 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.

## **64. FLY AMERICA** (applicable for foreign air transport or travel)

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 197 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **65. SENSITIVE SECURITY INFORMATION**

Contractor shall take all appropriate measures to protect "sensitive security information" made available during the course of its performance hereunder, in accordance with the provisions of 49 U.S.C. Section 40119(b); the implementing U.S. Department of Transportation regulations at 49 CFR Part 15; 49 U.S.C. Section 114(s); and the implementing U.S. Department of Homeland Security regulations at 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.

## **66. SEAT BELT USE**

Contractor is encouraged to adopt and promote one-the-job use of seat belts, and to include this provision in its subcontracts at all tiers, in accordance with Executive Order No. 13043, "Increasing seat Belt Use in the United States," 04-16-1997, 23 U.S.C. Section 402 note.

## **CONSTRUCTION CONTRACT TERMS**

The following additional General Conditions apply to construction contracts.

## **67. CONSTRUCTION DEFINITIONS AND ACRONYMS**

**Change Notice** means a document issued by the HRT Project Manager to the Contractor requesting a price proposal for specified changed work.

**Change Request** means a document issued by the Contractor to HRT's Project Manager requesting that a Change Order be issued.

**Construction Manager** means HRT's authorized representative who is charged with the overall administration of the Light Rail Project.

**Construction Safety Officer** means HRT's designated safety representative, responsible for overall safety compliance on the Project.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 198 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**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 HRT acknowledging that Contractor has fulfilled all of its 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.

**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

**Substantial Completion** means completion of the Work, or a designated portion thereof, to a point where HRT 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 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.

## 68. PERFORMANCE BOND AND PAYMENT BOND

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 Performance Bond required hereunder shall be in the amount of 100% of the Contract value, including any adjustments thereto. The Payment Bond shall be in the amount of:

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 199 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

- A. Fifty percent of the contract price if the contract price is not more than \$1 million;
- B. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- C. The amount of \$2.5 million dollars if the contract price is more than \$5 million.

The above bonds shall remain in full force and effect for the entire term of the Contract, including option terms or extensions if any. HRT must give its prior written consent to any substitution of surety and maintains the right to reject a proposed substitution.

**69. DAVIS-BACON, COPELAND AND CONTRACT WORK HOURS & SAFETY STANDARDS ACTS** (applicable if over \$2,000)

Minimum wages to be paid on this construction project have been established by the U.S. Department of Labor and are included in the Contract Documents. See Appendix.

**A. Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**B. Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section 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 (1) 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 hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**C. Withholding for unpaid wages and liquidated damages** - The Commission shall upon its own action or 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 in the clause set forth in paragraph (2) of this section.

**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.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 200 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**E. Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

## **70. 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. HRT 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. HRT reserves the right to reject materials on the basis of HRT 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 HRT;
- B. Work done or products incorporated contrary to HRT's instructions;
- C. Work changed or added without HRT'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;
- F. Work or Materials not in conformance with the Contract requirements.



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 201 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

When non-conforming work is discovered, HRT may:

- i. Reject the Materials or workmanship or require its correction. 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.
  - ii. If Contractor fails to promptly replace rejected Materials or correct rejected workmanship, HRT may,
- G. 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, or
  - i. Terminate the Contractor's right to proceed in accordance with General Condition 36, Termination for Default and Contractor and its sureties shall be liable for any costs and damages incurred.
  - ii. 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.

#### **71. DIFFERING SITE CONDITIONS**

The contractor shall immediately notify HRT of any site conditions not reasonably discoverable in site inspections, 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 of the character provided for in the contract.

#### **72. RETAINAGE**

HRT shall pay the approved invoice, less five percent (5%) for retainage, except as provided under Section 48 of the General Conditions, Reduction of Retainage, within thirty (30) days after its receipt by HRT. All retainage shall be held by HRT until the time for final payment and HRT has received consent of surety.

#### **73. REDUCTION OF RETAINAGE**

HRT shall withhold five percent (5%) retainage until the Contractor successfully achieves Substantial Completion on the Contract. Following Substantial Completion HRT may, at its sole discretion, elect to withhold retainage in an amount equal to twice the amount of the estimated value of all uncompleted Work including Warranty and pay the Contractor the balance of withheld retainage. The remainder of withheld retainage shall be paid after Final Completion. In the event that HRT and the Contractor agree to have Punch List or other Work performed by parties other than the Contractor, the cost of such work shall be subtracted from the amount of retainage due the Contractor.

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 202 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

#### **74. COOPERATION WITH OTHER CONTRACTORS**

The Contractor shall confer with and coordinate through the HRT Project Manager, this Contract's work with that of any other HRT contractors as well any other entities or contractors working in close proximity to or on the Work Site. At the HRT 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.

#### **75. 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 twenty-five percent (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 Special Provision 15, Changes in the Work. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (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.

#### **76. 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. 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 HRT.

D. Contractor's compliance with such restrictions shall not be the basis of any claim for extensions of time or additional compensation unless HRT has expressly stated in this Contract that waivers, variances, or other authorizations shall 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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 203 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

withdrawn and such unavailability or withdrawal did not result from some act or omission by Contractor.

**E. Maintenance of Traffic**

Contractor shall be responsible for mitigating impact to traffic.

**F. Noise and Vibration Control**

Contractor shall comply with all applicable City (Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, or Virginia Beach, as appropriate), Commonwealth of Virginia, and federal laws, ordinances and 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.

**77. FINAL PAYMENT AND RELEASE OF LIENS / CLAIMS**

Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify the RE in writing. Upon receipt of Contractor's notice of Final Completion, RE 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 HRT's written Final Acceptance of the Work, Contractor shall invoice HRT for any amounts due under the Contract including retainage. HRT shall pay 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 HRT (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, (2) consent of surety to final payment, and (3) if required by HRT, 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 HRT.

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, HRT, without terminating the Contract, shall 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 Contractor prior to payment. Payment under this Article shall 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 HRT shall constitute a waiver of claims by HRT except those arising from: (1) liens, claims, security interests, or encumbrances arising out of the Contract and unsettled; (2) latent defects in the Work or failure of the Work to comply with the requirements of the Contract; (3) any misrepresentations or falsifications by the Contractor; or (4) terms of all warranties required by the Contract.

Acceptance of final payment by the Contractor, a Subcontractor, or a Supplier shall constitute a waiver of claims by the payee except those previously made in writing and

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 204 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

identified by the payee as unsettled at the time of application for final payment. Such waivers shall 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 HRT, to the extent loss or damage was not caused by HRT or its representatives.

Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify the RE in writing. Upon receipt of Contractor's notice of Final Completion, RE 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 and any deliverables not yet accepted by HRT. Upon receipt of HRT's written Final Acceptance of the Work, Contractor shall invoice HRT for any amounts due under the Contract including retainage. HRT shall pay Contractor within thirty (30) days after receipt of the approved final invoice.

### **END OF GENERAL CONDITIONS**

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 205 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

## **APPENDIX E – OTHER RESOURCES**

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

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 206 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 207 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

### THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(16) 10-1-2009)
<b>All FTA Assisted Third Party Contracts and Subcontracts</b>		
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)		§ 2.f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, EEO, ADA)		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220.1F	§ 15.a
<b>Awards Exceeding \$10,000</b>		
Terminations	If 49 CFR Part 18 applies	§ 11 and § 15.a, which incorporate 49 CFR Part 18
<b>Awards Exceeding \$25,000</b>		
Debarment and Suspension		§ 11
<b>Awards Exceeding \$100,000</b>		
Terminations	If 49 CFR Part 19 applies	§§ 11 and 15.a, which incorporates 49 CFR Part 19
<b>Awards Exceeding the Simplified Acquisition Threshold (\$100,000)</b>		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 54
<b>Awards Exceeding \$100,000 by Statute</b>		
Lobbying		§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 208 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

### THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(16) 10-1-2009)
<b>Transport of Property or Persons</b>		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations	§ 14.c
<b>Construction Activities</b>		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000	§ 24.a
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000	§ 24.a
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000	§ 24.a
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond 100% performance bond Payment bond equal to: – 50% for contracts < \$1M – 40% for contracts >\$1M – < \$5M – \$2.5M for contracts > \$5M	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings	§ 23.e
<b>Non-construction Activities</b>		
Non-construction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (excluding transportation services contracts) in excess of \$100,000	§ 24.b
<b>Transit Operations</b>		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 209 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**THIRD PARTY CONTRACT PROVISIONS (Continued)**

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(16) 10-1-2009)
Drug Use and Testing	Safety sensitive functions	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions	§ 32.b
<b>Planning, Research, Development, and Demonstration Projects</b>		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
<b>Special Notification Requirements for States</b>		
Special Notification Requirement for States	.	§ 38
<b>Miscellaneous Special Requirements</b>		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation	§ 12.g
Assignability Clause	Procurements through assignments	§ 15.a, which incorporates 49 CFR Part18 and 49 CFR Part 19

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 210 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 211 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

### APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(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 Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination (if 49 CFR Part 18 applies.)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 212 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)**

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings &	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 213 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)**

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 214 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 215 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

**CERTIFICATIONS, REPORTS, AND FORMS**

<b>CERTIFICATIONS, REPORTS, AND FORMS</b>	<b>COMMENTS</b>	<b>REGULATORY REFERENCE</b>
Bus Testing Certification	Procurements of buses and modified mass produced vans	49 CFR Part 665
TVM Certifications	All rolling stock procurements	49 CFR Part 26
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000	49 CFR Part 661
Pre-award Review	Rolling stock procurements exceeding procurements exceeding \$100,000	49 CFR Part 663
Pre-award Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000	49 CFR Part 663
Pre-award Purchaser's Requirement	Rolling stock procurements exceeding procurements exceeding \$100,000	49 CFR Part 663
Post Delivery Review	Rolling stock procurements exceeding procurements exceeding \$100,000	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000	49 CFR Part 663
Post Delivery Purchaser's Requirement	Rolling stock procurements exceeding procurements exceeding \$100,000	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock procurements for more than 10 vehicles	49 CFR Part 663
Federal Motor Vehicles Safety Standards Pre-award Review and Post Delivery)	Motor vehicle procurements (49 CFR 571)	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000	49 CFR Part 20
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities	49 CFR Part 20

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 216 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

This page intentionally left blank



TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 217 of 217</b>
---	-------------------------------------	---------------------------	--------------------------------

### **PRINCIPAL STATUTES, REGULATIONS AND RESOURCES GOVERNING HRT'S PROCUREMENTS**

<b>CITATION</b>	<b>TITLE</b>	<b>SUBJECT</b>	<b>URL</b>
Treasury Circular 570	List of Approved Sureties	Companies approved to provide bonds on federal projects.	<a href="http://www.fms.treas.gov/c570/index.html">http://www.fms.treas.gov/c570/index.html</a>
FTA C5010.1D	Grant Management Guidelines	Regulations governing the administration of grants	<a href="http://www.fta.dot.gov/laws/circulars/leg_reg_8640.html">http://www.fta.dot.gov/laws/circulars/leg_reg_8640.html</a>
EPLS	U.S. Excluded Parties List System	Listing of Debarred Individuals and Companies	
VA Debarment Listing	Virginia Division of Purchases and Supplies Debarment and Prohibited List	Listing of Debarred Individuals and Companies	<a href="http://www.eva.virginia.gov/dps/Buyers/docs/debarred.pdf">http://www.eva.virginia.gov/dps/Buyers/docs/debarred.pdf</a>
FTA C4220.1F	Third Party Contracting Requirements	Requirements for Federally-funded procurements	<a href="http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html">http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html</a>
FTA MA(Current Year)	Master Agreement (Issued annually as of October 1 of each year)	Terms and conditions governing Federally-assisted projects	<a href="http://www.fta.dot.gov/documents/17-Master.pdf">http://www.fta.dot.gov/documents/17-Master.pdf</a>

SOURCE / NETWORK PATH C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx
---

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 218 of 218</b>
---	-------------------------------------	---------------------------	--------------------------------

**(CONTINUED)**

**PRINCIPAL STATUTES, REGULATIONS AND RESOURCES GOVERNING HRT'S PROCUREMENTS**

<b>CITATION</b>	<b>TITLE</b>	<b>SUBJECT</b>	<b>URL</b>
49 C.F.R. Part 18	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments	Regulations governing Federally-assisted projects	<a href="http://www.access.gpo.gov/nara/cfr/waisidx_08/49cfr18_08.html">http://www.access.gpo.gov/nara/cfr/waisidx_08/49cfr18_08.html</a>
49 U.S.C. Chapter 53	Federal Transit Laws	Statutes governing federal transit programs	<a href="http://uscode.house.gov/download/pls/49C53.txt">http://uscode.house.gov/download/pls/49C53.txt</a>
49 CFR Part 26	Participation by Disadvantaged Business Enterprise in Department of Transportation Programs	Regulations governing the certification of DBEs and the establishment/administration of DBE goals	<a href="http://www.access.gpo.gov/nara/cfr/waisidx_09/49cfr26_09.html">http://www.access.gpo.gov/nara/cfr/waisidx_09/49cfr26_09.html</a>
49 CFR Part 661, Buy America Requirements	Buy America Requirements - Surface Transportation Assistance Act Of 1982, As Amended	Buy America requirements for iron, steel, manufactured products and rolling stock	<a href="http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;sid=3c5bb75fcfd0ec2bde382cfda2113614&amp;tpl=/ecfrbrowse/Title49/49cfr661_main_02.tpl">http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;sid=3c5bb75fcfd0ec2bde382cfda2113614&amp;tpl=/ecfrbrowse/Title49/49cfr661_main_02.tpl</a>

SOURCE / NETWORK PATH  
C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx

TITLE <b>Procurement Procedures Manual</b>	NUMBER <b>PRO-001 Rev. 2</b>	DATE <b>10/04/2012</b>	Page <b>Page 219 of 219</b>
---	-------------------------------------	---------------------------	--------------------------------

**(CONTINUED)**

**PRINCIPAL STATUTES, REGULATIONS AND RESOURCES GOVERNING HRT'S PROCUREMENTS**

40 U.S.C. §§3141 et seq.	Davis Bacon Act	Prevailing wage requirements for Federally—assisted construction projects	<a href="http://www.dol.gov/whd/contracts/dbra.htm">http://www.dol.gov/whd/contracts/dbra.htm</a>
40 U.S.C. §1102	Brooks Act	Procurement of Architect-Engineering and Related Services	<a href="http://www.fhwa.dot.gov/programadmin/121205_40usc.cfm">http://www.fhwa.dot.gov/programadmin/121205_40usc.cfm</a>

**END OF SECTION**

SOURCE / NETWORK PATH C:\Documents and Settings\tdennis\Desktop\Procurement Policy and Procedures Manual October 2012.docx
---