

## **Virginia Recreational Trails Program** **Procurement Procedures**

All project contractors, suppliers, vendors, and project equipment and materials are subject to the Commonwealth of Virginia's construction and professional services procurement requirements and the federal contract requirements outlined in form [FHWA 1273](#), as well as other applicable state and federal procurement regulations.

All RTP projects must comply with [2 CFR 200.317-327](#), the [Virginia Public Procurement Act](#) (VPPA), and local entity procurement standards. The Commonwealth of Virginia **Construction and Professional Services Manual (CPSM)** sets forth the standards, policies, terms, conditions, and procedures to be followed by state agencies and institutions in procuring professional design and construction services. The CPSM is published under the authority of §2.2-1132, Code of Virginia, as amended. To access the CPSM visit the Department of General Services, Division of Engineering and Buildings website at <https://dgs.virginia.gov/engineering-and-buildings/statewide-constructionproject-management/about-the-cpms/>. If local procurement standards conflict with State or Federal standards, please contact RTP Recreation Grants staff to determine appropriate actions to ensure proper procurement procedures are followed. Both the VPPA and 2 CFR 200 have allowances that permit a locality to follow certain alternative procurement procedures, but those procedures must be adopted as policies in writing *prior to* the solicitation and procurement.

Costs associated with posting solicitation documents such as publishing in a newspaper are eligible expenses for reimbursement. Tare sheets and/or website screen prints must be provided along with proof of purchase as discussed in the RTP Reimbursement Request Guide available at <https://www.dcr.virginia.gov/recreational-planning/trailfnd>.

### **Contracts**

Contracts must be awarded to entities licensed to work in Virginia. Contracts must not be awarded to any vendor which is debarred or suspended or is otherwise excluded for or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." Cost plus agreements are not allowed and will not be considered eligible for reimbursement.

Solicitation documentation must contain notice that ***"partial funding for the project is being provided by the Recreational Trails Program of the Federal Highway Administration administered in Virginia by DCR and must be undertaken in accordance with the Recreational Trails Program guidance of the FHWA, 2, 23 and 49 CFR, and the Build America, Buy America Act."***

### ***Design and Engineering Contracts***

Design and engineering (professional services) contracts must be secured by competitive negotiation. Copies of the final RFP, executed contract, response and evaluation summary, and summary of DBE/SWaM efforts must be provided to DCR for project filing records.

## ***Construction Contracts***

Construction contracts must be secured by competitive sealed bidding. Contracts must be awarded to the lowest responsive and responsible bidder. Federal funding prohibits negotiation with the lowest bidder. If only one bid is received, then the project must be re-bid.

A draft copy of the invitation for bid (IFB) should be provided to DCR for administrative review during the solicitation process. Copies of the final IFB, a bid spreadsheet showing the lowest responsive and responsible bidder, executed contract, and description and documentation of the effort exerted by the RTP recipient to include DBEs and SWaMs in the bidding process must be provided to DCR for project filing records.

Note that FHWA approval of all environmental review/ NEPA documentation is required *before* advertising for the construction phase.

Projects within the right-of-way of a federal-aid highway are subject to the Davis-Bacon Act and [23 U.S.C. 113](#), prevailing rate of wage.

## ***On-Call and/or previously Procured Contractors***

If the project contains elements or contractors that are part of a procurement that has already taken place, the subgrantee must verify that the applicable state and local procurement procedures were followed. DCR may request documentation of past procurement records, to include: documents listed at the end of this guide as required records for new RTP procurements, as well as proof of advertisement (a screen shot or report showing that the RFP or IFB was posted in a public location), the letter of award on the contract, and the contract agreement.

## ***Small Purchase Procedures***

Public bodies may utilize methods of procurement other than competitive negotiation or competitive sealed bidding, such as small purchase procedures, if the procedures have been adopted in writing and are in compliance with the allowances in 2 CFR 200 and the Virginia Public Procurement Act. In most circumstances a minimum of three price or rate quotations should be obtained.

## ***Preliminary Engineering Phase and NEPA Completion***

**FHWA approval of all NEPA documentation is required *before* advertising for construction.** Please see the RTP Environmental Review Guidance document posted at <https://www.dcr.virginia.gov/recreational-planning/trailfund> for full list of environmental review requirements. The complete environmental review package and certification form must be submitted to DCR for review, and DCR will submit the package to FHWA on the entity's behalf. Do not advertise the bid package until receiving notice of FHWA approval of NEPA documentation.

### **Small, Women-owned, and Minority-owned Businesses (SWaM) and Disadvantaged Business Enterprises (DBE)**

All RTP recipients must take appropriate and reasonable steps to provide DBE and SWaM businesses with the maximum opportunity to compete for and perform contracts for trail projects receiving aid through the program. These steps shall include: placing qualified small and minority businesses and women's business enterprises on solicitation lists, and assuring that small, minority businesses, and women's business enterprises are solicited whenever there are potential sources.

This can be completed by using the Virginia Small Business & Supplier Diversity Directory at <https://www.sbsd.virginia.gov/directory/>, searching for pertinent engineers or contractors in the general project area, and directly sending the RFP or IFB documentation to the listed businesses. Alternatively, the subgrantee may use the eProcurement Marketplace (eVA) at <https://www.eva.virginia.gov/> and, if DBE and SWaM businesses have viewed the solicitation, print the list of all businesses that viewed the posting. An additional option is to post the RFP or IFB in a local or regional minority or specialty newspaper. Provide DCR with proof of correspondence for project records showing due diligence was completed.

### **Buy America Requirements**

Iron, steel, and construction materials for the project must comply with Buy America and Build America, Buy America requirements ([23 USC 313](#), [23 CFR 635.410](#), and [Infrastructure Investment and Jobs Act Section 70901](#)). Entities are responsible for ensuring all materials are in compliance and that all contractors understand and follow these requirements.

Buy America specifically applies to certain federal-aid projects and is different than *Buy American*, which covers direct federal procurements. Guidance from FHWA can be found [here](#). Material certification documentation may be required to prove materials were sourced and manufactured in the U.S. For FHWA-funded projects, there is a \$2,500 limit on the total value of non-domestic iron and steel, as delivered to the project. If material certification cannot be provided, it will be assumed the material is non-domestic and subject to the \$2,500 project limit. There is no allowance for non-compliant construction materials.

While Buy America for iron and steel has been a long standing RTP requirement, construction materials were recently added, effective November 2022. The Office of Management and Budget currently defines construction materials as:

*articles, materials, or supplies incorporated into an infrastructure project that consist of only one or more of the following materials...: (i) Non-ferrous metals; (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); (iii) Glass (including optic glass); (iv) Fiber optic cable; (v) Optical fiber; (vi) Lumber; or (vii) Drywall.*

Currently, cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives are not defined as construction materials. However, it may be determined that they are still subject to Buy America preferences in the future.

The Department of Transportation is currently evaluating a proposed waiver to these requirements for small grants, but applicants should be prepared to fully comply with the standing requirements for their RTP project.

### **Required Document Submissions and Recordkeeping**

Procurement documents must be submitted to DCR for administrative review before proceeding in the procurement process and/or for project file records.

#### ***Administrative Review***

Following must be submitted for DCR administrative review:

- Draft of IFB solicitation for construction (before public posting)
- Bid summary sheet / Proposal summary sheet (before awarding contract)
- Full environmental review package (must be submitted and FHWA approved *prior to* advertising for construction)
- As requested: verification or documentation of any procurement of services occurring before project authorization

#### ***Project Records***

The subgrantee must maintain records sufficient to detail the history of all procurements. These records should include, but are not limited to: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

In addition to keeping with their own project records, the subgrantee should provide the following documents to DCR as they are completed:

- Copy of the final solicitation/advertisement (tare sheet and/or website screen print)
- A copy of the final Invitation for Bid or Request for Proposals,
- Bid/response spreadsheet listing all bids/responses received,
- Executed contract,
- Summary of the RTP recipient's efforts to comply with the RTP DBE and SWaM Policy. It is essential that there is documentation that the process was competitive and fair.

**Recipients are responsible for ensuring that all contracts are in compliance with federal and state laws concerning the solicitation of supplies, equipment, and services. When conflicts exist, DCR must be contacted for consultation with the FHWA. If any project components or services are not procured per the applicable standards, those expenses will not be eligible for RTP reimbursement and the project may be withdrawn and any previous payments returned to FHWA.**