



*This policy supersedes all prior policy statements written, verbal, or otherwise*

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<b>Charlie Rountree, Chairman    Kelli Fairless, Executive Director</b>	

# Valley Regional Transit Procurement Manual

## 1. PURPOSE AND INTRODUCTION

1.1 Objective. The purpose of the Valley Regional Transit Procurement Manual is to define the basic policies and procedures for the procurement and disposal of materials, equipment, buses, other vehicles, and facilities, and the procurement and administration of professional services and other services required Valley Regional Transit. The Procurement Manual specifies policy and procedure for all Valley Regional Transit employees involved in the procurement process.

Valley Regional Transit’s policies and procedures are established in order to:

- Maximize the value received for Valley Regional Transit’s expenditure of public funds,
- Protect assets purchased with public funds and ensure their application in Valley Regional Transit’s interest,
- Provide a timely, efficient, and cost-effective flow of resources necessary to support Valley Regional Transit’s provision of service, and
- Protect the integrity of Valley Regional Transit’s procurement process and the reputations of Valley Regional Transit, its officers and employees.
- Comply with all applicable U.S. DOT Federal Transit Administration (FTA), and State of Idaho regulations.

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- 1.2 General Procurement Policy. It is the policy of Valley Regional Transit that the purchase of all goods and services be accomplished under the control of its Executive Director and appointed staff designated by the Executive Director who are responsible for each purchase. These purchasing professionals facilitate procurement of quality materials, equipment and services in a cost effective, efficient and responsive manner. They are responsible for ensuring full and open competition and equitable treatment of all potential vendors and sources of goods and services. They will use sound procurement policies and procedures in the planning, solicitation, award, administration, and documentation of contracts through which public funds are expended.
- 1.3 Federal, State and Local Regulations. Valley Regional Transit’s policies and procedures are designed to conform to applicable federal, state, and local regulations and guidelines that govern public procurements. Valley Regional Transit will employ the strictest of any federal, state, or local guideline, which applies to a particular procurement. The largest number of individual procurements for Valley Regional Transit involves purchases to support transit operations, which are supported in part by federal funds through grants from the Federal Transit Administration (FTA). The U.S. Department of Transportation Federal Transit Administration provides guidance for procurement in 49 Code of Federal Regulations Part 18, and in FTA Circulars 4220.1F (Ver.2), and 5010.1D. The state of Idaho also provides rules applicable to public procurement for Political Subdivisions in Title 67, Chapter 28, “Purchasing by Political Subdivisions.”
- 1.4 Review and Update. The policies incorporated in Section 2.0 “Policies” of this Procurement Manual can only be changed with the approval of the Valley Regional Transit Board. The Executive Director is responsible to prepare and propose to the Valley Regional Transit Board the rules and regulations regarding purchasing policies, procedures and practices which are in accord with applicable State of Idaho statutes and Federal Transit Administration (FTA) requirements.. The Executive Director (or a person he/she designates) will, at a minimum, annually review the Manual against any changes in federal, state or local guidelines that may have occurred, or changes in internal procedures necessary or appropriate. Changes to the Manual shall be submitted by the Executive Director to the Valley Regional Transit Board for approval.

## **2. POLICIES**

### **2.1 Ethics**

- 2.1.1 Purpose. Because it is imperative that officials and employees of the Valley Regional Transit Board maintain the highest possible standards

of ethical conduct in their transaction of public business, such standards must be clearly defined and published. The following Code of Ethical Standards has been adapted from Idaho Code Title 59, Chapter 7, "Ethics in Government Act of 1990" and includes standards of the Federal Transit Administration.

- 2.1.2 Relationships. In all procurement matters relating to Valley Regional Transit, no Valley Regional Transit employee, official, or agent, including any member of an evaluation committee for a Valley Regional Transit project, shall participate in the selection, award, or administration of a contract between Valley Regional Transit and a private business if a conflict of interest, real or apparent, would be involved. Such a conflict would exist when an employee, officer, or agent of Valley Regional Transit; any member of his/her immediate family; his or her partner; or an organization which employs, or is about to employ, any of the above; has a material financial or other interest in a firm selected for award of a contract. Any interest as owner or stockholder of one percent (1%) or less in such a firm shall not be deemed to be a material financial interest, but serving as Director, officer, consultant, or employee of such an organization would be deemed a material interest.

Unless specifically prohibited by law, a Valley Regional Transit official or employee, as such, is not precluded from making a bid on an Valley Regional Transit contract if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he or she has not taken part in developing contract plans or specifications, and he or she will not be personally involved in opening, considering, or accepting bids or proposals, and he or she will not in any way participate in administering the contract.

No Valley Regional Transit official or employee may approve, disapprove, vote, abstain from voting, or otherwise act upon any matter in which he or she has a financial interest without disclosing the full nature and extent of his or her interest. Such a disclosure must be made before the time when he or she is to perform the duty or concurrently with that performance. For a Valley Regional Transit Board member or the Executive Director, disclosure shall be made to the Valley Regional Transit Chairman and other Board members. For all other employees, disclosures shall be made to the Executive Director.

No Valley Regional Transit official or employee may accept any salary, retainer, augmentation, expense allowance or other compensation

from any private source for the performance of his or her duties as a Valley Regional Transit official or employee.

If a Valley Regional Transit official or employee acquires, through his or her public duties or relationships, any information which by law or practice is not at the time available to people generally, he or she may not use the information to further the pecuniary interests of himself or herself, or any other person or business entity.

No Valley Regional Transit official or employee may suppress any governmental report or other document because it might tend to affect unfavorably his or her financial interests.

- 2.1.3 Gifts and Gratuities. It is Valley Regional Transit's policy that no official or employee of Valley Regional Transit shall seek or accept, directly or indirectly, any gift, gratuity, service, favor, employment, engagement, compensation or economic opportunity from a contractor, potential contractor, or subcontractor which would tend to improperly influence a reasonable person in his or her position to depart from the faithful and impartial discharge of his or her public duties. This would include any gift or gratuity that has a value of more than \$25.00. No Valley Regional Transit official or employee may use his or her position to secure or grant unwarranted privilege, preferences, exemptions, or advantages for himself or herself, any member of his or her immediate household, any business entity in which he or she has a financial interest, or any other person. Gifts received with a value of \$25.00 or more shall be returned to the source.
- 2.1.4 Violations. Violation of Valley Regional Transit's ethics policy by any employee shall subject the individual to disciplinary action up to and including discharge as determined by the Executive Director of Valley Regional Transit. Violation of this policy by the Executive Director, a member of the Board, officer or agent of Valley Regional Transit shall subject the individual to disciplinary action or sanction as determined by the Valley Regional Transit Board. Violation of this policy by contractors or their agents may be considered a breach of contract and shall subject such contractor or agent to action up to and including cancellation of contract and suspension and disbarment from contracting with Valley Regional Transit. Violation of this policy by bidders or potential contractors may be considered to make such bidder or proposer ineligible to bid or render a bid or proposal non-responsive.
- 2.1.5 Organizational Conflict of Interest. It shall be Valley Regional Transit's policy in soliciting and contracting for goods and services to prevent

any real or apparent organizational conflicts of interest which could arise when the nature of work to be performed under a proposed contract would result in an unfair competitive advantage to the contractor in the award of future work. It shall not be a bid or proposal requirement that a prospective vendor or contractor have prior contracts with Valley Regional Transit. This shall not be construed, however, to prevent or limit the use of two-step sealed bidding.

2.1.6 Procurements with Suspended/Debarred Vendors Prohibited. It is Valley Regional Transit's policy not to enter into a contract with a bidder(s) on the General Services Administration's listing of Suspended and/or Debarred Parties (as published at <https://www.epls.gov/>).

2.2 General Procurements Requirements. As a political subdivision of the State of Idaho, Valley Regional Transit (VRT) procurement procedures comply with Idaho Code 67-2801 through 67-2808. In addition, since U.S. DOT Federal Transit Administration (FTA) funding is utilized, VRT also complies with procedures and regulations as found in FTA Circular, 4220.1F (Ver. 2) (current as of 1 July 2010), and its references. The following citations apply to the various types of procurements listed:

2.2.1 General Procurements Requirements. Valley Regional Transit Procurement procedures comply with Idaho Code 67-2801 through 67-2808 as well as other applicable sections of Idaho Code, and FTA C 4220.1F (Ver. 2), and its associated outside references.

2.2.2 Procurement of Real Property. Valley Regional Transit Procurement procedures will comply with applicable sections of Idaho Code and FTA requirements. Real property acquisition is addressed in DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR Part 24, implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. Section s 4601 *et seq.*, which provide protections for owners and lessees of real property to be acquired as part of an FTA-Assisted project. More guidance is included in the most recent edition of FTA Circular 5010.1, providing "Grant Management" guidance.

2.2.3 Procurement of Public Works Construction. VRT will follow the requirements of Idaho Code, Title 67-2805 and applicable FTA requirements.

2.2.4 Intelligent Transportation Systems. Intelligent Transportation Systems (ITS) Property and services must comply with the National ITS Architecture and Standards to the extent required by section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on

Transit Projects,” 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

2.2.5 Rolling Stock. For the procurement of transit vehicles (also referred to as “Rolling Stock”) Valley Regional Transit will comply with the applicable requirements of Idaho Code 67-2801 through 67-2808 and the specific rolling stock requirements in FTA C 4220.1F (Ver. 2), Chapt. IV, 2.e (Rolling Stock – Special Requirements).

2.2.6 Professional Service Contract with Design Professionals, Construction Managers and Professional Land Surveyors (also referenced as Architectural Engineering (A&E), and Related Services by FTA). For the procurement of projects which are connected or related to construction or repair or real property, VRT will comply with Idaho Code, 67-2320, unless otherwise pre-empted by federal law.

### 2.3 Centralized Purchasing Authority.

2.3.1 The responsibility for the procurement and disposal of all material, equipment, vehicles, property and services for Valley Regional Transit rests with the Executive Director. The Executive Director has independent authority to act for the Valley Regional Transit Board, subject to Valley Regional Transit policies, in purchases of materials, equipment or services through \$49,999.99. All purchases between \$50,000.00 and \$74,999.99 require approval by the Valley Regional Transit Board Management Committee prior to award. Purchases of 75,000.00 or more require approval by the Valley Regional Transit Board prior to award.

2.3.2 Purchases of \$50,000 and over require formal bidding and advertising. For purchases in excess of \$3,000.00 but not more than \$50,000, Valley Regional Transit shall, as set forth in Idaho Code § 67-2806 obtaining price or cost quotations from at least three (3) responsible vendors in the business of supplying such goods or services. If Valley Regional Transit finds that it is impractical or impossible to obtain three (3) quotations for the proposed transaction, Valley Regional Transit may acquire the property in any manner it deems best from a qualified vendor quoting the lowest price. Certain authority and responsibility will be delegated by the Executive Director to other Valley Regional Transit employees, but will always be subject to the Executive Director’s review. No other employee may commit funds to potential or existing suppliers or vendors on Valley Regional Transit’s behalf except as provided for herein. Purchases up to \$3,000.00 are defined as ‘micro purchases’ as specified in FTA C 4220.1f (Ver. 2).

- 2.3.3 For all procurements, the Executive Director shall designate a Contracting Officer to oversee all procurements of goods and services for Valley Regional Transit, whose responsibility shall be to insure full and open competition, fair treatment of all suppliers, and good value to Valley Regional Transit in all procurements it makes.

The Contracting Officer's responsibilities shall include assisting departmental Project Managers in the development of the statement of the purchase requirement, and in controlling the solicitation, negotiation, award and contract administration of the procurement. The Contracting Officer will assist the departments to determine the method of procurement (e.g., RFQ (Request for Qualifications, or Request for Quotes), RFB (Request for Bids), RFP (Request for Proposals), non-competitive negotiation, etc.), the type of contract (e.g., firm fixed-price, cost reimbursement, etc.), and the terms and conditions to be included in the contract based on the requirements.

The Contracting Officer is responsible to ensure that no contract will be entered into unless all requirements of law, regulations, and all applicable procedures, including proper clearances and approvals, have been met and that sufficient funds are available for the obligation. Following contract award, the Contracting Officer is responsible for assisting Project Leads in monitoring contract compliance, enforcing contract provisions, including issuing timely performance and payment approvals, modifying the contract as necessary, closing out the contract when its performance is completed, and maintaining a complete record of each procurement in a single file. The Executive Director will designate Project Lead individuals as appropriate.

In overseeing Valley Regional Transit's procurement process, the Contracting Officer shall directly participate in the solicitation process for all of Valley Regional Transit's negotiated procurements, including competitive negotiation (Requests for Proposal) and non-competitive negotiation, including sole source, single bid and contract change orders.

- 2.3.4 Each Valley Regional Transit department head shall designate a Project Lead, who is specifically responsible for each project. The Project Lead shall define program requirements and incorporate those requirements in a statement of work, indicate the relevant evaluation factors and the weight they are assigned in valuation, and develop initial cost estimate for the requirement to enable comparison with the proposal from contractors. During the solicitation, the Project Lead

will be involved in the evaluation of responses to the solicitation. In competitively negotiated procurements, the Project Lead or the Contracting Officer shall chair the evaluation panel unless the Executive Director determines a potential conflict of interest exists.

Following contract award, the Project Lead shall have primary responsibility for monitoring contractor compliance with contract requirements, keeping the Contracting Officer informed of progress and problems, evaluating technical changes or modifications proposed by the contractor and recommending appropriate action to the Contracting Officer.

Project Leads generally will have independent authority to manage the solicitation process for simple procurements made under small purchase provisions (currently up to \$3,000.00 per FTA C 4220.1F (Ver. 2), and under competitive bid (Invitation for Bid) procedures, however, as deemed appropriate or necessary, the Contracting Officer may participate in these procedures. Because competitively negotiated and non-competitively negotiated procurements are more complex, those procurements will always involve the Contracting Officer through the solicitation, contract negotiation and award.

- 2.3.5 All purchases of goods and services in excess of \$3,000 shall be initiated through use of a purchase requisition. Appropriate approvals must be acquired before the purchase is made. A Purchase Order is required for all purchases.
- 2.3.6 Each department's Project Lead is responsible for early involvement of the Contracting Officer in planning for procurements in order that full and open competition can be maximized.
- 2.3.7 Project Leads are responsible to provide to the Contracting Officer, in a manner as thorough and complete as possible, formal solicitations including scope of work or technical specifications for their requirements. The Contracting Officer and/or counsel will review all formal solicitations for completeness prior to release for bid or proposal.
- 2.3.8 Pending the award of a contract in any negotiated procurement, user departments may consult with vendors concerning details of their products. However, any discussion of prices, quantities, or other bidding, proposal, or contractual matters with vendors must involve necessary consultation with the Contracting Officer, to assure proper procedures are followed. All substantive information discussed with

any one vendor must be disclosed to all other potential vendors participating in the procurement.

- 2.3.9 All correspondence with a supplier regarding a matter of its contract with Valley Regional Transit, whether relating to the scope of work, specifications, quality of work, delivery, payment, etc., shall involve the Contracting Officer or Project Lead.
- 2.3.10 The Contracting Officer has full authority to question the quantity, kind, and quality of material or services requisitioned in order to avoid purchase of unnecessary or duplicate items or items of questionable value to Valley Regional Transit, and to consider consolidating or breaking out procurements to obtain economical purchase. Division Directors and Project Leads shall cooperate with the Contracting Officer in these matters. For Micro-purchases, Division Directors, Project Leads and the Contracting Officer will assure equitable distribution among qualified suppliers and that there is no splitting of procurements to avoid competition as required in FTA Circular 4220.1F (Ver. 2).
- 2.3.11 The Contracting Officer and Project Leads may consider and pursue, in the interest of economy and efficiency, the use of state and local intergovernmental agreements for procurements, agreements for the use of common goods and services, or the use of federal or state excess and surplus property, when it is in the interest of Valley Regional Transit to do so and complies with state and federal requirements and guidelines.
- 2.3.12 The Contracting Officer and the Project Leads are responsible to ensure that awards are made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. To that end, they will consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources in determining whether a potential contractor is responsible.
- 2.3.13 The Contracting Officer is responsible for assuring that a record is maintained with sufficient detail on the significant history of all procurements. The record must include, but will not be limited to, rationale for method of procurement, selection of contract type, selection or rejection of contractors, basis for contract price, contract amendments or change orders, and contract close-out.
- 2.3.14 The Contracting Officer, with any necessary guidance and assistance of the Executive Director and/or counsel, shall be responsible to assist

Project Leads in the settlement of all contractual and administrative issues arising out of procurements, including source evaluations, protests, disputes and claims. In dealing with protests, the Contracting Officer shall assure Valley Regional Transit’s written protest procedure, which is in compliance with Federal Transit Administration (FTA) Circular 4220.1F (Ver. 2), is followed. See Section 6.8.2 (a – e) for required actions by protest type.

2.3.15 Valley Regional Transit shall comply with all state and federal laws for all procurements. Further, Valley Regional Transit shall conduct procurements in a manner that prohibits statutory or administrative in-State or geographical preferences in the solicitation and evaluation of bids or proposals, except where federal or state law expressly mandates such preferences.

2.4 Approval Levels for Purchases.

2.4.1 The following represents Valley Regional Transit’s required approval levels for purchases. Approvals must be obtained before committing Valley Regional Transit funds, except as set forth in Section 2.4.2, below. A Purchase Requisition is required for all purchases in excess of \$3,000. A Purchase Order is required for all purchases except as otherwise determined for particular types of purchases by VRT Finance Director.

<u>Amount</u>	<u>Approval Required</u>
Up to \$10,000	Department Managers
\$3,000.00 to \$10,000.00	Department Managers, Department Directors
\$10,000.01 to \$49,999.99	Executive Director
\$50,000.00 to \$74,999.99	Valley Regional Transit Management Committee
\$75,000.00 and Over	Valley Regional Transit Board

2.4.2 Emergency Purchases. Approvals as described above shall be secured before committing any Valley Regional Transit funds, except in cases of emergency. Idaho State Statute defines an “emergency” as one which the property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property as defined in Idaho Code § 67-2808. If there is a great public calamity, as

an extraordinary fire, flood, storm, epidemic or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or if it is necessary to do emergency work to safeguard life, health or property, or for contracts which do not exceed one (1) year if there is only one (1) vendor for the property to be acquired, the Contracting Officer may declare that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property, or declare that there is only one (1) vendor for the property. Upon making the declaration of emergency, any sum required in the emergency may be expended without compliance with formal bidding procedures.

An emergency shall be considered to be a real and present threat to Valley Regional Transit property, Valley Regional Transit employee welfare, or the provision of transit service that cannot be reasonably alleviated without the purchase, in question. In all cases, the Contracting Officer will be involved.

During normal business hours, the requirement will be addressed to the appropriate approval level and the appropriate director, who will assure necessary pricing and issue a purchase order.

After normal business hours, the senior person present will determine whether the matter may be resolved during the next business day. If not, an attempt will be made to secure price quotations from two or more reputable sources, and a purchase made. A requisition will be prepared the next business day and fully documented as to the nature of the emergency, and approval signatures will be obtained.

Emergency purchases exceeding the threshold requirement for advertising and/or competitive bidding will require prior approval of the Executive Director before a commitment to purchase is made. In such cases, quotes will be invited from three or more persons or firms known to deal in the materials or services required. The Executive Director will report such emergency action to Valley Regional Transit Management Committee and the Valley Regional Transit Board at the next regularly scheduled meeting.

## 2.5 Disadvantaged Business Enterprise Program.

It is the policy of Valley Regional Transit to actively encourage and assist Disadvantaged Business Enterprises (DBEs) to participate competitively in Valley Regional Transit procurement actions as outlined in the DBE policy. This shall be done in compliance with the Idaho Transportation Department Disadvantaged Business Enterprise Program.

2.6 Audits/Inventory of Assets.

2.6.1 Real Property Acquisition and Management. Valley Regional Transit shall follow the requirements for acquisition and management of real property specified in Federal Transit Administration Circular 5010.1D, Use and Disposition of Project Property. Concurrent with its biennial equipment certification, Valley Regional Transit will review all real property acquired with FTA assistance and certify what property continues to be needed for project purposes. These certifications no longer require submission to the FTA, but must be kept on file. If excess real property exists, an excess real property utilization plan or plan for disposal shall be prepared and submitted Equipment Management Standards. Valley Regional Transit shall follow the requirements for management of equipment purchase with Federal Transit Administration funds specified in FTA Circular 5010.1D, Use and Disposition of Project Property.

At least once every year, Valley Regional Transit will conduct a physical inventory and account for all equipment and other capital assets. A “capitalized fixed asset”, for FTA inventory purposes, is property, such as land, buildings, rolling stock and equipment, with a cost equal to or greater than \$5,000, and a useful life of one or more years. The property record maintained for each item shall include:

- (a) Description;
- (b) Identification number (e.g. serial number, model number, etc.);
- (c) Grant number and percent federal participation;
- (d) Purchase date;
- (e) Purchase cost;
- (f) Condition and use/location;
- (g) Date of disposal, if disposed;
- (h) Sale price and method for determining fair market value;
- (i) Appraisal value/date; and,
- (j) Vested title (as applicable).

In connection with the physical inventory of assets, a Certification will be prepared regarding the existence, current use, and continued need for FTA-funded equipment, and the Certification will be retained in Valley Regional Transit’s files. For those items identified as surplus, the Finance Director will be responsible to develop a plan for disposal for approval by the Executive Director.

2.6.2 Parts and Supplies Inventory. Valley Regional Transit will conduct, at a minimum, an annual inventory of parts and supplies (or other method

such as cycle counting) to reconcile items in stock versus the record of those on hand.

## 2.7 Disposition of Surplus Equipment and Supplies/Scrap.

- 2.7.1 Identification of Surplus/Obsolete Materials, Supplies, Equipment and Scrap. Equipment shall be surplus to Valley Regional Transit when it becomes obsolete to Valley Regional Transit because it has been replaced by newer equipment or because the equipment no longer supports Valley Regional Transit's mission. Equipment shall be scrapped only when it is non-functional and non-repairable, and has little or no value unless functional

Parts are surplus when the part is no longer applicable to Valley Regional Transit's fleet or when stock on hand exceeds the maximum established by the usage history of the item for a period of over three (3) years. In the Valley Regional Transit operation, stock levels and order levels will be reviewed for all stock items at least once annually.

All scrap metal and other scrap having recovery value shall be sold for the benefit of Valley Regional Transit.

- 2.7.2 Disposal of Surplus. It is the policy of Valley Regional Transit to dispose of surplus and scrap to ensure the highest possible return consistent with the costs of disposal, while conforming to requirements of FTA Circulars 5010.1D and 4220.1F (Ver. 2), and the principles set forth in Idaho Code § 67-5732A, applicable to the State of Idaho, Department of Administration. VRT Surplus Property Policy and Procedures, conforming to, and Pursuant to Idaho Code § 67-5701 *et seq.*, all sales of personal property of Valley Regional Transit must be made, to the extent possible, under the conditions and limitations as required by Title 67, Chapter 57 in the purchase of personal property, but the governing body or its authorized representatives may sell any such personal property at public auction if it deems such a sale desirable and in the best interests of the local government.

Pursuant to FTA Circular 5010.1D, when selling equipment exceeding its useful life with a fair market value over \$5,000, or supplies sold for over \$5,000 in aggregate, Valley Regional Transit shall reimburse FTA by the same percentage of net sales proceeds as the percentage of federal interest in the original grant for the equipment or supplies. Valley Regional Transit will secure prior FTA concurrence in selling equipment before the end of its useful life and shall reimburse FTA for its share of the unamortized value of the remaining service life based

on straight line depreciation, unless the unamortized value is \$5,000 or less.

Surplus materials or equipment that cannot be returned or sold shall not be sold as scrap while such material or equipment is still applicable to Valley Regional Transit vehicles or operation. The disposition of surplus materials, supplies and scrap must be authorized and approved by the Executive Director prior to disposition. All sales shall be by cashier's check or cash.

- 2.7.3 Disposal of Scrap. Materials, parts, or equipment identified as scrap and having recovery value shall be sold to the highest of three scrap dealers willing to make quotations. The Finance Director must recommend, with subsequent Board approval, the disposition of scrap. All sales shall be by cashier's check or cash, unless otherwise approved by the Finance Director.

### 3. RESPONSIBILITIES

- 3.1 General. The authority to award contracts rests with the Valley Regional Transit Board. This authority is delegated, in part, to the Executive Director who oversees all agency activities and designates a Contracting Officer to oversee day-to-day purchasing activity. Directors and managers, including, shall designate (or may serve as) Project Leads for specific projects carried out by their respective departments. Project Leads are generally responsible to initiate the procurements for their departments and to work closely with the Contracting Officer in award and administration of contracts.

The responsibilities of persons involved in the procurement process are described in following paragraphs.

- 3.2 Valley Regional Transit Board.
1. Holds sole contracting authority;
    - (a) Establishes agency operating budget and capital plan and budget based on recommendations of Executive Director and staff;
    - (b) Approves all purchases of \$75,000.00 and over resulting from competitive procurements pursuant to Idaho Code § 67-28, and based on Executive Director's recommendation;
    - (c) Requires award methodology be consistent with the solicitation evaluation criteria and the requirements of the scope of work, bid specifications, etc;

- (d) Authorizes Executive Director to approve all purchases of \$49,999.99 and below and to ensure all purchases are made in compliance with applicable state and federal guidelines; and
- (e) Authorizes Executive Director to dispose of surplus materials, supplies, equipment and property, subject to its policies.

3.3 Management Committee

- (a) Sets annual DBE goals based upon recommendation of Valley Regional Transit staff;
- (b) Approves all purchases of \$50,000.00 to \$74,999.99 resulting from competitive procurements pursuant to Idaho Code § 67-28, and based on Executive Director's recommendation;
- (c) Awards procurements consistent with the evaluation criteria and accompanying weights and the requirements of the scope of work, bid specifications, etc., of the procurement; and
- (d) Authorizes Executive Director to approve all purchases \$49,999.99\* and below and are made in compliance with this policy and applicable state and federal guidelines.

3.4 Executive Director.

- (a) Maintains authority for contracting of all purchases of \$49,999.99 or less;
- (b) Provides recommendations for all purchases over \$49,999.99 to the Valley Regional Transit Management Committee or Board for approval;
- (c) May sign any contract on behalf of Valley Regional Transit upon Board approval or as authorized by the Board; and
- (d) Establishes internal purchasing procedures, recommends changes in purchasing procedures to the Valley Regional Transit Board, and assures compliance with Valley Regional Transit purchasing policies.

3.5 Contracting Officer.

- (a) Acts as the Contracting Officer and under the authority delegated by the Executive Director, delegates approval of purchase orders under \$3,000.00, directly approves all purchases between \$3,000.00 and

\$10,000, and assures funding availability and recommends for approval all purchases over \$10,000;

- (b) In Executive Director's absence may execute documents on behalf of Valley Regional Transit for which signature authority exists;
- (c) Sets up and maintains bidders list;
- (d) Authorizes payments to vendors upon verification of receipt;
- (e) Resolves any dispute of authority for a purchase with department heads;
- (f) Maintains and communicates to department heads a bidding schedule for new bids prior to expiration of contracts, develops activity schedules for major solicitations, assists departments in preparation of technical bid specifications or proposal requirements and other advance coordination necessary to assure full and open competition;
- (g) Oversees simple procurements under small purchase and competitive bid solicitations directly managed, in most cases, by division directors in each department;
- (h) Reviews bids for conformity with contract requirements and determines acceptable bids;
- (i) Assures required procedures are followed in negotiation of all negotiated contracts, including competitively negotiated (RFP process) and non-competitively negotiated (sole source, contract change or amendment) contracts;
- (j) Assists Project Leads in receipt and transmittal of all correspondence with contractor regarding contractual matters after award, and in coordinating any proposed changes with contractor, obtaining cost proposals and conducting cost or price analysis, and obtaining approvals and initiating contract changes as necessary;
- (k) Performs contract administration including review of invoices for negotiated contracts to assure allow ability of costs, receives necessary contractor reports and initiates contractual progress payments, attends progress meetings, and assures proper contract close-out;
- (l) Maintains and updates the Federal Transit Administration (FTA) "Best Practices Procurement Manual" and implements changes; and
- (m) Maintains contract documentation in accordance with FTA regulations.

3.6 Accounting Specialist I. Issues, creates and approves Purchase Orders and assigns identifying number;

- (a) Ensure compliance with purchasing guidelines established by Valley Regional Transit to ensure competitive pricing, terms, etc.;
- (b) Consults with department staff to determine product, equipment and service requirements;
- (c) Core management of all inventories to include but not limited to: analyzing usage, shrinkage anomalies and etc.;
- (d) Order and adjust inventory for all departments;
- (e) Complete routine inventory audits for all departments;
- (f) Investigate inventory discrepancies and errors;
- (g) Complete confidential procurement/contracting duties as assigned by Deputy Director;
- (h) Setup and maintain vendor accounts with finance department;
- (i) Compare invoices against requisitions to verify price, quality and quantity of merchandise received and reconcile any discrepancies with vendor;
- (j) Keep electronic records of inventory received and issued;
- (k) Perform accurate inventory checks (cycle counts) of items on an on-going basis;
- (l) Account for and process all warranty claims to ensure proper credit from vendors;
- (m) Process and submit freight claims as needed; and
- (n) Maintain a working knowledge of applicable federal, state and local regulations.

3.8 Valley Regional Transit Department Managers.

- (a) Identifies needs for goods and services supporting program mission, approve purchase requisitions up to \$10,000, and secure Executive Director approval for requisitions for purchases over \$10,000

- (b) Reviews planned purchases including inventory and non-inventory, contract expirations requiring re-bid, local and grant-funded capital, and total requirements during annual budget planning;
- (c) Coordinates all large non-inventory purchases planned during a budget year with the Contracting Officer to ensure inclusion in and proper prioritization of annual procurement plan;
- (d) Develops all necessary documentation, including technical specifications or scope of work requirements, for inclusion in bid letting or proposal solicitation. Acts as, or appoints, Project Manager to oversee small purchases and formal invitations for bid in department;
- (e) Proposes evaluation criteria for RFP evaluation and participates in evaluation and selection committees as requested; and
- (f) Coordinates with Contracting Officer for payment and contract close-out as necessary upon receipt of goods or services; evaluates quality of goods or services received and gives appropriate feedback.

3.9 Disadvantaged Business Enterprise Officer (Director of Finance).

- (a) Assures that FTA Circular 4715.1A and other federal, state and local regulations are adhered to be Valley Regional Transit;
- (b) Coordinates with directors and managers during annual budget cycle to review planned non-inventory procurement and determine appropriate DBE goal for individual procurements; determines and recommends annual Valley Regional Transit DBE contracting goals taking into account both planned non-inventory and inventory purchases;
- (c) Solicits and encourages the addition of qualified DBE vendors to Valley Regional Transit's bidders lists; offers technical assistance to DBEs as appropriate; assists potential prime contractors to identify potential DBE subcontractors for contracting opportunities; and
- (d) Prepares all required internal and external DBE utilization reports; audits procurements as necessary to assure DBE requirements are met.

3.10 Valley Regional Transit Legal Counsel.

- (a) Reviews all proposed contracts over \$99,999.99, and other contracts as determined to be necessary by VRT Executive Director, to be

submitted for Valley Regional Transit approval prior to submittal to Board; and

- (b) Assists as requested by Executive Director and/or Board in matters of contract solicitation, award, or administration including protests and disputes with vendors.

#### **4. ACQUISITION PLANNING**

4.1 General. Valley Regional Transit recognizes that advance procurement planning is a significant factor in providing and enabling full and open competition. Such planning for large or complex procurements will involve the efforts of all personnel responsible for a procurement to coordinate in planning the funding, technical specifications/scope of work, solicitation and award, contract administration and other matters far enough in advance to assure adequate time to solicit maximum participation by prospective vendors in meeting the requirement. Generally, planning for large or complex non-inventory procurements will begin with the annual budgeting and capital planning process. However, very complex procurements may require advance procurement planning to begin before the annual budget cycle in order to properly define a project scope and budget.

4.2 Department Responsibilities. Directors or managers initiating a project are responsible to provide the Contracting Officer with an "Invitation For Bid," or "Request For Proposal" package, including technical specifications and any necessary drawings for equipment or materials contracts, or a Scope of Work and suggested evaluation criteria for a service contract.

Technical specifications or the Scope of Work will set forth the minimum essential characteristics or standards and will not include any features unduly restricting competition. "Brand name or equal" specifications will only be used when it is impractical to provide a clear and accurate technical description of the product, and will, to the extent possible, describe the relevant functional characteristics of the items to be purchased.

In addition to a purchase requisition, directors, managers, and project leads are responsible to furnish the following information to the Contracting Officer (if appropriate to the purchase):

- (a) Product/service description;
- (b) Desired delivery schedule;
- (c) Technical evaluation criteria in order of merit;
- (d) Special terms and conditions for contract;

- (e) Progress reporting requirements, and
- (f) List of potential vendors (contact name, address and phone number).

Finally, FTA Circular 4220.1F (Ver. 2), requires that an independent cost estimate for all purchases of materials, equipment or services be provided before soliciting quotations, bids, or proposals. Division directors initiating projects are responsible for providing an independent cost estimate to the Contracting Officer for the contract file prior to solicitation. Such documents will be made available to VRT staff, and placed in the appropriate Laser fiche Data files.

- 4.3 Planning Major Procurements. In order to provide for a smooth flow of major procurement work, the Executive Director will annually convene one or more meetings of directors, managers, and project leads after annual budget approval for the purpose of advance procurement planning for the coming year. The expected result of such meeting(s) will be agreement as to responsibilities for and the general timing of procurement effort for major projects in order that consistency of procurement activity is achieved and timely solicitations are made. Minutes of these meetings will be made and retained.

## 5. **SMALL PURCHASES**

- 5.1 General. The Division Directors in consultation with the Contracting Officer will determine the most appropriate method of procurement for each purchase. Purchases will be made by the following methods:

- (a) Petty Cash purchases;
- (b) Small Purchase procedures;
- (c) Emergency purchases;
- (d) Check request/direct pay items;
- (e) Request for Bids (RFB);
- (f) Request for Proposals (RFP);
- (g) Request for Qualifications; or
- (h) Non-competitive procurements.

A significant portion of Valley Regional Transit purchasing activity involves purchases of materials or services under the threshold for formal advertising and bidding, generally termed small purchases. Small purchase procedures are covered in this section.

A Purchase Requisition must be completed and the necessary approvals secured prior to the commitment of Valley Regional Transit funds. The only exceptions to this rule are:

- (a) Emergency purchases coordinated with the Finance Director;  
and
- (b) Direct pay items under existing contracts or with proper prior approvals or authority for expenditure.

## 5.2 Small Purchase Procedures.

5.2.1 General. Federal Transit Administration (FTA) regulations contained in FTA Circular 4220.1F (Ver. 2), and the Federal Acquisition Regulation, define small purchases as those relatively simple and informal procurement methods for securing supplies, services, or property that do not cost more than \$100,000 in the aggregate. Circular 4220.1F (Ver. 2), requires that price or rate quotations will be obtained from an adequate number of qualified sources when small purchase procedures are used. Small purchases are not automatically excluded from consideration for formal bidding if cost-savings or other factors make bidding advisable.

Idaho Code 67-2806, requires at least three written bids be solicited for contracts estimated to be over \$25,000 and formal bidding and public advertising for contracts estimated to be over \$50,000.. Small purchases exempt from formal bidding requirements are those that equal \$25,000 or less are outlined in Idaho Code 67-2803. Professional services and other specific items are exempt from the bidding requirements. The statute does not define procedures for small purchases, but permits informal rate quotations. FTA protocol does not exempt Small Purchases or purchases of Professional Services from bidding requirements.

Valley Regional Transit Competition Guidelines. Valley Regional Transit's competition guidelines for purchases which are less than \$3,000.00 permit purchase without quotation if, in the best judgment of the purchaser, the prices furnished are reasonable and comparable to prices for the same or similar supplies or materials which have been actively competed. Purchases above \$3,000 to \$49,999.99 will require that written bids or proposals be solicited from at least three vendors, if available, without a formal bid or proposal solicitation, unless when the possibility of Disadvantaged Business Enterprise (DBE) participation exists, award may be made directly to a DBE providing the quote is responsive, competitive, and the award would not conflict with any state and federal law. Purchases \$50,000.00 and above will require formal solicitations and bids (or proposals) and formal advertising.

Small purchase procedures will apply. Purchases in excess of \$75,000.00 will require approval by the Valley Regional Transit Board.

For all types of purchases less than the statutory threshold for formal bids, competition guidelines will be relieved when the purchase is known to be “sole source” or when there are less than two potential sources available or willing to quote. In such cases, FTA-required procedures for sole-source acquisition and documentation (see Section 8.0, Non-Competitive Negotiation) will be followed and all efforts to identify and solicit competitive quotations from an adequate number of vendors will be documented.

5.2.2 Purchasing Bidding Requirements

<u>Dollar Amount</u>	<u>General Purchases/Capital</u>	<u>Services Exceptions</u>
<\$3,000.00	Competitive Advantage	Competitive Advantage Verbal Quotes
\$3,000.00 - \$49,999.99	Informal-three written quotes	Informal-three written quotes
\$50,000.00>	Formal bidding and advertising	Formal bidding or request for proposal, and advertising

5.2.3 Small Purchase Documentation. When oral quotations are solicited or obtained, an informal record of notation will be made on or attached to the requisition showing names of suppliers contacted, prices and other terms and conditions quoted by each. Written records of solicitation may include actual written or faxed quotations received or abstracts showing suppliers contacted and responding, price and delivery terms quoted, or references to current printed price lists of a vendor.

5.3 Emergency Purchases. Emergency purchases are separately covered under Section 2.4.2 of Valley Regional Transit Purchasing Policies and Procedures. Emergency procedures will not be used to circumvent established policies and procedures elsewhere described herein. The purchasing professional will be involved at the earliest opportunity. Employees initiating emergency purchases are responsible for all documentation required to the point the procurements is taken over by the Contracting Officer.

In the event of an emergency purchase over the threshold for formal bids, the Valley Regional Transit Board must be informed at its next regularly scheduled meeting.

5.4 Check Request/Direct Pay Items. Certain expenses are incurred without the issuance of a purchase requisition supporting each payment. Such expenses are typically the following types:

- (a) Periodic vendor payments under established vendor contracts or leases;
- (b) Utility and telephone bills;
- (c) Licenses and permits;
- (d) Organizational membership dues;
- (e) Postage;
- (f) Investigative expenses; and
- (g) Settlement of claims and litigation.

For some of these payments, Valley Regional Transit will receive a bill or invoice and for others Valley Regional Transit may bear the responsibility for meeting a schedule payment. Since the usual requisition is not present for approval documentation, a purchase order must be issued in order to record payment in the accounts payable system, a purchase order will be prepared and signatures at the proper authority level will be obtained before payment is issued.

## **6. FORMAL ADVERTISING/REQUEST FOR BID (RFB)**

6.1 General. When Valley Regional Transit requires a simple service contract for items costing more than \$50,000 for rental/lease payments. When this occurs, competitive bidding is initiated. An RFB, requiring sealed bids, shall be solicited, hopefully resulting in three or more persons (or firms) capable of performing the contract under a fixed-price (lump sum of unit price), contract. The contract shall be awarded to the responsible bidder whose bid is, conforming (responsive), to the RFB, is most advantageous to Valley Regional Transit, price and other factors affecting price (such as life-cycle costs or transportation costs) considered.

In addition to the above, based on the solicitations received for the RFB; Valley Regional Transit may determine, in certain circumstances, that issuing an RFB for a purchase requirement under the threshold would be more appropriate in order to secure a favorable price or other benefit to Valley Regional Transit.

6.2 Conditions Determining When Formal Advertising is Appropriate. The following conditions should be present for an RFB to be considered:

- (a) A complete, adequate and realistic specification or purchase description can be made available. Specifications may include one or more of the following conditions:

That bids will be received and contracts let, separately, for each line or class of material;

That bids will be received and contracts let for purchase or lease of an (estimated but) unspecified number of items at a fixed price per unit;  
or

That bids will be evaluated on the basis of such factors as reliability, productivity, and the cost of maintenance and services (i.e., life-cycle cost).

- (b) Reasonable certainty exists that three or more bidders are able and willing to compete effectively for the bid; and
- (c) The purchase lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

6.3 Public Advertising. Invitations for Bid for purchases where the estimated aggregate amount is expected to exceed \$50,000 will be publicly advertised in accordance with Idaho Code Title 67 Chapter 28.

6.4 Solicitation: Preparation of RFB. An “RFB” is the complete assembly of related documents, either attached or incorporated by reference, furnished to prospective bidders. It is based on a clear and accurate description of the material, equipment or service to be purchased not containing features that unduly restrict full and open competition. RFBs should contain the following information if applicable to the purchase:

- (a) RFB number;
- (b) Name and address of Valley Regional Transit;
- (c) Date of issue;
- (d) Date, hour and place of bid opening;
- (e) Description of material, equipment, or services to be furnished under each item, in sufficient detail to promote competition;
- (f) Time of delivery or other performance requirements;

- (g) Permission, if appropriate, to submit bids of alternate material or design (in addition to bid called for);
- (h) Statement that “Bids must set forth full, accurate, and complete information as required by the RFB;”
- (i) Bid guarantee, performance and payment bond requirements;
- (j) A minimum bid acceptance period required of the bidder;
- (k) Any special technical specifications;
- (l) Any special provisions relating to progress payments, patents, liquidated damages, etc.;
- (m) Any contract provisions required by federal, state, or local law;
- (n) All factors to be considered in evaluation of bids, such as shipping costs, taxes and surcharges, etc., and how they will be considered;
- (o) How to obtain copies of documents incorporated by reference;
- (p) Instructions regarding how late bids will be handled;
- (q) FTA (Federal Transit Administration) required clauses;
- (r) Termination for cause or for convenience on contracts in excess of \$10,000; and
- (s) Protest Procedures.

## 6.5 Solicitation Guidelines.

6.5.1 Specifications. Specifications and purchase descriptions will provide accurate descriptions of the technical requirements for the material, equipment or service and will include the procedure for determining whether the requirement has been met. When possible, Valley Regional Transit will state performance specifications defining the expected performance standards the end product is expected to achieve.

Purchase descriptions may refer to a “brand name or equal” product when it is not feasible to provide a more detailed description. All known acceptable brand name products will be listed. Potential bidders will be given opportunity to offer products other than those

specifically referenced by brand name if those other products can be shown to meet Valley Regional Transit needs in the same manner.

- 6.5.2 Bidding Time. Adequate time will be given between the issuing of bid notice and the time set for receipt of bids to permit prospective contractors to prepare bids. Generally, no less than 20 calendar days will be allowed for standard commercial items and no less than 30 calendar days when purchasing other than standard commercial items, or professional services. Complex procurements for certain items of equipment or construction will require significantly longer bidding time.
- 6.5.3 Distribution of RFBs. RFBs over \$50,000 will be publicly advertised in accordance with Section 6.3, with notice posted on the Valley Regional Transit website. At first publication, they will also be mailed to known prospective vendors. Records of RFBs and bids will be maintained as a part of the procurement record for FTA audits. They may also serve as a resource that can be consulted in preparing a source list for similar RFBs.
- 6.5.4 Amendment of RFB. Any change or correction necessary in bid quantities, specifications, delivery schedules, opening date, etc., which is required after issuing RFBs but before bid opening, will be made by issuing an amendment. Any new information given to one prospective bidder will be furnished to all others in the form of an amendment. Consideration will be given to the period of time remaining to opening and the period will be extended in such amendment, if necessary. Notice of amendment will be furnished to each person furnished an RFB. If the scope of the project for an RFB is substantially altered the RFB will be terminated and a new RFB will be issued.
- 6.5.5 Responsiveness of Bids. A bid must comply in all material respects with the RFB, including the method and timeliness of submission. Telegraphic or facsimile bids will not be considered under the competitive sealed bid procedure. Bidders must use the Valley Regional Transit bid form, and in failing to do so will be considered non-responsive.
- 6.5.6 Modification/Withdrawal of Bids. Bids may be modified or withdrawn by written, telegraphic, or facsimile notice or in person if submitted to, received and verified by the Contracting Officer before the time set for bid opening. Telegraphic or facsimile modifications or withdrawals will be sealed in an envelope by a Valley Regional Transit official and noted for opening with the bid package. Information will not be disclosed prior to opening.

6.5.7 Time and Place of Bid Submission. The RFB, and public advertisement if advertised, will set forth the time, date, and place for opening of bids. A bidder will not be required to (but may) submit a bid before the time specified for receipt of bids. Valley Regional Transit shall entertain any bid which is submitted after it publishes notice and before the expiration of the waiting period. Bid specifications will set forth the manner in which sealed bids are to be marked with the Valley Regional Transit RFB number and identified as “sealed bids.” When received by Valley Regional Transit, sealed bids will be date stamped “Received” and the time of receipt noted.

Bids will be opened at the time and place designated in the notice. To be considered responsive, bids must be submitted not later than the exact time specified. Late bids will only be accepted if proven to be late due to Valley Regional Transit’s mishandling after receipt at its offices.

## 6.6 Award of Bids Under RFB Procedures.

6.6.1 Cancellation After Opening. Award will be made to the responsible bidder who submits the lowest responsive bid unless all bids contain unreasonable prices, there is evidence of collusion or bad faith, or competition was not adequate to ensure a reasonable price. Bids will not be canceled and re-advertised due solely to increased requirements for number items being purchased.

6.6.2 Rejection of Individual Bids. Any bid failing to conform to the essential requirements of the RFB, such that it materially affects price, quantity, quality, or delivery of the items bid, or in which the bidder imposes conditions modifying the requirements of the RFB or limiting its liability to Valley Regional Transit in a way that gives the bidder an advantage over others, will be rejected as non-responsive. Minor informalities and errors that do not affect the substance of a bid, may be waived. A low bidder may be requested to delete certain conditions from its bid, provided the conditions do not affect the substance of the bid. If the bidder fails to furnish a bid guarantee that is required as a condition of the bid, the bid must be rejected.

6.6.3 Rejection of All Bids. Valley Regional Transit maintains the right to reject all bids, all bidders will be notified that all bids were rejected stating the reasons for rejection.

6.6.4 Delay of Award. If after bid opening administrative problems delay potential award of the bid beyond the bid acceptance period (as published in the RFB), and all bids are not to be rejected, bidders will

be requested in writing, prior to the expiration of their bids, to extend the bid acceptance period by a specified amount of time. Written confirmation must be received if their bid is to remain in consideration.

6.6.5 Award. Award of a bid will be made by written notice within the time period specified for acceptance (or extension). Award will be made to the responsive and responsible bidder with the lowest bid conforming to the RFB. Valley Regional Transit will consider price and other factors affecting price. Award will not be made until all required approvals for the contract are obtained.

6.6.6 Responsible Bidder. The following factors and any others deemed relevant by Valley Regional Transit will be considered in determining responsibility of a bidder:

- (a) Possession of and limit on any required license;
- (b) Financial responsibility (including ability to provide required bonds);
- (c) Experience;
- (d) Adequacy of equipment; and
- (e) Ability of bidder to complete performance.
- (f) Capacity, capability, and demonstrated compliance with all applicable State of Idaho, and Federal laws, regulations, and administrative rules.

6.6.7 Responsive Bidder. The following factors and any others deemed relevant by Valley Regional Transit will be considered in determining the responsiveness of a bidder:

- (a) Whether the bid conforms in all material respects with the specifications;
- (b) Whether the bid complies specifically with the invitation to bid and instructions to bidders;
- (c) Whether the bidder complied with all applicable statutes or regulations pertaining to the award of a public contract; and
- (d) Whether all FTA (Federal Transit Administration) certifications and assurances have been completed.

6.6.8 Price Analysis. Some form of price analysis is required for every procurement transaction. In addition, cost analysis is required when it is necessary to examine individual cost elements, such as labor hours or materials prices, to determine the reasonableness of price. In most cases, when competition exists under an RFB, price analysis will be used. Price analysis alone is appropriate when the price will be based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or where prices are set by law or regulation. The Contracting Officer (or Project Manager) must document, for the contract file, that the price is fair and reasonable and give the basis for that conclusion.

Price analysis is the process of examining and evaluating a proposed price, to conclude the price is fair and reasonable, without evaluating its separate cost elements and proposed profit. Price analysis should include at least two of the following approaches:

- (a) Comparison of competitive price quotations;
- (b) Comparison of prior quotations/bids and contract prices with current quotations/bids for the same or similar items;
- (c) Use of yardsticks such as dollars per pound, per horsepower, or other units to identify inconsistencies;
- (d) Comparison of published price lists or prices issued on a competitive basis, or published market prices of commodities, together with discount or rebate schedules; and
- (e) Comparison of proposed prices with independent cost estimates prepared before bid.

Price analysis is based on data that is obtained from sources other than the prospective contractor. Prices proposed by competitors are the best data because they reflect current economic conditions and are based on identical specifications. If using prior pricing information, the following factors must be considered:

- (a) The prices must be adjusted for changes in economic conditions between the times of the two procurements;
- (b) Adjustments must be made for differences in quantity; and
- (c) Consideration must be given to inclusion of nonrecurring costs in prices. To make a fair comparison, nonrecurring costs should be removed from both prices.

6.6.9 Single Bids. Valley Regional Transit may award a sole source contract to a single bidder provided that an analysis can be completed which documents the price is fair and reasonable. Price analysis will only be used when price reasonableness can be established based on catalog or market price of a commercial product sold in quantity or set by law or regulation. A cost analysis is required in all other cases of single bid evaluation. Cost analysis is covered in Section 7.7.6.

FTA Circular 4220.1F (Ver. 2), specifies that single bids must be considered as non-competitive negotiations, and negotiated procurement procedures must be followed. Negotiated procurements are covered under Section 8.

FTA Circular 4220.1F (Ver. 2) requires recipient agencies who have self-certified to submit to FTA for pre-award review any proposed award exceeding \$1 million, or for more than 14 buses, which results from a single bid. Documentation requirements outlined in 4220.1F (Ver. 2), E will be followed. Valley Regional Transit is self-certified.

## 6.7 Bonding Requirements.

6.7.1 General. Idaho Code 67-2805 provides that if it is deemed that it is in the best interest to the organization, it may require the vendor to provide bid security. The bid security shall be an amount equal to at least five percent (5%), but not more than ten percent (10%), of the bid and may be cash, a cashier's check made payable to Valley Regional Transit, a certified check made payable to Valley Regional Transit, or a bidder's bond executed by a qualified surety company made payable to Valley Regional Transit. If required, a bid shall not be considered unless one of the forms of bid security is included with the bid.

The Federal Transit Administration (FTA Circular 4220.1F (Ver. 2)) requires bid, performance and payment bonds for construction or facilities improvement contracts over \$100,000. Minimum requirements include a bid guarantee of eighty-five percent (85%) minimum in the form of a bid bond, certified check or other negotiable instrument accompanying the bid, a performance bond of one hundred percent (100%) of the contract amount, and a payment bond assuring payment of all persons furnishing labor and material in furnishing the work of one hundred percent (100%) of the contract amount.

6.7.2 Bid Bonds. Except where bid guarantee is required by law or regulation, the Contracting Officer shall assess the need for such protection in view of the nature of material, equipment or service to

be purchased, the expected level of competition, and the extent of urgency in securing it. As a general rule, a bid guarantee will not be required for standard commercial items where adequate competition is expected to exist.

Bid guarantees shall be required for public construction over \$10,000 and for materials contracts over \$50,000. The bid guarantee amount shall be between five and ten percent (5% - 10%) of the contract amount, depending upon the nature of the purchase, the expected level of competition, and the urgency of securing it.

- 6.7.3 Performance and Payment Bonds. The requirement for a performance bond shall be determined by the Contracting Officer in view of the nature of purchase, its scope, and potential impact to Valley Regional Transit of the contractor's failure to perform. Performance bonds for purchases of standard commercial items generally will not be required.

Performance and payment bonds for construction projects shall meet the requirements of Idaho Code §54-1926.

Handling and Documentation. Bid guarantee checks of unsuccessful bidders will be returned to the bidders immediately upon award of bid (or rejection or expiration of bid). Bid guarantee checks of successful bidders will be retained until successful completion of the purchase.

Should the Contracting Officer determine a need for bid guarantee, performance bond, or payment bond where not required by law or regulation, documentation justifying the need for and the amount of guarantee or bond will be received prior to contract award and included in the contract file.

## 6.8 Protest Procedures.

- 6.8.1 General. Prospective bidders or proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract may make protests. Valley Regional Transit will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protests are to be submitted in writing to: Valley Regional Transit Board, 830 N. Main St., Suite 230, Meridian, Idaho 83642. Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information:

- (a) Name, address, and telephone number of protestor;

- (b) Identification of contract solicitation number;
- (c) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (d) A statement as to what relief is requested.

Protests must be submitted to Valley Regional Transit in accordance with these procedures and time requirements, must be complete and must contain all issues that the protestor believes relevant.

6.8.2 Types of Protests/Appeals Defined. Types (categories) of protests are developed to best address the specific type and phase in which a protest and/or appeal may be received. Depending on the category of protest and/or appeal, the various state and federal citations may apply:

- a) **Protest Before Bid Opening.** This type of protest is addressed when potential bidders wish to protest the timing, publication, location, or other factors of the bid opening, as published in the respective Request for Bid (RFB), or other formal procurement.
- b) **Protest of Contractor Selection or Contract Award:** Bid protests against the making of an award by Valley Regional Transit Board must be submitted in writing to the Contracting Officer and received within seven (7) days of the award by the Valley Regional Transit Board. Prospective bidders or proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract may make protests. All protests are to be submitted in writing to: Valley Regional Transit, Attn: Contracting Officer, 830 N. Main St., Suite 230, Meridian, ID 83642. Protest submissions should be concise, logically arranged and clearly state the grounds for the protest. A protest must include at least the following information: (a) Name, address, and telephone number of protester. (b) Identification of contract solicitation number; (c) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and (d) A statement as to what relief is expected.
- c) **Protest and/or Appeal of Bid Specifications.** Specific procedures regarding the method of protesting or appeal of bid specifications are outlined in detail in all RFBs, RFQs, or other formal bid documents published by Valley Regional Transit. Certain RFBs, and other formal bid documents will also outline procedures for requesting Approved Equals to the specifications listed. **Protest submissions should be concise, logically arranged and clearly state**

the grounds for the protest. A protest must include at least the following information: (a) Name, address, and telephone number of protester. (b) Identification of contract solicitation number; (c) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and (d) A statement as to what relief is expected.

d) **Appeal of Rejection of Bid.** A Bidder or Proposer whose offer is rejected and is not to be considered may appeal the rejection of their bid. Valley Regional Transit will review appeals for rejection of submitted bid(s) based on the method the bidder used to develop, submit, and otherwise respond to the RFB, or other formal procurement. Also applicable are State of Idaho Requirements as listed in Idaho Code, Administrative Rules; and in Federal regulations issued by the U.S. DOT, and other cognizant **Protest submissions should be concise, logically arranged and clearly state the grounds for the protest. A protest must include at least the following information: (a) Name, address, and telephone number of protester. (b) Identification of solicitation number; (c) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and (d) A statement as to what relief is expected.**

e) **Protest and Appeal of Execution of Contract.** Valley Regional Transit will review appeal of contract execution, as published in the respective RFB, or other formal procurement based on the specific information published in the bid document and applicable State of Idaho and/or Federal regulation

6.8.3 Protests Before Bid Opening. Bid protests alleging restrictive specifications or improprieties which are apparent prior to bid opening or receipt of proposals must be submitted in writing to the Contracting Officer at the address above and must be received at least seven (7) days prior to Responses Due date for receipt of bids or proposals. If the written protest is not received by the time specified, bids or proposals may be received and award made in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or response from other bidders, which shall be submitted to the Contracting Officer not less than ten (10) days after the date of Valley Regional Transit's request. So far as practicable, appeals will be decided based on the written appeal, information and written response submitted by the

appealing party and other bidders. In failure of any party to timely respond to a request for information, it may be deemed by Valley Regional Transit that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation deemed appropriate by Valley Regional Transit, the Contracting Officer shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested parties will be afforded opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the Contracting Officer will render a decision, which shall be final, and notify all interested parties thereof in writing, but no later than ten (10) days from the date of informal hearing.

6.8.4 Protests After Bid Opening/Prior to Award. Bid protests against the making of an award by the Valley Regional Transit Board must be submitted in writing to the Contracting Officer and received within seven (7) days of the award by the Valley Regional Transit Board. In addition, when a protest against the making of an award by the Valley Regional Transit Board is received and it is determined to withhold the award pending disposition of the protest, the bidders or Proposers whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the bid. Where a written protest against the making of an award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless Valley Regional Transit determines that:

- (a) The items to be purchased are urgently required;
- (b) Delivery or performance will be unduly delayed by failure to make award promptly; or
- (c) Failure to make award will otherwise cause undue harm to Valley Regional Transit or the federal government.

6.8.5 Protests After Award. In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis therefore. If the contractor has not executed the contract as of

the date the protest is received by Valley Regional Transit, the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless Valley Regional Transit determines that:

- (a) The items to be purchased are urgently required;
- (b) Delivery or performance will be unduly delayed by failure to make award promptly; or
- (c) Failure to make award will otherwise cause undue harm to Valley Regional Transit or the federal government.

#### 6.8.6 Reconsideration of Contracting Officer Determination

Appeals and requests for reconsideration of the determination of the Contracting Officer of protests under sections 6.8.3 and 6.8.4 must be submitted to the Executive Director of Valley Regional Transit and received within seven (7) days after the date of written determination by the Contracting Officer. The Executive Director may request additional information of the appealing party and information or a response from other bidders, which shall likewise be submitted in writing to the Executive Director not later than ten (10) days from the date of Valley Regional Transit's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other bidders. In failure of any party to timely respond to a request for information, it may be deemed by Valley Regional Transit that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to respond, and, in such event, the appeal will proceed and will not be delayed by lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by Valley Regional Transit, the Executive Director shall either (a) render a decision, or (b) at the sole election of the Executive Director, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Within ten (ten) days after the informal hearing, the Executive Director shall render a decision, which will be final, and advise all interested parties thereof in writing.

6.8.7 Protests to Federal Transit Administration (FTA). Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any such protest will be limited to:

- (a) Alleged failure by Valley Regional Transit to have written protest procedures or alleged failure to follow such procedures, or alleged failure to review a complaint or protest; or
- (b) Alleged violations of federal law or regulation.

Protestors shall file a protest with FTA not later than five (5) working days after a final decision of Valley Regional Transit's Executive Director is rendered under the Valley Regional Transit protest procedure. In instances where the protestor alleges that Valley Regional Transit failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) federal working days after the protestor knew or should have known of Valley Regional Transit's failure to render a final determination in the protest.

6.8.8 Submission of Protest to FTA. Protests submitted to FTA should be submitted to the FTA Region 10 Office in Seattle, Washington with a concurrent copy to Valley Regional Transit. The protest filed with FTA shall:

- (a) Include the name and address of the protestor;
- (b) Identify the Valley Regional Transit project number and the number of the contract solicitation;
- (c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow Valley Regional Transit's protest procedures, or the alleged failure to have procedures, and be fully supported to the extent possible; and
- (d) Include a copy of the local protest filed with Valley Regional Transit and a copy of the Valley Regional Transit decision, if any.

## 7. **COMPETITIVE NEGOTIATION/REQUESTS FOR PROPOSALS (RFP)**

7.1 General. When Valley Regional Transit requirements for professional or personal services contracts over \$50,000, formal competitive proposals and negotiation will be used. Items under the \$50,000 amount will follow the

small purchases procedure. The competitive proposal process may also be appropriate for certain other procurements in which it is infeasible to fully detail a specification suitable to the RFP process. Proposals are formally advertised and a fixed-fee or cost-reimbursement type contract is negotiated and awarded to the responsible proposer whose proposal is most advantageous to Valley Regional Transit with price and other factors considered.

In addition to the above-required formally advertised RFP solicitations, Valley Regional Transit may determine in certain circumstances that issuing an RFP for an amount of \$50,000 and below threshold would be appropriate to secure favorable competition or price to Valley Regional Transit Conditions Determining When Competitive Negotiation is Appropriate. The following conditions should be present for an RFP to be considered:

- (a) A complete, adequate and realistic specification or purchase description is infeasible, or a more general description is appropriate to assure full and open competition;
- (b) Factors other than price, or price-related, will be evaluated and weighed, with price, for award (except architect/engineering contracts prohibiting price consideration in evaluation);
- (c) Oral/written discussions may be needed with Proposers;
- (d) Reasonable certainty that two or more Proposers are able and willing to compete with proposals; and
- (e) It is appropriate if a cost-reimbursement contract must be used instead of a fixed-fee contract.

7.2 Public Advertising. Requests for Proposal for purchases over \$50,000 will be publicly advertised in the local newspaper and/or appropriate trade publications.

7.3 Solicitation Guidelines For RFP.

7.3.1 Specifications. Specifications and purchase descriptions will provide as accurate of a description as possible of the technical requirements for the material, equipment or service and will include the procedure for determining whether the requirement has been met. When possible, Valley Regional Transit will state performance specifications defining the expected performance standards the end product is expected to achieve.

Purchase descriptions may refer to a “brand name or equal” product when it is not feasible to provide a more detailed description. All known acceptable brand name products will be listed. Potential Proposers will be given opportunity to offer products other than those specifically referenced by brand name if those other products can be shown to meet Valley Regional Transit needs in the same manner.

- 7.3.2 Proposal Time. Adequate time will be given between the issuing of RFP notice and the time set for receipt of proposals to permit prospective contractors to prepare proposals. Generally, no less than 20 calendar days will be allowed for standard commercial items and no less than 30 calendar days when purchasing other than standard commercial items, or professional services. Complex procurements for certain items of equipment or construction will require significantly longer time periods.
- 7.3.3 Distribution of RFPs. RFPs over \$50,000 will be publicly advertised in accordance with Section 6.3. At first publication, they will also be mailed to known prospective vendors. Records of RFPs and proposals will be maintained as a part of the procurement record for FTA audits. They may also serve as a resource that can be consulted in preparing a source list for similar RFPs.
- 7.3.4 Amendment of RFP. Any change or correction necessary in proposed quantities, specifications, delivery schedules, opening date, etc., which is required after issuing RFPs but before proposal opening, will be made by issuing an addendum. Any new information given to one prospective proposer will be furnished to all others in the form of an addendum. Consideration will be given to the period of time remaining to opening and the period will be extended in such addendum, if necessary. A copy of the addendum will be furnished to each person furnished an RFP. If the scope of the project for an RFP is substantially altered the RFP will be terminated and a new RFP will be issued.
- 7.3.5 Responsiveness of Proposer. A proposal must comply in all material respects with the RFP, including the method and timeliness of submission. Telegraphic or facsimile proposals will not be considered under the competitive sealed bid procedure. Proposers must use the Valley Regional Transit bid/proposal form, and in failing to do so will be considered non-responsive.
- 7.3.6 Modification/Withdrawal of Proposals. Proposals may be modified or withdrawn by written, telegraphic, or facsimile notice or in person if submitted to, received and verified by the Contracting Officer not later

than twenty-four (24) hours before the time set for proposal opening. Telegraphic or facsimile modifications or withdrawals will be sealed in an envelope by a Valley Regional Transit official and noted for opening with the bid package. Information will not be disclosed prior to opening.

- 7.3.7 Time and Place of Proposal Submission. The RFP, and public advertisement if advertised, will set forth the time, date, and place for opening of proposals. A proposer will not be required to (but may) submit a proposal before the time specified for receipt of proposals. Valley Regional Transit shall entertain any proposal which is submitted after it publishes notice and before the expiration of the waiting period. RFP specifications will set forth the manner in which sealed proposals are to be marked with the Valley Regional Transit RFP sequence number and identified as “sealed Proposal.” When received by Valley Regional Transit, sealed proposals will be date stamped “Received” and the time of receipt noted.

Proposals will be opened at the time and place designated in the notice. To be considered responsive, proposals must be submitted no later than the exact time specified. Late proposals will only be accepted if proven to be late due to Valley Regional Transit’s mishandling after receipt at its offices.

- 7.4 Preparation of RFP. A Request for Proposal (RFP) is the complete assembly of related documents, either attached to or incorporated by reference, furnished to prospective proposers. RFPs should include the following information if applicable to the purchase:

- (a) RFP number;
- (b) Name and address of Valley Regional Transit;
- (c) Date of issue;
- (d) Date, hour, and place for receipt of proposals;
- (e) As complete a description of Valley Regional Transit’s needs as possible, set forth clearly to promote understanding of those needs by an adequate number of qualified sources to promote reasonable competition;
- (f) Request for technical and cost proposals (ceiling price or budget will not be disclosed);

- (g) List of evaluation factors/criteria in descending order of importance as indicated by relative weights applied to each factor;
- (h) Statement that Valley Regional Transit reserves the right to select and award based on original proposals without discussion or negotiation with Proposers, or with negotiation;
- (i) Proposal guarantee, performance and payment bond requirements, if any;
- (j) Minimum proposal acceptance period required of proposer;
- (k) Language indicating that all proposals will be considered proprietary and confidential;
- (l) Special contract provisions and contract provisions required by federal, state, and local law; and
- (m) How to obtain copies of documents incorporated by reference.

7.5 Architectural/Engineering Competitive Negotiations. Procedures for procurement of architectural/engineering consulting services shall be adopted in conformance with the Consultant Selection Procedure of the Street and Highway Program Policy document.

Valley Regional Transit shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. For projects which are connected or related to construction, alteration, or repair of real property, VRT will follow Idaho Code §67-2320 unless otherwise pre-empted by federal law.

7.6 Solicitation Guidelines.

7.6.1 Department Responsibilities. The department director, manager, or Project Lead responsible for the procurement will prepare and submit to the Contracting Officer the following:

- (a) Requisition Form
- (b) Specification, scope of work, statement of desired services, in as much detail as possible;

- (c) A detailed independent estimate of costs for the required services;
- (d) Suggested evaluation factors, in rank order of importance, and weights; and
- (e) Suggested evaluation team members, to include the Contracting Officer.
- (f) List of Suggested Vendors

7.6.2 Independent Estimate of Costs. An independent estimate of costs is required to be prepared prior to all negotiated procurements. The independent estimate will be retained in the contract file and will be used as a basis to establish the competitive range for the resulting negotiations. The Division Director (Note: Check position title) or Project Manager will provide the independent estimate to the Contracting Officer before the proposal is released.

7.6.3 Distribution of RFP. Public advertising as described in Section 7.2 will be conducted for all RFP solicitations over \$50,000. The Contracting Officer will furnish RFP solicitations to (at least three, if possible) known qualified firms or persons who may propose, no earlier than the first date of publication.

7.6.4 Discussion with Proposers. During the solicitation process and through evaluation and award, the Contracting Officer shall be the primary contact with all Proposers, unless the Executive Director delegates such authority to the Project Officer (Note: Check Position Title). Care will be given to avoid providing any information to a proposer that would give them competitive advantage. Only the Contracting Officer or other authorized lead person shall discuss issues of expected cost with prospective Proposers, and no ceiling or budget price will be furnished.

## 7.7 Evaluation of RFP Submissions.

7.7.1 Evaluation Committee. The Project Manager, in consultation with the Contracting Officer, shall establish written evaluation criteria and weighting of criteria, only the evaluation criteria shall become part of the solicitation and notification that the factors will be weighted. The Contracting Officer will place the weighting portion of the evaluation criteria under lock and key. The weighting will be kept confidential until the Evaluation Committee meets to evaluate the received proposals. The Contracting Officer prior to opening of the RFP shall

designate an evaluation committee. The size and make-up of the committee will be dependent upon the nature and scope of the procurement. It may consist of the requesting Project Manager or department director/manager, other directors to be involved or impacted, other senior managers of Valley Regional Transit, Valley Regional Transit Board Members, and/or community representatives from outside Valley Regional Transit with expertise in the subject of the procurement. The evaluation committee may also continue to serve in conducting negotiations with a proposer and in a project coordinating capacity after award as determined by the Contracting Officer.

7.7.2 Selection of Proposers. Written or oral discussion will be conducted with finalists, and, if required, all responsible Proposers who submitted proposals within a competitive range, price and other factors considered. Exceptions to this requirement are:

- (a) Purchases where rates or prices are fixed by law or regulation;
- (b) Purchases in which it can be clearly demonstrated that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable initial price, Valley Regional Transit reserves the right to do so in the solicitation; and
- (d) Valley Regional Transit maintains the right to reject all Proposals, all Proposers will be notified that all proposals were rejected stating the reasons for rejection.

In instances where a proposal is deemed to be most favorable, but that proposal involves a material departure from the requirements stated in the RFP, Proposers shall be given the opportunity to submit new proposals on a basis comparable to that proposed.

7.7.3 Proposal Openings. At the time and date set for proposal openings, proposals will be opened and the name of each proposer read. Price proposals will not be read aloud or otherwise disclosed to anyone other than the evaluation committee upon its first meeting. To protect the integrity of the RFP process no additional information regarding the contents of a proposal will be released or made available to other Proposers or the public until award by the Valley Regional Transit and conclusion of any protests.

7.7.4 Proposal Evaluation. In conducting a technical and price evaluation of proposals, the evaluator or evaluation committee will consider only

those factors set forth in the solicitation as evaluation factors; no other evaluation factors may be used. Findings related to evaluation factors should be concrete and specifically related to those factors.

Responsibility factors may be included in evaluation. However, responsibility factors will only be evaluated to establish a Proposer's eligibility or ineligibility for award; there will be no weighing of responsibility factors other than to establish a proposer eligible or ineligible for award (i.e., one responsible vendor can be no "more responsible" than another, only more responsive).

Evaluation criteria will vary with each RFP, but might include a range of weights given to such factors as:

- (a) Quality of similar work known to have been performed;
- (b) Depth of experience in the field;
- (c) Competence of technical personnel;
- (d) Quality of the responses to the RFP;
- (e) Ability to meet contract schedules; and
- (f) Best estimate of total cost.

7.7.5 Architect/Engineer Contracts. FTA Circular 4220.1F (Ver. 2), incorporates requirements of P.L. 92-582, known as the "Brooks Act," which requires selection of architect and engineering firms based upon their technical qualifications. Price cannot be considered as an evaluation factor in determining the most qualified proposer. The most qualified competitor is selected for award of a contract, subject to negotiation of a fair and reasonable contract price. Negotiation is conducted only with the most qualified proposer, rather than all qualified Proposers. These rules apply to related services including construction management, feasibility studies, preliminary engineering, design, mapping and similar services commonly performed by architect or engineering firms. These services are the only services that may be procured in such a manner by Valley Regional Transit. For projects which are connected or related to construction, alteration, or repair of real property, VRT will follow Idaho Code §67-2320 unless otherwise pre-empted by federal law.

7.7.6 Cost Analysis. In a competitive negotiation, price analysis will generally only be used where price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in

substantial quantities or where prices are fixed by law or regulation. In all other cases of competitive negotiation, or non-competitive negotiations including single bid, option, contract modification, or change order, cost analysis will be performed. Cost analysis is appropriate to professional service, personal service, and architect/engineer contracts when the proposer is required to submit the elements of his/her estimated cost.

A cost analysis is the review and evaluation of the separate cost elements and proposed profit of a Proposer's or contractor's cost and pricing data. A cost analysis is conducted to form an opinion as to the degree to which the Contractor's proposed costs represent what his performance of the contract should cost, assuming reasonable economy and efficiency, and whether costs are proper, allowable, and allocable.

Cost analysis is different from price analysis because it focuses on the reasonableness of the estimated costs of performance, not the reasonableness of the price. It is necessary to review each element of cost to determine whether the contractor's estimate contains an accurate and reasonable prediction of the costs that will be incurred during performance. The contract price is determined by adding a rate of profit that is determined to be fair.

Major elements of cost analysis are as follows:

Verification of cost or pricing data and evaluation of cost elements, including the following:

- (a) Necessity for and reasonableness of proposed costs, including allowances for contingencies;
- (b) Projection of Proposer's cost trends on basis of current and historical cost and pricing data;
- (c) Technical appraisal of estimate labor, material tooling, and facilities requirements and reasonableness of scrap and spoilage factors; and
- (d) Application of audited or negotiated indirect cost rates, labor rates, etc.

Evaluating the effect of the Proposer's current practices on future costs, to ensure the effects of inefficient or uneconomic past practices are not projected into the future.

Comparison of cost proposed by the proposer for individual cost elements with the following:

- (e) Actual costs previously incurred by the same proposer;
- (f) Previous cost estimates from the proposer or other Proposers for the same or similar items;
- (g) Other cost estimates received in response to Valley Regional Transit's requests;
- (h) Independent cost estimates by Valley Regional Transit technical personnel; and
- (i) Forecasts or planned expenditures.

Verification that the Proposer's cost submissions are in accordance with federal cost principles and procedures.

Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor.

Analysis of the results of any make-of-buy analysis in evaluating subcontract costs.

Cost analysis will be performed by the Contracting Officer prior to initiating any negotiation with Proposers, and will be used as a basis for negotiation of a fair and reasonable price. A memorandum will be prepared for the contract file reflecting how the cost analysis was conducted, the factors considered, including profit, and the judgments made.

## 7.8 Negotiations.

- 7.8.1 General. The Contracting Officer shall be responsible for negotiation of all competitively negotiated or non-competitively negotiated contracts.

With the exception of architect/engineering contracts, all qualified Proposers whose proposals are in competitive range will be included in the negotiation process.

All Proposers selected to participate in negotiations shall be advised of deficiencies in their proposals and offered reasonable opportunity to correct or resolve the deficiencies and to submit such price or cost,

technical, or other revisions to their proposals that may result from the discussions. A deficiency is defined as that part of a proposal that would not meet Valley Regional Transit's requirements.

During separate discussions with Proposers, Valley Regional Transit shall not disclose the strengths or weaknesses of competing Proposers or disclose any information regarding one proposer, which would enable another proposer to improve his/her proposal as a result thereof.

## 7.8.2 Negotiation of Profit.

7.8.2.1 General. Negotiation of profit as a separate cost element is required whenever a cost plus fixed-fee contract will result. A fair and reasonable contract provision for profit or fee will not be a simple percentage of the cost estimate or selling price, but must be stated in the contract as a dollar amount. Such things as the amount of subcontracting, travel, subsistence, and material influence profit, and as these items increase in relation to direct labor, the percent of profit should decrease. Federal rules governing direct procurement by the federal government, regarding profit or fee on cost plus fixed-fee contracts, apply to Valley Regional Transit. The following factors will be considered in determining profit in all negotiated contracts.

7.8.2.2 Effect of Competition. When competition is adequate and marketplace pressures on price are evident, Valley Regional Transit will not ordinarily need to consider profit in detail. When competition is lacking, profit will need to be carefully considered.

7.8.2.3 Degree of Risk. The degree of risk assumed by the contractor will influence profit; when elements of risk are shifted to Valley Regional Transit through provisions of cost-reimbursement or price escalation, profit should be less.

7.8.2.4 Nature of Work. Difficulty or complexity of the work, unusual demands of the contract (i.e., new technology, approaches), and whether contractor must use highly skilled professionals will influence profit.

7.8.2.5 Extent of Valley Regional Transit Assistance. To the extent the contractor utilizes Valley Regional Transit's facilities, equipment, financial resources or other assistance, profit will be reduced.

7.8.2.6 Extent of Contractor's Investment. The extent of contractor investment, both equity and borrowed capital, will influence acceptable profit.

7.8.2.7 Character of Contractor's Business. When turnover of contractor's working capital is characteristically low, profit on individual contracts is generally higher than in industries where turnover is higher.

7.8.2.8 Contractor's Performance. Consistent excellent past performance merits consideration in higher fee, record of quality control, cost control, meeting delivery schedules, creative ability merits consideration.

7.8.2.9 Subcontracting. Subcontracting should be segregated for separate profit or fee evaluation. When subcontractors perform a substantial portion of the work, the prime contractor's profit should be lower. Subcontractors should be entitled to a fair and reasonable profit; contractors and subcontractors cannot both receive full profit for the same work.

7.8.2.10 Unrealistic Estimates. If records reveal a contractor's actual costs are consistently lower than estimated costs and the contractor will not provide what is considered to be a realistic estimate of costs, a lower profit or fee is appropriate.

7.8.3 Negotiation Documentation. Each negotiation regarding procurement must be documented and included in the contract file. A Negotiation Memorandum will generally include:

7.8.3.1 Background. Covering the requirement, its purpose, special characteristics; statement of when and where negotiations were conducted, principal participants, and result; record of any unusual aspects such as changes in requirements, progress payments, major subcontracts.

7.8.3.2 Justification for Type of Contract. Summary of justification for choosing the type of contract to be used. (i.e., fixed fee, cost reimbursement plus fixed fee, time and materials, labor hour, etc.).

7.8.3.3 Technical Evaluation of Cost Elements. An analysis of the reasonableness of contractor's estimates of work to be performed under the proposal.

7.8.3.4 Cost or Price Analysis. Summary of cost or price analysis performed.

7.8.3.5 Pre-negotiation Position. Statement of pre-negotiation position on cost elements, profit, price, delivery schedule, etc. (independent cost analysis may be used).

7.8.3.6 Procurement History. Including procurement authority, whether it is new or sole source, change order or modification, number of RFPs issued, number of proposals received, discussion of proposals received.

7.8.3.7 Negotiation of Costs. How final cost elements were determined, including profit.

7.8.3.8 Signature, Title, Date.

## 7.9 Award.

7.9.1 General. Unless all proposals are rejected, award will be made to the lowest and best proposer based on the evaluation criteria established in the RFP. Award will not be made until all required signature approvals have been obtained.

In the event the Valley Regional Transit Board should disagree with the recommendation of the evaluation committee or staff, the Valley Regional Transit Board is not bound by their recommendations in the making of an award. However, the decision of the Valley Regional Transit Board must be consistent with the written evaluation criteria and requirements as set forth in the solicitation, and it cannot consider other factors than those. If awarded to other than the recommended proposer, council must provide file documentation justifying the basis for award. The same Protest Procedures apply to RFPs as are outlined in section 6.8 of this document and will be included as part of every RFP and RFB.

7.9.2 Award of Contract. Upon award of a contract, the Contracting Officer will return any required bid guarantee checks to unsuccessful proposers. Bid guarantee furnished by the successful proposer will be retained in the contract file. The Contracting Officer (or Project Manager) will notify unsuccessful Proposers in writing. If not already incorporated in the solicitation document and including signatures of the proposer, a contract will be prepared in duplicate and mailed to the contractor for signature. When returned with any necessary performance bond, certificates of insurance, etc., it will be furnished to

the Valley Regional Transit, counsel, Executive Director, etc. for appropriate signature. One copy will be retained in the contract file and the second returned to the contractor.

## **8. NON-COMPETITIVE NEGOTIATION**

8.1 General. Non-competitive negotiation, or sole source, procurement is accomplished through solicitation or acceptance of a proposal from only one source or when, after solicitation of a number of sources, competition is determined inadequate. A contract amendment, addendum or change order not within the original scope of a contract is considered a non-competitive procurement, as is exercise of an option clause in a contract.

8.2 Limitations. Purchase by non-competitive negotiation will be used only when the award of a contract is infeasible under small purchase procedures, sealed bids (formal advertising), or competitive proposal method, and at least one of the following circumstances exists:

- (a) The item is only available from a single source;
- (b) There is unusual or compelling urgency or an emergency not permitting delay from competitive processes;
- (c) After solicitation of a number of sources, competition is determined inadequate; or
- (d) The item is an associated capital maintenance item that is procured directly from the original manufacturer or supplier as the only available source for such an item.

8.3 Processing Non-Competitive Procurements. The Contracting Officer or Project Managers responsible for a purchase are responsible for providing accurate and complete information necessary to support the recommendation for a non-competitive procurement.

The Contracting Officer will assure that, before initiating a non-competitive purchase:

- (a) Written justification is documented in the contract file;
- (b) It is certified as accurate and complete by the Contracting Officer or other responsible official;
- (c) Appropriate approvals are secured consistent with required signature authority levels;

- (d) Cost analysis, as covered in Section 7.76, is required and must be documented in the contract file;
- (e) Non-competitive or sole-source procurements over \$1 million or for 14 or more buses will be submitted to FTA for prior approval pursuant to FTA Circular 4220.1F (Ver.2). (Other Sole source procurements may have to be authorized by FTA.); and
- (f) Before making sole source purchases of associated capital maintenance items, as defined in 49 U.S.C. §5307(a)(1) that are procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:
  1. That such manufacturer or supplier is the only source for such item; and
  2. That the price of such item is no higher than the price paid for such item by like customers.

Negotiated procurement procedures as outlined in Section 7, Competitive Negotiation, must be followed for non-competitive procurements.

8.4 Contract Options. General. An option is a unilateral right in a contract by which, for a specified time, Valley Regional Transit may elect to purchase additional materials or services called for by the contract or may elect to extend the term of the contract. When used properly, options can enhance the flexibility of procurement by Valley Regional Transit. The Contracting Officer or Project Officer must address several considerations to determine the best interest of Valley Regional Transit before electing to include an option clause in a solicitation and contract award, including:

- (a) How long the option period should be;
- (b) What an appropriate option quantity should be, in relation to the base quantity;
- (c) How option prices should be evaluated in the selection process for award; and
- (d) Unit cost and number of units for each year of options must be included in all contracts that contain options.

Options generally will not be used when any of the following circumstances exist:

- (a) The option represents known firm requirements for which funds are available;
- (b) The foreseeable requirements involve the production and delivery of minimum economic quantities (permitting recovery of start-up costs and delivery of requirements at a reasonable price) and delivery requirements far enough into the future to permit competitive acquisition in a single order;
- (c) The materials or services are readily available on the open market;
- (d) The contractor may incur undue risks in quoting an option (i.e., price or availability of necessary materials or labor is not reasonably foreseeable) or market prices are likely to change substantially in the future, or
- (e) An indefinite quantity or requirements contract is appropriate (except that such contracts may be extended with use of an option clause).

8.4.2 Use of Options. In using options, Valley Regional Transit will follow the requirements of FTA Circular 4220.1F (Ver. 2), as follows:

8.4.2.1 Option Period. The total of the basic contract and option periods shall not exceed five years in any contract.

8.4.2.2 Option Price. The contract shall specify the price for the products or services for the specified option period.

8.4.2.3 FTA Approval. Prior to issuing a solicitation, Valley Regional Transit will obtain FTA approval for the inclusion of any option provision in excess of the amounts or periods set forth above. The request to FTA will set forth the need for the option and why it is in the best interest of Valley Regional Transit and the FTA.

8.4.3 Solicitation Guidelines for Options. The following guidelines will be incorporated in specifications when making solicitations in which option clauses will be used:

- (a) Valley Regional Transit will state that the evaluation of options will not obligate Valley Regional Transit to exercise the option.

- (b) Valley Regional Transit will state the bid or proposal may be rejected if it is materially unbalanced as to prices for the base requirement and option quantities.
- (c) Valley Regional Transit will state that the total proposal or bid price including the base requirement plus the option prices will be evaluated as part of the award decision. However, when calling for options, Valley Regional Transit may elect to evaluate all proposals without options and award a contract without options.
- (d) Valley Regional Transit will indicate how the option will be exercised, including the time frame for exercise of the option. In order to exercise the option after contract award, it must have been evaluated as part of the initial competition.

8.4.4 Exercise of Contract Options. Valley Regional Transit will exercise an option only after making a written determination, signed by the appropriate official and placed in the contract file, that the exercise of the option is the most advantageous method of filling Valley Regional Transit's need, price and other factors considered. The following methods may be used to make such a determination:

- (a) A new solicitation may be made and the option awarded if the new solicitation fails to produce a more favorable price or proposal. This method will not be used when it is reasonably certain the option price or proposal is the best available;
- (b) An analysis of prices or examination of the market indicates that the option price is better than the prices available on the market or that the option is a more advantageous proposal; or
- (c) The time between the award of the contract and the exercise of the option is so short that it indicates the option price is the lowest obtainable or it is the most advantageous proposal.

In determining whether to exercise an option, Valley Regional Transit will take into account its need for continuity of operations and potential costs of disrupting operations. Options will be exercised in accordance with the conditions of this section, the terms of the option and within the option period specified in the solicitation.

## 9. FTA-SUPPORTED CONSTRUCTION CONTRACTS

9.1 General. Under federal laws and regulations and FTA grant contracts, certain special solicitation and contract requirements apply to construction contracts that are not necessarily applicable to non-construction contracts. These special requirements include mandatory requirements for bid bonds, performance bonds and payment bonds for construction contracts above \$100,000 (see Section 6.7, Bonding Requirements), environmental requirements, ADA accessibility requirements, minimum insurance requirements, liquidated damages provisions in contracts, Anti-Kickback provisions and labor provisions applicable to all construction contracts under the Davis-Bacon Act.

Idaho Code Title 67 Chapter 28 provides that construction contracts for public works shall be awarded to the lowest responsible and responsive bidder after receipt of competitive sealed bidding.

Construction contract solicitation and administration requirements will not be covered in detail in this Manual. Solicitations and contracts for construction or “public work” activity will require careful review by counsel to assure completeness.

### 9.2 Federal Labor Requirements.

9.2.1 Davis-Bacon Act. Valley Regional Transit is subject to the requirements of the Davis-Bacon Act, under which the advertised specifications for every Valley Regional Transit contract over \$2,000 for construction, alteration and/or repair, including painting and decorating, of public buildings or public works which requires or involves the employment of laborers and/or mechanics must contain a provision stating the minimum wages to be paid them based on determinations by the Secretary of Labor of local prevailing wage rates for comparable work. The rates must be posted at the site, and the wages must be paid in full no less often than weekly. Valley Regional Transit must complete weekly documented on site verification that the Davis-Bacon Act has been complied with and this verification must be made part of the procurement file for the project.

A copy of the determination of the Secretary of Labor must be included in each solicitation and the award of any contract must be conditioned upon the contractor accepting the terms therein. As an FTA grantee, Valley Regional Transit must report all reported or suspected violations to the FTA.

9.2.2 Copeland Anti-Kickback Act. Valley Regional Transit is subject to the requirements of the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented by Department of Labor regulations (29 CFR Part 3) applicable to all contracts or subcontracts for construction or repair. This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. Valley Regional Transit is required to report any suspected or reported violations to the FTA.

9.2.3 Contract Work Hours and Safety Standards Act. All contracts issued for construction in excess of \$2,000 by Valley Regional Transit or its subcontractors (and all contracts over \$2,500 which involve the employment of mechanics or laborers) shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 103 of the Act, each contractor will be required to compute the wages of every mechanic and laborer on the basis of a standard work day of eight (8) hours and a standard work week of forty (40) hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in a calendar day or 40 hours in the work week.

Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his/her health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

## **10. CONTRACT ADMINISTRATION**

10.1 Post-Award Responsibilities. The Contracting Officer's post-award contract administration responsibilities include the following responsibilities (these may be delegated to Project Officers):

10.1.1 Monitoring for Contract Compliance. The Contracting Officer is responsible for monitoring contract compliance. If relying on the Director or Project Officer for contract compliance monitoring, the

Contracting Officer must assure that the Division Director or Project Officer gives timely notice of contract compliance problems.

10.1.2 Enforcing Contract Provisions. It is the Contracting Officer's responsibility to enforce the contract as written or amended. If not enforced, a loss of time or product quality may be incurred.

10.1.3 Issuing Timely Performance and Payment Approvals. The Project Lead is the person with authority to approve contract performance so that progress payments or other authorized expenditures of funds to the contractor are made. Timely approvals enable the work to proceed on a timely basis.

10.1.4 Modifying the Contract as Necessary. As the contract work proceeds, modifications or changes may become necessary. After technical considerations are resolved (by Division Director/Project Officer), it is the Project Lead who has authority to initiate contract changes on behalf of Valley Regional Transit.

10.1.5 Closing Out the Contract. When the contract performance is completed, it is the Project Lead's responsibility to close-out the contract. Timely close-out enables comparison of performance to be checked against contract requirements while information is fresh and maximizes Valley Regional Transit's ability to correct any deficiencies of performance against contract requirements.

10.1.6 Maintaining Records. The Project Lead is responsible for maintaining, as part of the procurement file, documented records of all activities that take place concerning each individual procurement in a single Contract file. This includes everything from its inception to its completion. This is generally accomplished by use of Laser fiche storage software.

10.2 Project Management. The user department director/manager shall serve as, or designate, the Project Officer for every project in excess of \$10,000 (this excludes purchase of standard items of material exceeding \$10,000). It is the Project Officer's responsibility to follow the contractor through the work process, providing technical direction to the contractor regarding the Scope of Work (which defines specific tasks, milestones and review procedures for the specific project). When authorized by the Contracting Officer, the Project Officer will respond to correspondence on technical matters from the contractor, either orally or in writing, and shall furnish the Contracting Officer with a copy of or memorandum reflecting all correspondence with the contractor. The Project Officer shall review the progress of all the work on a

periodic basis and initiate any required reviews by Valley Regional Transit staff.

The contractor may be required to document the amount of time and money spent on work on a periodic basis as specified by the contract. It is the Project Officer's responsibility to review the contractors' documentation and invoices in relation to the milestones, work expended, and budget, and to advise the Contracting Officer whether the contractor is in compliance with the contract.

- 10.3 Contract Amendments and Change Orders. Change orders are amendments to a contract and may be required to adjust a contract quantity or performance period due to unanticipated conditions. Change orders are considered non-competitive procurements and are subject to the same requirements as noted in Section 8. Working with the Project Lead, the Contracting Officer shall determine whether the proposed change order contains a change in scope, which may be grounds for bidding the extra work. All change orders are subject to the Executive Director's review and approval. If a change order, or the cumulative effect of all change orders, is to increase the original contract amount by over ten percent (10%) of the original contract amount approved by the Valley Regional Transit, the Executive Director shall submit it to the Valley Regional Transit Board for prior approval before the change is made. Change orders are subject to the availability of funds.

A cost analysis must be performed and filed in the contract file in connection with any change order, unless price reasonableness can be established based on catalog or market price of a commercial product or on the basis of prices set by law or regulation.

- 10.4 Contract Requirements. Contracts established by Valley Regional Transit should set forth each party's responsibilities and rights clearly and completely in order to minimize the potential for conflict, and should set forth the directions for resolutions of disputes, if any. Contracts will incorporate the solicitation document, either physically or by reference, in order to maintain clarification of the scope and details of the project. Contracts should include the following elements, as appropriate to the specific purchase:

- (a) Statement of Work/Scope of Work
  - Contract Objectives
  - Contract Scope
  - Specifications/Purchase Descriptions

Progress Report Requirements (consultant/professional services contracts and any contract containing progress payment provisions)

- (b) Delivery Schedule
- (c) Contract Period
- (d) Pricing Schedule (should include description of each line item, quantity, unit of measure, unit price and total price for each item)
- (e) Payment Schedule (including special terms such as progress payments and authorities to withhold payments)
- (f) Inspection Provisions and Acceptance Criteria
- (g) FOB Point and Delivery Instructions
- (h) Other Requirements (if appropriate):
  - (1) Identification of key personnel and facilities;
  - (2) Extent of subcontracting and consulting;
  - (3) Provision for changes by Valley Regional Transit within general scope of the contract;
  - (4) Provision for termination for default by Valley Regional Transit for its convenience and, where appropriate, suspension of the contractor's work under the contract;
  - (5) Provisions for resolution of protests (required in solicitation), contract claims and disputes;
  - (6) Sanctions or remedies, such as liquidated damages or performance bonds, for contractor's non-performance; and
  - (7) Notice of any FTA or other federal requirements applicable to the contract.

## 10.5 Special Contract Requirements.

10.5.1 Liquidated Damages Provisions. The Contracting Officer, working with the Project Lead shall determine whether or not the use of a liquidated damages provision is appropriate for a specific procurement. The amount of liquidated damages set forth must be reasonable to compensate Valley Regional Transit for possible damages and not be so large as to be construed as a penalty. The assessment for damages shall be at a specific rate per day for

each day of overrun in contract time; and the rate must be specified in the contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

Valley Regional Transit will not include such provisions in contracts unless:

- (a) The time of delivery is of such importance that Valley Regional Transit can reasonably expect to suffer damage if the delivery is delinquent;
- (b) Valley Regional Transit determines the delivery schedule is reasonable at the time of contract award; and
- (c) Damages would be difficult or impossible to establish.

If the Contracting Officer determines that a liquidated damages provision is necessary in a contract, he/she shall document the derivation of the rate of assessment and assure it is reasonable, proper, and not arbitrary.

10.5.2 Progress Payment Provisions. The following standards relate to Valley Regional Transit's use of progress payment provisions:

- (a) Progress payments may be appropriate if:
  - (1) The contractor won't be able to bill the first delivery of products, or other performance milestones, for a substantial time after work must begin; and
  - (2) The contractor will make expenditures for contract performance during the period prior to delivery having significant impact on its working capital.
- (b) Progress payments may be appropriate for small or DBE businesses if the contractor demonstrates actual financial need or unavailability of private financing.
- (c) When progress payments are used, Valley Regional Transit will obtain title to property (i.e., materials, work in progress, and finished goods) for which progress payments are made. Such title must be free of all encumbrances, or Valley Regional Transit will secure a priority lien pursuant to Article 9 of the Uniform Commercial Code and applicable state law and local ordinances.

10.5.3 Insurance Provisions. The Contracting Officer should determine when insurance is required and include in any solicitation and contract document a clause informing contractors of the minimum coverage requirements required by federal or state statutes. When FTA grant funds are used, the minimum requirements shall be as follows:

- (a) Workers Compensation and Employers Liability - \$100,000;
- (b) General Liability - \$500,000 per occurrence;
- (c) Property Liability as required by Valley Regional Transit in special circumstances; and
- (d) Auto Liability for Personal Injury and Property Damage - \$200,000 per person and \$500,000 per occurrence for personal injury and \$20,000 for property damage.

Insurance specifications shall provide that an insurance certificate be provided prior to contract work beginning and that, no less than 60 days prior to expiration of the insurance policy date, the contractor shall give notice to Valley Regional Transit of his/her intent to provide a new certificate. The policy shall contain an endorsement to the effect that "Only in the event of cancellation or material change adversely affecting Valley Regional Transit's interest, shall the policy not be effective for the period, as the laws of the State of Idaho prescribe, or until 30 days after the insurer or the contractor gives written notice to Valley Regional Transit, whichever period is longer."

The Project Officer and the Contracting Officer shall assure a current certificate is on file at all times during performance of the contract.

10.5.4 Contract Termination Provisions. As required by FTA Circular 4220.1F (Ver. 2), all contracts over \$10,000 shall contain provisions for Audit/Inspection of Records, Remedies/Sanctions for Breach of Contract, and Contract Termination Provisions.

The performance of work under a contract containing such provisions may be terminated in part or in whole when Valley Regional Transit's Executive Director, in consultation with counsel or Valley Regional Transit Board as necessary, determines that such termination is in the best interests of Valley Regional Transit. Contracts may be terminated for convenience (i.e., a reduced need or otherwise in the best interests of Valley Regional Transit) or for default (i.e., the contractor has failed to perform under the contract requirements). Contractors will not be granted the right of termination.

When the decision to terminate is made, a “Notice of Termination” shall be sent by the Contracting Officer to the contractor by Certified Mail, with a return receipt requested. The Notice of Termination shall specify the reason for termination, the extent to which the performance of work is terminated (i.e., in whole or in part), and the day upon which such termination becomes effective. Settlement of claims shall be made as soon as possible after the issuance of a Notice of Termination/Default to protect the interests of and minimize the liability of Valley Regional Transit. When settlement cannot be made, Valley Regional Transit shall reserve the right to issue a determination of the amount due consistent with the termination clause and applicable cost principles, subject to appeal under the disputes provisions of the contract.

Valley Regional Transit will consider a no-cost settlement instead of issuing a termination notice when it is known the contractor will accept one, Valley Regional Transit’s property was not furnished, and there are no outstanding payments, debts due Valley Regional Transit, or other contractor obligations to Valley Regional Transit.

10.5.5 Buy America Provisions. Section 165 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1601), Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

All Valley Regional Transit procurements are subject to the Buy America regulation, which requires that all steel and manufactured products (and cement in construction) have 100% U.S. content and be manufactured in the United States. There are special provisions relating to purchase of buses and communications equipment which require sixty percent (60%) U.S. content and final assembly in the United States. In purchasing buses, Valley Regional Transit is required (49 CFR Part 663) to conduct a pre-award and post-delivery audit of the manufacturer’s Buy America certification.

All vendors are required to certify that they can or cannot comply with the Buy America requirements of Section 165(a). When a vendor cannot so certify, Part 661.7 of the regulation provides guidance under which Valley Regional Transit may submit a request for waiver of the Buy America requirements to the FTA Administrator.

Buy America Certification forms will be included with each RFB or RFP solicitation and will be required to be executed and submitted with a bid or proposal. Purchases made using small purchase procedures are

most often made under a purchase order, in order to set up the account payable. Valley Regional Transit's purchase order states conditions of purchase, including Buy America requirements. It is a condition of Valley Regional Transit's purchase order that when accepting the order, the vendor certifies that Buy America requirements are met by signing and returning the certification printed on the purchase order. In those few instances where a purchase order is not used, a certification form will be furnished to the vendor for execution. Once a certification is received from a vendor for a particular item, it is not necessary to require receipt of a certification for each subsequent purchase provided there is a certification on file for that item.

#### 10.5.6 Bus Purchase - Special Requirements.

Federal Register 49 CFR Part 665 requires Bus testing and certification for bus purchases. 49 CFR Part 663 addresses the pre-award post delivery audit requirements for new bus purchases. The Americans With Disabilities Act (ADA) "Accessibility Specifications For Transportation Vehicles" is addressed in Title 49 Subtitle A Part 38 which requires wheelchair lifts (or Ramps), Wheel Chair Tie downs and Public Address Systems Federal Provisions and Required Contract Clauses.

When FTA operating or capital funds are used in a purchase, certain solicitation provisions and required contract clauses must be incorporated in Valley Regional Transit's solicitation and award. These requirements are stated in Valley Regional Transit's FTA grant contract (Part II), FTA Circulars, and in the various regulations themselves. Some provisions and clauses apply only over certain contract dollar thresholds, and some apply separately to construction and non-construction contracts, contracts for bus purchases, and so forth. Appendices to this manual includes those currently included in FTA Circular 4220.1F (Ver.2), references to required clauses that generally apply to non-construction contracts. Part II of Valley Regional Transit's FTA grant contract and procedures in Section 9 of this Manual will be referenced in preparing for an FTA-funded construction contract.

When including "boilerplate" provisions and contract clauses in an RFB or RFP, the Contracting Officer will separately reference in bid instructions those provisions and/or clauses which are not applicable to the procurement, and will cross out and initial those inapplicable sections of the "boilerplate" document which is included in the solicitation.

10.6 Contract File Documentation. Valley Regional Transit will comply with the requirements of Circular 4220.1F (Ver. 2), by maintaining records detailing the history of each procurement. Contract files will be organized so as to allow a reviewer to reconstruct and understand the history of the contract in the absence of the Contract Administrator, and will provide complete background supporting the actions taken. Currently, record storage for Valley Regional Transit is provided using Laser fiche storage software.

The extent of file documentation will vary with the complexity of purchase. At a minimum, small procurements made under purchase order procedures will include the following file documentation:

Purchase requisition including independent cost estimate;

List of sources solicited and abstract of quotes received, including form of quotations received (book, telephone, fax, written, etc.);

Purchase orders;

Buy America certificate and any other required submissions; and

Award and receiving documents.

Contract files for more complex procurements will contain some or all of the following, as appropriate to the procurement:

- a) Purchase requisition, acquisition planning information, and other pre-solicitation documents;
- b) Evidence of availability of funds;
- c) Rationale for method of procurement;
- d) List of sources solicited;
- e) Independent cost estimate;
- f) Scope of work or technical specifications;
- g) Copies of published notices;
- h) Copies of solicitation and all amendments;
- i) FTA required Clauses
- j) FTA required Certifications

- k) Documentation of all bids, proposals or quotes relating to the procurement;
- l) Contractor's certifications including a Buy America certification supporting every equipment, material or supply contract;
- m) Source selection documentation, if applicable;
- n) Contracting Officer's determination of contractor responsibility;
- o) Records of contractor's compliance with labor policies, including EEO policies, as required by the contract;
- p) Determination that price is fair and reasonable including price analysis or cost analysis, with source materials of price analysis data or vendor certificates of current cost data;
- q) Required internal approvals;
- r) Notice of award;
- s) Notice to unsuccessful quoters or Proposers;
- t) Bid, performance, payment or other bond documents and notices to sureties;
- u) Notice to proceed, stop orders, and any overtime premium approvals granted at time of award;
- v) Approvals or disapprovals for requests for waivers of deviations from contract documents; and
- w) Documentation regarding timely close-out or any early termination actions for which the Contracting Officer is responsible.

## **11. VALLEY REGIONAL TRANSIT PROCUREMENT MANUAL**

11.1 This manual covers Valley Regional Transit's standard procurement practices and procedures. For in-depth information refer to FTA Circulars 5010.1D and 4220.1F (Ver. 2), Idaho Code Title 67 Chapter 28 "Purchasing by Political Subdivisions", Federal Register 49 CFR Parts 665, 663, 661 and 38, and The FTA Best Practices Procurement Manual. Procurement questions should be directed to FTA Region 10 office in Seattle, Washington.

## APPENDICIES

***To maintain currency of all applicable references and related documents, this manual only lists the references, and provides links to the documents, Users of this manual should consult the current references at their source. If the links provided are not working, please notify VRT Administration for repair and update.***

(List as appropriate)

### APPENDIX A

#### REFERENCES

Federal Transit Laws, Title 49, United States Code, Chapter 53; also public transportation provisions of Title 23, United States Code.

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), Public Law 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act, 2008, Public Law 110-244, June 6, 2008.

Transportation Equity Act for the 21st Century 1998 (TEA-21), Public Law 105-178 as amended by TEA-21 Restoration Act 1998, Public Law 105-206.

7 U.S.C. Sections 2131 *et seq.*—Animal Welfare Act, as amended.

15 U.S.C. Sections 205a *et seq.*— Omnibus Trade and Competitiveness Act (Amendments to the Metric Conversion Act), 15 U.S.C. §§ 205a *et seq.*

15 U.S.C. Section 644 note—Section 7101(a) of the Federal Acquisition Streamlining Act of 1994 (Repeal of Labor Surplus Area Programs).

18 U.S.C. Section 874—Section 1 of the Copeland Anti-Kickback Act, as amended.

18 U.S.C. Section 1001—Criminal Fraud.

20 U.S.C. Sections 1681 *et seq.*—Title IX of the Education Amendments of 1972, as amended (Nondiscrimination on the Basis of Sex).

23 U.S.C. Section 512 note—Section 5307(c) of SAFETEA-LU (Intelligent Transportation Systems).

29 U.S.C. Sections 201 *et seq.*—Fair Labor Standards Act, as amended (Wage and Hour Restrictions).

29 U.S.C. Sections 621 through 634—Age Discrimination in Employment Act (Prohibitions).

29 U.S.C. Section 794—Section 504 of the Rehabilitation Act of 1973, as amended (Nondiscrimination under Federal Grants on the Basis of Disability).

29 U.S.C. Section 794d—Section 508 of the Rehabilitation Act of 1973, as amended (Electronic and Information Technology acquired with Federal funding to be Accessible).

31 U.S.C. Section 1352—Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions (Byrd “Anti-Lobbying” Amendment).

31 U.S.C. Sections 3801 *et seq.*—Program Fraud Civil Remedies Act of 1986, as amended.

31 U.S.C. Section 5112(p)—Section 104 of the Presidential \$1 Coin Act of 2005 (Use of Coins in Transit Facilities and Equipment).

31 U.S.C. Sections 7501 *et seq.*—Single Audit Act of 1984, as amended (Audits of Federally Funded Programs).

33 U.S.C. Sections 1251 through 1377—Clean Water Act.

35 U.S.C. Sections 200 *et seq.*—Bayh-Dole Act (Patent Rights).

40 U.S.C. Section 502(a)(3)—Federal Property and Administrative Services Act of 1949, as amended (General Services Administration (GSA) Schedule Use by the District of Columbia).

40 U.S.C. Section 502(c)—Section 211 of the E-Government Act of 2002 (GSA Schedule Use for Information Technology).

40 U.S.C. Section 502(d)—Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (GSA Schedule Use for Major Disaster or Emergency Relief).

40 U.S.C. Chapter 11—Architectural Engineering Procurement Requirements (“Brooks Act”).

40 U.S.C. Sections 3141 *et seq.*—Davis-Bacon Act (Prevailing Wages).

40 U.S.C. Section 3145—Section 2 of the Copeland Anti-Kickback Act, as amended.

40 U.S.C. Section 3701(b)(3)(A)(iii)—Section 4104(c) of the Federal Acquisition Streamlining Act of 1994 (Increased Wage and Hour Thresholds for Contract Work Hours and Safety Standards Act).

40 U.S.C. Section 3702—Section 102 of the Contract Work Hours and Safety Standards Act (Wage and Hour Restrictions).

40 U.S.C. Section 3704—Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety).

41 U.S.C. Section 253m—(Two-Step Selection Procedures Process [for Federal Procurements]).

41 U.S.C. Section 403(11)—Federal Acquisition Streamlining Act of 1994 (Definition of the [Federal] Simplified Acquisition Threshold).

42 U.S.C. Sections 289 *et seq.*—National Research Act, as amended (Protection of Humans).

42 U.S.C. Sections 2000d *et seq.*—Title VI of the Civil Rights Act of 1964, as amended (Nondiscrimination).

42 U.S.C. Section 2000e *et seq.*—Title VII of the Civil Rights Act of 1964, as amended (Equal Employment Opportunity).

42 U.S.C. Sections 4601 *et seq.*—Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

42 U.S.C. Section 5150—Stafford Act (Major Disaster or Emergency Relief).

42 U.S.C. Sections 6101 *et seq.*—Age Discrimination Act of 1975, as amended, (Nondiscrimination on the Basis of Age in Federal or Federal Assistance Programs).

42 U.S.C. Sections 6321 *et seq.*—Subchapter III, Part B, Energy Policy and Conservation Act (State Energy Conservation Plans).

42 U.S.C. Section 6962—Section 4002 of the Resource Conservation and Recovery Act of 1976, as amended (Recycled Materials).

42 U.S.C. Sections 7401 through 7671q—Clean Air Act.

42 U.S.C. Sections 7701 *et seq.*—Earthquake Hazards Reduction Act of 1977, as amended, (Seismic Safety).

42 U.S.C. Sections 12101 *et seq.*—Americans with Disabilities Act of 1990, as amended (Accessibility for Persons with Disabilities).

46 U.S.C. Section 55305—Cargo Preference Act (codified).

48 U.S.C. Section 1469e—Use of GSA Supply Schedules by Insular Areas.

49 U.S.C. Section 114(r)—Department of Transportation, Transportation Security Administration (Protection of Sensitive Security Information).

49 U.S.C. Sections 303(b) and 303(c)—Department of Transportation (DOT) (Statutory protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites).

49 U.S.C. Section 40118—Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended (“Fly America” Act – Persons and Property).

49 U.S.C. Section 40119(b)—(Protection of Sensitive Security Information).

DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200.

DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18 (Common Grant Rule for Governmental Recipients).

DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR Part 19 (Common Grant Rule for Non-governmental Recipients).

DOT regulations, “Protection of Human Subjects,” 49 CFR Part 11.

DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15.

DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20.

DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 CFR Part 21.

DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR Part 24.

DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25.

DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26.

DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31.

DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27.

DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, including Appendix A, “DOT Modifications of ATBCB Standards for Accessible Transportation Facilities.”

Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.

DOT regulations, “Seismic Safety,” 49 CFR Part 41 at Sections 41.117 and 41.120.

Federal Transit Administration (FTA) regulations, “Charter Service,” 49 CFR Part 604.

FTA regulations, “School Bus Operations,” 49 CFR Part 605.

FTA regulations, “Capital Leases,” 49 CFR Part 639.

FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655.

FTA regulations, “Buy America,” 49 CFR Part 661.

FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 CFR Part 663.

FTA regulations, “Bus Testing,” 49 CFR Part 665.

Joint Federal Highway Administration (FHWA)/FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

Joint FHWA/FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 CFR Parts 771 and 774, and 49 CFR Part 622.

Federal Acquisition Regulation (FAR), 48 CFR Chapter 1.

FAR Subpart 6.3, 48 CFR Chapter 1, Subpart 6.3 (Federal Procurement by Noncompetitive Proposals).

FAR Subparts 25.1 and 25.2, 48 CFR Chapter 1, Subparts 25.1 and 25.2 (Federal Buy American Regulations).

FAR Part 31, 48 CFR Chapter 1, Part 31 (Federal Cost Principles).

FAR Subpart 31.2, 48 CFR Chapter 1, Subpart 31.2 (Contracts with Commercial Organizations).

Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.

Department of Labor (DOL) regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 CFR Part 3.

DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 CFR Part 215.

DOL regulations “Safety and Health Regulations for Construction,” 29 CFR Part 1926.

DOL regulations, “Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor,” 41 CFR Part 60.

Equal Employment Opportunity Commission regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625.

Department of Agriculture regulations, “Animal Welfare,” 9 CFR Subchapter A, Parts 1, 2, 3, and 4.

Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” 31 CFR Part 223.

ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194.

Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms,” 37 CFR Part 401.

Department of Commerce, “Export Administration Regulations,” 15 CFR Parts 730 *et seq.*

Environmental Protection Agency (EPA) regulations, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR Part 247.

EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85.

EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86.

EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.

Council on Environmental Quality regulations, "Other Requirements of NEPA," 40 CFR Part 1506.

Department of Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90.

General Services Administration (GSA), "Federal Property Management Regulations," 41 CFR Parts 101-42 through 101-46, and 101-48, 101-49.

GSA regulations, "Use of United States Flag Air Carriers," 41 CFR Sections 301-10.131 through 301-10.143.

Maritime Administration regulations, "Cargo Preference U.S. Flag Vessels," 46 CFR Part 381.

Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," October 13, 1967.

Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Section 205a note.

Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. Section 4321 note.

Executive Order No. 13043, "Increasing Seat Belt Use in the United States," August 16, 1997, 23 U.S.C. Section 402 note.

Executive Order No. 13132, "Federalism," August 4, 1999, 5 U.S.C. Section 601 note.

Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. Section 2000d-1 note.

Executive Order No. 13502, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009, which rescinds Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. Section 251 note.

Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note.

Office of Management and Budget (OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180.

OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 CFR Part 220.

OMB Guidance for Grants and Agreements, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 CFR Part 225.

OMB Guidance for Grants and Agreements “Cost Principles for Non-Profit Organizations (OMB Circular A-122),” 2 CFR Part 230.

OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” as revised.

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DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009.

DOT, “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” December 14, 2005.

FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for FTA Recipients,” 05-13-07.

FTA Circular 5010.1D, “Grant Management Requirements,” 11-01-08.

FTA Circular 9030.1C, “Urbanized Area Formula Program Grant Application Instructions” 10-01-98.

FTA Circular 9300.1B, “Capital Investment Program Guidance and Application Instructions” 11-01-08.

FTA Circular 9400.1A, “Federal Transit Administration Design and Art in Transit Projects,” 06-09-95.

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FTA, “Pricing Guide for FTA Grantees.”

Defense Contract Audit Agency Audit Manual

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THIRD PARTY CONTRACTING CHECKLISTS

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APPENDIX C

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

**A. THIRD PARTY CONTRACT PROVISIONS**

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<b>PROVISION</b>	<b>COMMENTS</b>	<b>MASTER AGREEMENT REFERENCE (based on FA MA(16) 10-1-2009)</b>
<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

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

**A. 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>Nonconstruction Activities</b>		
Nonconstruction 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
Drug Use and Testing	Safety sensitive functions	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions	§ 32.b

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

**A. 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>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

**APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS**

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

<b>TYPE OF PROCUREMENT</b>					
<b>PROVISION</b>	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
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	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
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
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)	

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

**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
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			
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

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

**C. 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
Preaward Review	Rolling stock procurements exceeding procurements exceeding \$100,000	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000	49 CFR Part 663
Preaward 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 Preaward 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

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

**D. OTHER MATTERS**

<b>OTHER MATTERS</b>	<b>COMMENTS</b>	<b>STATUTORY OR REGULATORY REFERENCES</b>
Contract Administration System		49 CFR § 18.36(b)(2) 49 CFR § 19.47
Record of Procurement History		49 CFR § 18.36(b)(9) 49 CFR § 19.47
Protest Procedures		49 CFR § 18.36(b)(12)
Selection Procedures		49 CFR § 18.36(c)(3)
Cost/Price Analysis		49 CFR § 18.36(f) 49 CFR § 19.45
Justification for Noncompetitive Awards	If Applicable	49 CFR § 18.36(b)(9) by implication 49 CFR § 19.46(b)
No Excessive Bonding Requirements		49 CFR § 18.36(h) 49 CFR § 19.48(c)(5)
No Exclusionary Specifications		49 U.S.C. § 5325(h)
No Geographic Preferences	Except for A&E Services	49 CFR § 18.36(c)(2)