




November 7, 2019

TO: Madam Chair Anderson and PRTC Commissioners

FROM: Robert A. Schneider, PhD 
Executive Director

SUBJECT: Federal Transit Administration Follow-Up Procurement Review Draft Report

From August 26-29, 2019, a team of three (3) auditors from Business Management Research Associates (BMRA) conducted a Federal Transit Administration (FTA) Follow-up Procurement Review (PSR) of PRTC and VRE procurements, including micro and small procurements.

The review was a follow-up to a review that was completed in 2016 and was done to assess PRTC's compliance with Federal requirements. Compliance was determined by examining a sample of procurements issued by PRTC and VRE over the last two years, focusing on those 11 elements that were deficient in the 2016 review.

Two (2) items were found to be deficient: #18 Award to Responsible Contractor; and, #19 Sound and Complete Agreement. FTA has issued a draft report (attached), which requires a response from PRTC within 30 days to include a corrective action plan with a schedule completion date for implementing procedures to address the items that were deficient.

Attached: As stated

**DRAFT REPORT
OF THE
FOLLOW UP PROCUREMENT SYSTEM REVIEW
OF
Potomac and Rappahannock Transportation Commission
(PRTC)**



WOODBRIIDGE, VIRGINIA

AUGUST 2019



**Conducted by a Procurement
Management Review Team from
Business Management Research Associates, Inc.
Fairfax, Virginia**

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I. EXECUTIVE SUMMARY

Business Management Research Associates (BMRA), under contract with the Federal Transit Administration (FTA), performed an on-site Follow up Procurement System Review of the Potomac and Rappahannock Transportation Commission (PRTC) and the Virginia Railway Express (VRE) during the period of August 26, 2019 through August 29, 2019.

The Federal Transit Administration (FTA) has a vested interest in assisting recipients to maintain efficient and effective procurement systems as well as a legal responsibility to ensure that its recipients expend their funds in accordance with FTA regulations, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (2 CFR 200, Uniform Guidance) and the contractual agreements between FTA and the local recipient. In order to carry out this responsibility, FTA has established an oversight framework that is composed of recipient self-certifications, annual single audits conducted in accordance with OMB Circular A-133, and FTA oversight reviews, including the Procurement System Review (PSR). The BMRA team conducted the review in accordance with the FTA Guide for Procurement System Reviews (FY 2019).

This review was performed in accordance with FTA procedures and included a risk assessment phase and a contract review phase. The risk assessment phase included a review of data available at the FTA Regional Office. The contract review phase consisted of a recipient document review and a system wide requirement review.

The contract review phase included a review of contract files and documents collected during the risk assessment phase and the contract files at the Potomac and Rappahannock Transportation Commission (PRTC) and the Virginia Railway Express (VRE). The specific documents referenced in this report are available in the PSR Reviewers Office (BMRA) or at the PRTC and VRE offices. The PRTC and VRE acquire goods, services, and architect-engineering and has also contracted for buses during the past five years.

This was a follow up review of the eleven (11) deficient elements identified in the August 2016 Procurement System Review, therefore the scope of this review was limited to these eleven (11) elements versus the sixty four (64) elements of a full Procurement System Review. See Table 1 below. The elements out of the scope of this review will be identified as such in the appropriate section of this report.

The review found two (2) repeat deficient elements. See Table 2 below. These deficiencies are addressed in the body of the report.

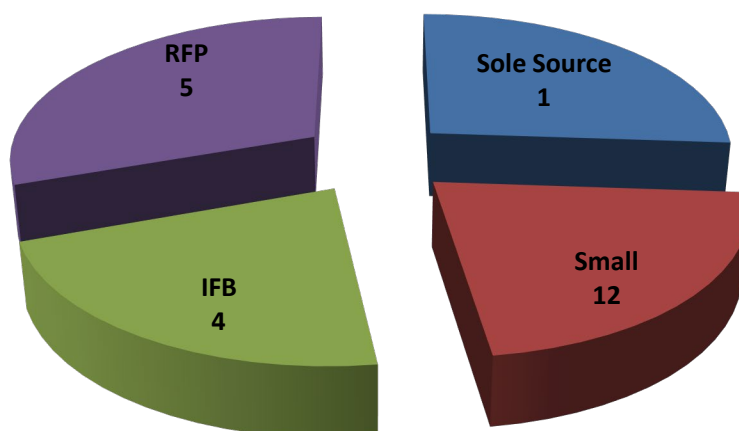
TABLE 1	
Element	Deficiencies in the August 2016 PSR
7	Independent Cost Estimate (PRTC & VRE Deficient)
18	Award to Responsible Contractors (VRE Deficient)

19	Sound and Complete Agreement (PRTC & VRE Deficient)
23	Price Quotations (Small Purchases) (PRTC Deficient)
24	Clear, Accurate, and Complete Specification (PRTC Deficient)
41	Cost or Price Analysis (PRTC & VRE Deficient)
42	Written Record of Procurement History (PRTC Deficient)
45	Advance Payments (PRTC Deficient)
49	Liquidated Damages Provisions (VRE Deficient)
56	Clauses (PRTC & VRE Deficient)
57	Veterans Employment (PRTC & VRE Deficient)

TABLE 2	
Deficiencies in the August 2019 PSR	
18	Award to Responsible Contractors (PRTC Deficient)
19	Sound and Complete Agreement (PRTC & VRE Deficient)

Procurements Reviewed

FTA-funded contracts having expenditures during the 24-month period preceding June 30, 2019 were reviewed to assess compliance with FTA Circular 4220.1F, OMB Super Circular, and the Fixing America Surface Transit (FAST) Act (for procurements after 2015). Reviews were performed on PRTC & VRE with findings summarized. Twenty two (22) procurements were reviewed. The breakdown is depicted below. This sample included one (1) bus purchase contract and one (1) sole source. There were no construction contracts award by the PRTC or the VRE during the period of the review.



II. PROCUREMENT SYSTEM REVIEW BACKGROUND

DESCRIPTION

The objectives of the Procurement System Review (PSR) are to encourage and facilitate improved recipient procurement operations, promote the use of best practices, and assess the recipient's compliance with all Federal requirements, specifically the requirements of FTA Circular 4220.1F and the Pre-Award, Post-Delivery Rule, applicable to Buy America requirements. The PSR is designed to be a customer-oriented review that encourages working relationships between FTA and the recipients.

This procurement system review was performed in accordance with FTA procedures and includes a risk assessment phase, a contract review phase, and a reporting phase. The risk assessment phase includes a review of regional office documents, grantee documents, system-wide requirements and risk assessment documents. The contract review phase includes a site visit, interviews, sample selection, contract file review, and follow-up interviews. The specific documents reviewed are referenced in this report and are available at the recipient's office. The reporting phase consists of reporting the findings of the review, to include the Transit Agency comments. This final phase includes a draft report, a draft final report, and a final report.

Individuals attending the Entrance or Exit Conference are shown in Appendix A.

REQUIRED ELEMENTS

The PSR looks at both system-wide and individual procurement elements. System-wide procurement elements are requirements that apply to the procurement system as a whole. Since none of the system wide elements were deficient in the August 2016 PSR they were considered out of the scope of this review. Individual procurement elements are evaluated on an individual contract basis and summarized across all contracts reviewed.

CLASSIFICATION OF FINDINGS

The reviewer determined the status (not deficient/deficient) for each individual procurement element in the scope of this review. The reviewer determined the status for: each individual procurement element based upon all the contract files reviewed.

Two levels of findings are used:

Not Deficient: A finding of “not deficient” indicates that the recipient complied with the basic requirements of the element. This is defined as, “The review of selected procurement files found that in all instances the recipient complied with the requirement.”

Deficient: A finding of “deficient” indicates that the recipient did not always comply with the requirements of the element. This is defined as, “The review of selected procurement files found that in one or more of the applicable instances, the recipient did not comply with the requirement.”

DESCRIPTION OF THE GRANTEE

Organization

Potomac and Rappahannock Transportation Commission (PRTC dba OmniRide) is a regional transit district created under Virginia enabling legislation (Transportation District Act, Virginia Code Section 15.2-4500 et. seq.). The district comprises Prince William, Stafford, and Spotsylvania counties and the cities of Manassas, Manassas Park, and Fredericksburg. The Board has 17 members, including two state delegates, one state senator, 13 representatives of the member jurisdictions, and one ex-officio representative from the Virginia Department of Rail and Public Transportation. PRTC applies for FTA funds under a “split-letter” agreement between the

Washington Metropolitan Area Transportation Authority, the Maryland Transit Administration, and the FTA.

In 1989, PRTC and NVTC, through a joint powers agreement with founding member jurisdictions, formed Virginia Railway Express (VRE) for the purpose of providing commuter rail service in the two transit districts. Current member jurisdictions include Arlington, Fairfax, Prince William, Stafford, and Spotsylvania counties and the cities of Alexandria, Fredericksburg, Manassas, and Manassas Park. VRE is overseen by an operations board consisting of 14 members, 13 of whom are recommended for appointment by the member jurisdictions with the concurrence of the pertinent commission. The 14th member is an appointee of the Commonwealth Transportation Board.

VRE is not a legal entity under Virginia law and, therefore, is not an FTA grantee. PRTC is the permanent designee of NVTC and the VRE Operations Board for the receipt and management of Federal funds for VRE projects. PRTC and NVTC have delegated to the VRE Operations Board full discretionary spending authority provided the amount is included in the annual budget and six-year financial plan (with the exception of 1) CSX, Norfolk Southern and Amtrak or other operating agreements, 2) insurance agreements, and 3) purchase of real property or equipment in the Commissions' name), the authority for approval of fare changes (tariffs) provided they are consistent with annual budgets and six-year financial plans (provided the requirement for a public hearing is maintained), the authority to determine the spending authority of VRE's chief executive officer (CEO), and the authority to determine the level of compensation for the CEO. VRE coordinates its operations with the numerous agencies and jurisdictions by means of a planning task force, which meets monthly. The task force consists of staff members of VRE, PRTC, NVTC, and representatives of the local jurisdictions and the Commonwealth.

Services

PRTC provides commuter and local route deviation bus service in Prince William County and the cities of Manassas and Manassas Park. All service is operated by a contractor, First Transit.

Commuter bus service, known as OmniRide Express and OmniRide Metro Express operates weekdays from 4:30 a.m. to 11:00 p.m. on 18 routes to Washington, DC, Northern Virginia destinations, and selected Metro stations. One route to the Franconia-Springfield Metrorail station operates Saturdays from 7:30 a.m. to 11:00 p.m.

Local bus service, called OmniRide Local, consists of six routes, four of which serve eastern Prince William County and two of which serve the cities of Manassas and Manassas Park. Weekdays, buses operate from 5:00 a.m. to 11:00 p.m. A commuter route called the OmniRide Cross County Connector connects the service operated in the cities of Manassas and Manassas Park with the service operated in eastern Prince William County. Saturdays, OmniRide Local operates in eastern Prince William County from 6:45 a.m. to 11:00 p.m. OmniRide Local buses deviate up to three-quarters of a mile off the route for pick-ups and drop-offs scheduled at least two hours in advance.

PRTC operates from a single management and operations headquarters in Woodbridge. Staff consists of executive, administrative, and dispatch employees. All other transportation and maintenance personnel are the employees of First Transit. An on-site First Transit General Manager directs the transportation and maintenance operations.

The cash fare for local OmniRide Local and the OmniRide Cross County Connector is \$1.55. During all hours, a reduced fare of \$0.75 is offered to seniors (60+), persons with disabilities, and Medicare cardholders. For a full-fare passenger, deviations cost \$1.55. For a passenger who qualifies for half fare, there is no deviation surcharge. Pre-payment options include SmartTrip, day and weekly passes, and ten-packs of tokens.

OmniRide Express' fares range from \$4.25 to \$9.20. Half fares are available for seniors (60+), persons with disabilities, and Medicare cardholders boarding during off-peak hours (9:30 a.m. to 3:00 p.m. and after 7:00 p.m.). Pre-payment options include SmartTrip.

PRTC operates a fleet of 177 buses. The fleet consists of 30- and 40-foot transit coaches and 45-foot over-the-road coaches. Currently, the peak requirement was 152 buses, resulting in a spare ratio of 20 percent. There is a contingency fleet of 24 buses and 1 bus is being readied for auction.

VRE operates 32 trains daily on two rail lines, Fredericksburg and Manassas. Both lines terminate at Washington Union Station. The Fredericksburg Line has 13 stations and the Manassas Line has ten. Four stations are served by both lines. The first trains leave the Spotsylvania and Broad Run terminus stations at 4:54 a.m. and 5:05 a.m., respectively. The last trains arrive at the Spotsylvania Station at 8:27 p.m. and the Broad Run Station at 8:09 p.m. VRE has a variety of occupancy arrangements on the station properties, including outright ownership of some assets, joint ownership, and leases. VRE contracts a facilities management firm for daily inspection and maintenance of its stations and commuter parking lots.

VRE contracts with Keolis Rail Services Virginia for rail operations and maintenance. Maintenance is performed at VRE's Broad Run or Crossroads Maintenance and Storage Facility at the end of each line. Equipment is stored overnight at the yards. VRE has a fleet of 79 coaches, 21 cab cars, and 20 locomotives. VRE's management office is in Alexandria, Virginia.

VRE has a zone fare system. The following table presents the fares.

	VRE Full Fares	VRE Half Fares
Single Ride Ticket	\$3.50 - \$12.15	\$1.75 - \$6.05
Day Pass	\$7.00 - \$24.30	\$3.50 - \$12.15
Ten-Ride Ticket	\$32.20 - \$111.80	\$16.10 - \$55.90
Five-Day Pass	\$28.00 - \$97.20	\$14.00 - \$48.60
Monthly Pass	\$97.00 - \$336.80	\$48.50 - \$168.40

III. RESULTS OF THE REVIEW

The results of the review are summarized for each system wide and individual procurement element. For each procurement guidance element, the report describes the required element, cites a reference to FTA Circular 4220.1F and other applicable regulations, discusses the issues and identifies the finding, and recommends corrective actions and schedules and shows related management comments. The PSR Report summary table is provided in Appendix C.

Overall, PRTC and VRE demonstrated their compliance in a number of key areas required by FTA and OMB guidance. The deficiencies identified are summarized overall in the table below and are detailed in the following sections.

Elements	PRTC/VRE
Area Not Deficient	9
Areas Deficient	2
Not Applicable or Not Covered in the Scope of the Review	53

SYSTEM-WIDE PROCUREMENT ELEMENTS

As stated above the PRTC & VRE were not deficient in any of the System Wide Elements during the August 2016 PSR, therefore, no information is provided in this section.

INDIVIDUAL PROCUREMENT ELEMENTS

The individual procurement elements are applicable to the contract files reviewed. We compiled the findings from all contracts reviewed by each individual procurement element. The results are organized by category of findings. Those elements for which the recipient is in compliance are shown first, followed by the elements that are found to be deficient.

IV. PRTC/VRE Results

PRTC/VRE System-Wide Procurement Elements

Not Applicable

The recipient was not deficient in the following systemwide procurement elements during the August 2016, therefore they were not part of the scope of this review:

Element 1 – Written Standards of Conduct

Element 2 - Contracts Administration

Element 3 – Written Protest Procedures

Element 4 – Prequalification System

Element 5 – Procedures for Ensuring Most Efficient and Economic Purchase

Element 6 - Procurement Policies and Procedures

Deficient

Not applicable to this review.

PRTC/VRE Individual Procurement Elements

Not Deficient

A full description of the elements for which the recipient is not deficient is in Appendix D.

Element 7 – Independent Cost Estimate

Element 23 – Price Quotations (Small Purchase)

Element 24 – Clear, Accurate, and Complete Specification

Element 41 – Cost or Price Analysis

Element 42 – Written Record of Procurement History

Element 45 – Advance Payments

Element 49 – Liquidated Damages

Element 56 – Clauses (Includes Veterans Preference Clause, Element # 57 in the previous review)

Not Applicable Elements

The following elements were rated as “not applicable” because PRTC/VRE did not award the types of contracts/purchase orders that included these elements or these items were out of the scope of this review because they were not deficient in the August 2016 PSR. A full description of these elements is contained in Appendix D.

Element 8 – A&E Geographic Preference (Not in the Scope of this Review)

Element 9 – Unreasonable Qualification Requirements (Not in the Scope of this Review)

Element 10 – Unnecessary Experience and Excessive Bonding (Not in the Scope of this Review)

Element 11 – Organizational Conflict of Interest (Not in the Scope of this Review)

Element 12 – Arbitrary Action (Not in the Scope of this Review)

Element 13 – Brand Name Restrictions (Not in the Scope of this Review)

Element 14 – Geographic Preferences (Not in the Scope of this Review)

Element 15 – Contract Term Limitation (Not in the Scope of this Review)

Element 16 – Written Procurement Selection Procedures (Not in the Scope of this Review)

Element 17 – Solicitation Prequalification Criteria (Not in the Scope of this Review)

Element 20 – No Splitting (Micro-Purchase) (Not in the Scope of this Review)

Element 21 - Fair and Reasonable Price Determination [Micro-purchase] (Not in the Scope of this Review)

Element 22 – Micro Purchase Davis- Bacon (Not in the Scope of this Review)

Element 25 – Adequate Competition – Two or More Competitors (Not in the Scope of this Review)

- Element 26 – Firm Fixed Price (Sealed Bid) (Not in the Scope of this Review)
- Element 27 – Selection on Price (Sealed Bid) (Not in the Scope of this Review)
- Element 28 – Discussions Unnecessary (Sealed Bid) (Not in the Scope of this Review)
- Element 29 – Advertised/Publicized (Sealed Bid) (RFP) (Not in the Scope of this Review)
- Element 30 – Adequate Number of Sources Solicited (Sealed Bid) (RFP) (Not in the Scope of this Review)
- Element 31 – Sufficient Bid Time (Sealed Bid) (Not in the Scope of this Review)
- Element 32 – Bid Opening (Sealed Bid) (Not in the Scope of this Review)
- Element 33 – Responsiveness (Sealed Bid) (Not in the Scope of this Review)
- Element 34 – Lowest Price (Sealed Bid) (Not in the Scope of this Review)
- Element 35 – Rejecting Bids (Sealed Bid) (Not in the Scope of this Review)
- Element 36 – Evaluation (RFP) (Not in the Scope of this Review)
- Element 37 – Price and Other Factors (RFP) (Not in the Scope of this Review)
- Element 38 – Sole Source if Other Award is Infeasible (Not in the Scope of this Review)
- Element 39 – Cost Analysis Required [Sole Source] (Not in the Scope of this Review)
- Element 40 – Evaluation of Options (Not in the Scope of this Review)
- Element 43 - Exercise of Options (Not in the Scope of this Review)
- Element 44 - Out of Scope Changes (Not in the Scope of this Review)
- Element 46 – Progress Payments (Not in the Scope of this Review)
- Element 47 – Time and Materials Contracts (Not in the Scope of this Review)
- Element 48 – Cost Plus Percentage of Cost (Not in the Scope of this Review)
- Element 50 – Piggybacking (Not in the Scope of this Review)
- Element 51 – Qualification Exclude Price (A&E and Other Services) (Not in the Scope of this Review)
- Element 52 – Serial Price Negotiation (A&E and Other Services) (Not in the Scope of this Review)
- Element 53 – Bid Security (Construction Over \$100,000) (Not in the Scope of this Review)
- Element 54 – Performance Security (Construction Over \$100,000) (Not in the Scope of this Review)
- Element 55 – Payment Security (Construction Over \$100,000) (Not in the Scope of this Review)
- Element 57 - Vehicle Pre-Award Review
- Element 58 - Vehicle Post-Delivery Review
- Element 59 - Change Orders (Not in the Scope of this Review)

Element 60 - Subrecipient Oversight (Not in the Scope of this Review)

Element 61 - Revenue Contracts (Not in the Scope of this Review)

Element 62 - Single Bid (Not in the Scope of this Review)

Element 63 - Certifications (TVM, Lobbying, Buy America (Not in the Scope of this Review)

Element 64 - Bus Testing (Not in the Scope of this Review)

Deficient

The recipient is deficient with respect to the following individual procurement elements summarized below:

Element 18 – Award to Responsible Contractors

Element 19 – Sound and Complete Agreement

Element (18) Award to Responsible Contractors (Code 344) Repeat Finding from the August 2016 PSR.

In addition to the Common Grant Rules that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. Section 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Moreover, SAFETEA-LU now requires a recipient entering into a fixed guideway project contract to consider the contractor's past performance, including information reported in FTA's required Contractor Performance Assessment Reports, 49 U.S.C. Section 5325(j)(2)(C).

(FTA C4220.1F, IV, 2.a.1.)

Discussion

The recipient is deficient with respect to this element.

Review of the following files disclosed deficiencies with respect to this element.

ID Number	Contractor	Item Description	\$ Amount
PRTC 17-04	Redmon Group	Website Development	\$86,779

PRTC retained the firm Redmon Group, Inc. (Redmon) on July 27, 2017 to provide website development, programming, hosting, and technical support. Redmon was selected based on a competitive RFP among five (5) proposers. PRTC did not conduct a contractor responsibility review or make a determination of contractor responsibility prior to award of the original

contract. A debarment check on SAM.gov was conducted on August 21, 2019 as part of the original award process for the award of the first task order.

Initial Action and Implementation Schedule:

SUGGESTED CORRECTIVE ACTION: For any contracts where the recipient was found to have failed to verify that the contractor was responsible, the recipient must verify the responsibility of contractors. The recipient must provide the FTA regional office documentation of an implemented process to make adequate responsibility determinations prior to award of a contract. For the next procurement, submit to the FTA regional office documentation that the required process was implemented. Note: During the August 2016 PSR the VRE was deficient in this area. The determination of responsibility in their contracts during this PSR were very well done. Recommend that the PRTC use the VRE's process for documenting contractor responsibility.

Recipient Response:

The Recipient's Response will go here.

Reviewer Comments and Final Corrective Action Plan

Element (19) Sound and Complete Agreement (Code 712) Repeat Finding from the August 2016 PSR.

Adequate Third Party Contract Provisions. The Common Grant Rules require that all third party contracts include provisions adequate to form a sound and complete agreement. Compliance with Federal laws and regulations will necessarily result in the addition of many other provisions to ensure compliance with those laws and regulations.

(FTA C4220.1F, III, 3.a.(1)b.)

Discussion

The recipient is deficient with respect to this element

ID Number	Contractor	Item Description	\$ Amount
PRTC 17-04	Redmon Group	Website Development	\$86,779
VRE 017-016	RPI Group, Inc	Installation & Integration of Security Cameras	NTE \$1,000,000

The underlying agreement with the Redmon Group included hourly rates for on-going task order work did not identify the method of compensation to be utilized for the task orders (i.e., fixed price, T&M, cost reimbursable contracts). The proposal issued by Redmon for the first task

order of \$64,199, and accepted by PRTC, did not include any breakdown of the \$64,199 fee, and included four payment milestones of 25% each for completion of various portions of the work, including an initial 25% milestone for “project start”. PRTC indicates that this project start milestone included domain name change, software licenses and schedule development.

VRE awarded a task order agreement to the firm RPI Group, Inc. (RPI) on October 3, 2017. The base contract is a NTE \$1,000,000. Under the agreement RPI will be assigned task orders over a potential six (6) year period (one base year plus five (5) one year option periods) to accomplish installation and integration of the camera/access control system throughout the VRE operating territory. The underlying agreement identified that the various task orders would be awarded to a single successful proposer, but did not identify the method of compensation to be utilized for the task orders (i.e., fixed price, T&M, cost reimbursable contracts). Task order proposals submitted by RPI in response to requests for such proposals identified the hours and labor costs, along with estimated amounts for ODC’s, and fee. The proposals submitted by RPI, and accepted by VRE, are classified as time and material arrangements. The use of T&M is not defined in the main agreement and VRE has not justified the use of T&M contracting as part of the Task order file documentation.

Initial Action and Implementation Schedule:

The recipient should develop a matrix/checklist that can be used as a reference document that identifies the applicable Federal requirements for IDIQ contracts, i.e. process for awarding task orders and the task order type (e.g., fixed price, cost plus). This matrix/checklist should be distributed to all personnel involved in the procurement process to identify Federally required requirements when using FTA funds.

The recipient should submit a corrective action plan and schedule for this item within 30 days of receipt of the draft final report. The plan should include steps to be taken in future procurements that will prevent this type of deficiency.

Recipient Response:

The Recipient’s Response will go here.

Reviewer Comments and Final Corrective Action Plan

OTHER MATTERS:

OTHER MATTERS:

1. Award to Responsible Contractors. The PRTC was a participant in a joint bus procurement. The Roaring Fork Transportation Authority was the lead agency. The determination of responsibility was not in the file. The review team recommended that PRTC obtain a copy of the determination of responsibility from the Roaring Fork Transportation Authority.

2. Time and Materials. (Observation outside the Scope of the current review) VRE awarded a contract to RPI Group, Inc. for the Installation and Integration of Security Cameras and Access Control Systems. The underlying agreement identified that the various task orders would be awarded to a single successful proposer, but did not identify the method of compensation to be utilized for the task orders (i.e., fixed price, T&M, cost reimbursable contracts). Task order proposals submitted by RPI in response to requests for such proposals identified the hours and labor costs, along with estimated amounts for ODC's, and fee. The proposals submitted by RPI, and accepted by VRE, are classified as time and material arrangements. The use of T&M is not defined in the main agreement and VRE has not justified the use of T&M contracting as part of the Task order file documentation. Additionally, by allowing the contractor to add a fee to the ODCs constitutes a Cost Plus a Percent of Cost arrangement which is illegal under Federal statute.
3. Liquidated Damages (LDs). (Minor Deficiency) VRE was deficient in this area during the FY 16 PSR. VRE has not awarded any construction contracts since the last review therefore this item was not reviewed. VRE has changed its process for calculating LDs specific to each contract. VRE provided a copy of the procedure to the reviewers. The PRTC was a participant in a joint bus procurement. The Roaring Fork Transportation Authority was the lead agency. The contract had a liquidated damages clause for a \$100 day for delays. The PRTC file did not have the calculation for the LDs. The review team recommended that PRTC obtain a copy of the LDs from the Roaring Fork Transportation Authority or delete the requirement for LDs if not used.
4. Vehicle Pre-Award Review. The FY 19 PSR Guide added this element 57. The Roaring Fork Transportation Authority joint bus procurement was reviewed. The vehicle pre-award review documentation was on file.
5. Vehicle Post-Delivery Review. The FY 19 PSR Guide added this element 58. The Roaring Fork Transportation Authority joint bus procurement was reviewed. The vehicle post-delivery review documentation was on file.
6. Change Orders. The FY 19 PSR Guide added this element 59.
7. Sub-recipient Oversight. The FY 19 PSR Guide added this element 60. The PRTC/VRE do not have any sub-recipients.
8. Revenue Contracts. The FY 19 PSR Guide added this element 61. Not in the scope of this review.
9. Single bid. The FY 19 PSR Guide added this element 62. One of the VRE contracts reviewed had a single bid. VRE properly documented the process for awarding a single bid.

10. Certifications (TVM, Lobbying, Buy America). The FY 19 PSR Guide added this element 63. The Roaring Fork Transportation Authority joint bus procurement was reviewed. The TVM documentation was on file. The contracts reviewed contained the required certifications (Lobbying, Buy America, etc.)
11. Bus Testing. The FY 19 PSR Guide added this element 64. The Roaring Fork Transportation Authority joint bus procurement was reviewed. The Bus Testing documentation was on file.
12. The VRE's responsibility determinations were some of the best the team has seen. The files were very neat and well organized.
13. The team would like to thank the PRTC/VRE staffs for their participation and support during this review. Specifically, Ms. Betsy Massie's, Ms. Cynthia Porter-Johnson's, and Kristin Nutter's support were superb.

Appendix A:

List of Individuals Participating in the Review

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APPENDIX B

REPORT SUMMARY TABLE

REPORT SUMMARY TABLE							
No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action
1)	Written Standards of Conduct	FTA C4220.1F, III, 1. a., b., c.	0	0	1	1	
2)	Contract Administration System	FTA C4220.1F, III, 3.	0	0	1	1	
3)	Written Protest Procedures	FTA C4220.1F, VII, 1.a.b.	0	0	1	1	
4)	Prequalification System	FTA 4220.1F, 1.c.	0	0	1	1	
5)	Procedures for Ensuring Most Efficient and Economic Purchase	FTA C4220.1F, IV, 1.	0	0	1	1	
6)	Procurement Policies and Procedures	FTA C4220.1F, III, 3.a.	0	0	1	1	
7)	Independent Cost Estimate	FTA C4220.1F, VI, 6.	10	0	12	22	
8)	A&E Geographic Preference	FTA C4220.1F, VI, 2.a.(4)(g)(1)	0	0	10	10	
9)	Unreasonable Qualification Requirements	FTA C4220.1F, VI, 2.a.(4)	0	0	22	22	
10)	Unnecessary Experience and Excessive Bonding	FTA C4220.1F, VI, 2.(4)); FTA C4220.1F, VI, 2.a.(4)(e))	0	0	10	10	
11)	Organizational Conflict of Interest	FTA C4220.1F, VI, 2.a.(4)(h) 1., 2.	0	0	10	10	
12)	Arbitrary Action	FTA C4220.1F, VI, 2.a.(4)(j)	0	0	22	22	
13)	Brand Name Restrictions	FTA C 4220.1F., VI, 4.	0	0	22	22	
14)	Geographic Preferences	FTA C 4220.1F, VI, 2.(4)(g)	0	0	22	22	
15)	Contract Term Limitation	FTA C4220.1F, IV, 2.e.(10)	0	0	22	22	
16)	Written Procurement Selection Procedures	FTA C4220.1F, III, 3.a.; FTA C4220.1F, VI, 2.d.	0	0	10	10	
17)	Solicitation Prequalification Criteria	FTA C4220.1F, VI, 1.c.	0	0	10	10	
18)	Award to Responsible Contractors	FTA C4220.1F, IV, 2.a.1.	8	2	0	10	
19)	Sound and Complete Agreement	FTA C4220.1F, III, 3.a.(1)b.	8	2	0	10	

20)	No Splitting (Micro-purchase)	FTA C4220.1F, VI, 3.a.(2)	0	0	0	0	
21)	Fair and Reasonable Price Determination (Micro-purchase)	FTA C4220.1F, VI, 3.a.	0	0	0	0	
22)	Micro-purchase Davis-Bacon	FTA C4220.1F, VI, 3.a.(1)	0	0	0	0	
23)	Price Quotations (Small Purchase)	FTA C4220.1F, VI, 3.b.(2)	12	0	0	12	
24)	Clear, Accurate, and Complete Specification	FTA 4220.1F, VI, 2.a.	22	0	0	22	
25)	Adequate Competition – Two or More Competitors	FTA C4220.1F, VI, 3.c.(1)(b); FTA C4220.1F, VI, 3.d.2(c)	0	0	10	10	
26)	Firm Fixed Price (Sealed Bid)	FTA C4220.1F, VI, 3.c.(1)(c)	0	0	4	4	
27)	Selection on Price (Sealed Bid)	FTA C4220.1F, VI, 3.c.(d)	0	0	4	4	
28)	Discussions Unnecessary (Sealed Bid)	FTA C4220.1F, VI, 3.c.(1)(e)	0	0	4	4	
29)	Advertised/Publicized (Sealed Bid) (RFP)	FTA C4220.1F, VI, 3, c.(2)(a); FTA C4220.1F, VI, 3.d.(2)(a)	0	0	4	4	
30)	Adequate Number of Sources Solicited (Sealed Bid) (RFP)	FTA C4220.1F, VI, 3.c.(1)(b); FTA C4220.1F, VI, 3.d.(2)(c)	0	0	4	4	
31)	Sufficient Bid Time (Sealed Bid)	FTA C4220.1F, VI, 3.c.(2)(d)	0	0	4	4	
32)	Bid Opening (Sealed Bid)	FTA C4220.1F, VI, 3.c.(2)(e)	0	0	4	4	
33)	Responsiveness (Sealed Bid)	FTA C4220.1F, VI, 3.c.(2)(f)	0	0	4	4	
34)	Lowest Price (Sealed Bid)	FTA C4220.1F, VI, 3.c.(2)(f)	0	0	4	4	
35)	Rejecting Bids (Sealed Bid)	FTA C4220.1F, VI, 3.(a)(2)(g)	0	0	4	4	
36)	Evaluation (RFP)	FTA C4220.1F, VI, 3.d.(2)(b); FTA C4220.1F, VI, 3.d.(2)(d)	0	0	5	5	
37)	Price and Other Factors (RFP)	FTA C4220.1F, VI, 3.d.(2)(e)	0	0	5	5	
38)	Sole Source if Other Award is Infeasible	FTA C4220.1F, VI, 3.i.	0	0	1	1	
39)	Cost Analysis Required (Sole Source)	FTA C4220.1F, VI, 6.a.	0	0	1	1	

40)	Evaluation of Options	FTA C4220.1F, VI, 7.b.(1)	0	0	10	10	
41)	Cost or Price Analysis	FTA C4220. 1F, VI, 6.	10	0	12	22	
42)	Written Record of Procurement History	FTA C 4220.1F, III, 3.d.	22	0	0	22	
43)	Exercise of Options	FTA C4220.1F, IV, 1.d.; FTA C4220.1F, V, 7.a.(1)	0	0	10	10	
44)	Out of Scope Changes	FTA C4220.1F, VI, 3.i.(1)(b)	0	0	10	10	
45)	Advance Payments	FTA C4220.1F, IV, 2.b.(5)(b).1.2.; FTA C4220.1F, III, 3.d.(1)(c)(d)	22	0	0	22	
46)	Progress Payments	FTA C4220.1F, IV, 2.b.(5)(c)	0	0	10	8	
47)	Time and Materials Contracts	FTA C4220.1F, VI, 2.c.(2)(b)	0	0	10	10	
48)	Cost Plus Percentage of Cost	FTA C4220.1F, VI, 2.c.(2)(a)	0	0	10	10	
49)	Liquidated Damages Provisions	FTA C 4220.1F, IV, 2.b.(6)(b)1	0	0	10	10	
50)	Piggybacking	FTA C4220.1F, V, 7.a.(2)	0	0	10	10	
51)	Qualifications Exclude Price (A&E and Other Services)	FTA C4220.1F, VI, 3.f.(1)	0	0	10	10	
52)	Serial Price Negotiations (A&E and Other Services)	FTA C4220.1F, VI, 3.f.(3)	0	0	10	10	
53)	Bid Security (Construction over \$100,000)	FTA C4220.1F, IV, 2.h.(1)(a)	0	0	10	10	
54)	Performance Security (Construction over \$100,000)	FTA C4220.1F, IV, 2.h.(1)b.	0	0	10	10	
55)	Payment Security (Construction over \$100,000)	FTA C4220.1F, IV, 2.h.(1)(c)	0	0	10	10	
56)	Clauses	FTA C4220.1F, VI, 2.	10	0	0	10	
57)	Veteran Hiring Preference	FTA C4220.1F, VI, 2.c.(1)	0	0	10	10	

APPENDIX C

Procurement Elements for which the Recipient is Not Deficient

SYSTEMWIDE ELEMENTS: PRTC/VRE were not deficient in any of the Systemwide Elements during the August 2016 PSR.

(Not in the scope of this review)(See Appendix D)

INDIVIDUAL PROCUREMENT ELEMENTS

07) Independent Cost Estimate

The independent cost estimate (ICE) is a tool to assist in determining the reasonableness of the bid or proposal being evaluated; that is, to assist in performing the cost or price analysis. An ICE is the starting point for conducting a cost or price analysis. It is required for all procurements actions exceeding the simplified acquisition threshold. An ICE is completed prior to receipt of bids or proposals. An ICE is required for procurement actions such as contract modifications and change orders. It can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications, and prior data. The word “independent” does not imply that it is performed by someone other than the recipient. This could be the case, however, if the recipient does not have the expertise for a large complex procurement.

(2 CFR § 200.323)

23) Price Quotations (Small Purchase)

When using small purchase procedures, the recipient must obtain price or rate quotations from an adequate number of qualified sources.

(FTA C4220.1F, VI, 3.b.(2))

24) Clear, Accurate, and Complete Specification

A complete, adequate, and realistic specification or purchase description should be available and included in any specifications and pertinent attachments which define the items or services sought in order for the bidder to properly respond.

(FTA

C4220.1F.III.3.a.)

41) Cost or Price Analysis

Recipients must perform cost or price analyses in connection with every procurement action exceeding the applicable Simplified Acquisition Threshold after receiving bids, but before awarding a contract. Note that effective June 20, 2018, the Simplified Acquisition Threshold increased from \$150,000 to \$250,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

(2 CFR § 200.323)(FTA Circular 4220.1F Chapter VI 6. a. Cost Analysis)(FTA Circular 4220.1F Chapter VI 6. b. Price Analysis)

42) Written Record of Procurement History

Recipients must maintain records sufficient to detail the significant history of a procurement. At a minimum, such records must include:

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)*

- Selection of contract type (i.e., fixed price, cost reimbursement)*
- Reason for contractor selection or rejection*
- Basis for the contract price (i.e., cost/price analysis)*

(2 CFR 200.318(i))

45) Advance Payments

FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval from the FTA regional office administering the project. A recipient may use its local funds for advance payments. However, advance payments made with local funds before federal funds have been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement.

(FTA C. 5010.1E, page IV-15) (FTA C. 4220.1F, Ch. IV, Sections 2. b. (5)(b) Advance Payments)

49) Liquidated Damages Provisions

A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. 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 third-party contract. Any liquidated

damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

(FTA C4220.1F, VI, 2.b.)

56) Clauses

Recipients are required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities), and subrecipient agreements. FTA Master Agreement identifies certain clauses that apply to third party contracts. 2 CFR 200.326 and Appendix II to 2 CFR Part 200 identify contract provisions for non-Federal contracts under a Federal award. FTA C. 4220.1F discusses Federal requirements that affect a recipient's acquisitions.

Additional guidance is provided through FTA's Third Party Procurement Frequently Asked Questions website. Through the National Rural Transportation Assistance Program (RTAP), FTA developed ProcurementPRO, an on-line procurement tool that assists recipients in developing procurement packages. Using ProcurementPRO, can assist a recipient in developing a procurement package that includes federally required clauses.

Recipients may not modify their own contracts after award to include Federal clauses and so make them eligible for procuring goods and services with Federal funds. Recipients may, however, modify its state's General Services Administration (GSA)-type contracts to add Federal clauses when they issue orders against those state contracts.

Not all clauses apply to every contract. The applicability of clauses depends on the size and type of contract as is described in the exhibit at the end of this section. Procurement contracts or purchase orders should be tailored and only the clauses applicable to the specific procurement should be included in the contract document. Including clauses not applicable to the procurement may restrict competition or result in higher contract pricing than necessary. Procurements above the micro-purchase threshold must include all applicable FTA clauses as part of the solicitation, purchase order, or contract. A general reference to FTA guidelines is not sufficient to meet this requirement. A matrix of required clauses is provided at the end of this section. The checklist provides a citation from the FTA Master Agreement for each required clause. Certifications, reports, and forms that are required for DBE, Buy America, debarment and suspension and lobbying are also included as are other required items to assist in determining whether the recipient's policies and procedures are actually being followed. The applicability of FTA clauses to different types of procurements is shown in the exhibit. Note that the construction of ferry vessels using Federal funds is considered a public works project and therefore, the clauses related to construction contracts are applicable

(2 C.F.R. 200.325); (Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards); and (FTA Master Agreement (25), section 16.e)

Appendix D:

Procurement Elements Determined to be Not Applicable (Not in the Scope of this Review)

SYSTEMWIDE ELEMENTS:

01) Written Standards of Conduct

“(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.”

(2 CFR-200.318 (c)(1) & (2)) (FTA-C4220.1F, III, 1.

02) Contract Administration System

Recipients are required to have mechanisms in place to ensure that contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders. 2 CFR Part 200 assigns responsibility to the recipient for resolving all contractual and administrative issues arising out of their third party procurements, including protests of awards, disputes, and claims using good administrative practices

and sound business judgment. Neither FTA nor 2 CFR part 200 relieves the recipient of any responsibility under its contracts to resolve disagreements that may arise in the course of contract formation or contract administration.

“Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”

(2 CFR 200.318(b))

03) Written Protest Procedures

Grantees shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Review of protest by FTA will be limited to:

- (1) A grantee’s failure to have or follow its protest procedures, or its failure to review a complaint or protest; or*
- (2) Violations of Federal law or regulations*

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

(FTA C4220.1F, VII, 1.)

Recipients must have written procedures that allow bidders or proposers to protest a procurement action. Notice of protest procedures must be available to all potential bidders or proposers, either by inclusion in the solicitation documents or available to the public. Protest procedures should allow for the filing of protests prior to receipt of bids or proposals, after receipt of bids or proposals, and prior to award of a contract.

FTA recipients are responsible for resolving all contractual and administrative issues arising out of their third party procurements, including source evaluation and selection, protests of awards, disputes, and claims using good administrative practices and sound business judgment.

“Section 200.318(k) provides that a recipient “alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the [recipient] of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the [recipient] unless

the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.”

(2 CFR §200.318(k))

Bid Protests. The Recipient agrees to provide FTA, as part of the annual or quarterly Milestone Progress Report, with a list of all bid protests and appeals for solicitations or contracts in excess of \$500,000. The Recipient also should be mindful of the requirement in Section 39, Disputes, that the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located, of significant current or prospective legal matters that may affect the Federal Government.

(FTA Master Agreement (24), Section 16.w)

Guidance note regarding notifying FTA of Protests and Appeals to FTA

FTA’s involvement in bid protests is limited. The Uniform Guidance, as adopted by DOT, no longer includes the language in 49 C.F.R. §18.36(b)(12) that provided for a direct appeal to FTA of a recipient’s final decision on a bid protest. The Uniform Guidance provides that:

“The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.” – 2 C.F.R. § 200.318(k)

Thus, the FTA’s role is limited to considering matters that are “primarily a Federal concern.” Accordingly, Section (1)(b)(2)(a) of Chapter VII of FTA Circular 4220.1F, which provides for direct appeals to FTA, is no longer applicable.

04) Prequalification Lists

“The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.”

Except for small and micro purchases, proposals and/or bids must be publicly solicited from an adequate number of sources. Recipients are prohibited from restricting competition in federally supported procurement transactions. Recipients are not required to prequalify potential bidders. However, recipients that place such a requirement on potential bidders must adhere to FTA’s requirements. If a recipient requires prospective

bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough sources to ensure full and open competition. Recipients must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step and qualifications-based procurements.

(2 CFR 200.319 (d))

(Note: Recipients are not required, or encouraged, to have a prequalification system. Prequalification systems are difficult and costly to maintain in a way that does not inhibit competition. The intent of this element is to ensure that, if a recipient maintains a prequalification list for one or more products or services, or a qualified manufacturers list, such lists are current and provide full and open competition.)

05) Procedures for Ensuring Most Efficient and Economic Purchase

2 C.F.R. 200 requires that recipients have procedures in place to avoid purchasing unnecessary or duplicative items and they should consider consolidating or breaking out procurements to obtain a more economical purchase.

Recipients who invest the time and resources to develop checks and balances in their procurement program, along with development of short and long range procurement plans, can avoid last minute, emergency, or unnecessary procurements, which are contrary to open, efficient, and effective procurements.

FTA recipients vary in size and organization, therefore the system that each develops and implements to avoid unnecessary or duplicative purchases should be tailored to their agency. Whether the procurement functions are centralized, decentralized, or a combination of both, it is essential that no employee undertakes any procurement function without delegated authority and guidelines. It is easier for an entity to effectively manage its procurement responsibilities if most of the decisions and contractual actions are concentrated in one or more experienced individuals who are familiar with the requirements that span the entire procurement cycle. Because initial identification of need is often initiated by a recipient's internal customers (i.e., program or technical personnel for whom goods or services are being procured), the procurement office should be in a position to facilitate the consolidation of procurements of different internal customers with the same need.

(2 CFR 200.318(d))

Grantee procedures shall provide for a review of proposed procurement to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

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

(FTA C4220.1F, IV, 1.)

06) Procurement Policies and Procedures

All recipients must have written procurement policies and procedures. Policies and procedures must explain how the recipient will ensure compliance with the standards and requirements identified in 2 CFR 200.318 (General Procurement Standards) through 200.326 (Contract Provisions)

(FTA C 4220.1F, III, 3.a.)

INDIVIDUAL PROCUREMENT ELEMENTS

08) A&E Geographic Preference

Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

(FTA C4220.1F, VI, 2.a.(4)(g)(1))

09) Unreasonable Qualification Requirements

Recipients are prohibited from developing solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325(h) from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be restrictive of competition include, imposing unreasonable business requirements for bidders or offerors.

(FTA C4220.1F, VI, 2.a.(4))

10) Unnecessary Experience and Excessive Bonding

The Common Grant Rules prohibit solicitation requirements that contain feature that unduly restrict competition. Example of situation restrictive of competition:

(1) Imposing unnecessary experience requirements for bidders and offerors.

(2) To encourage greater contractor participation in FTA assisted projects, FTA does not require the recipient to impose bonding requirements on its third party contractors other than construction bonding specified by the Uniform Guidance regulations and this circular for construction. FTA discourages

unnecessary bonding because it increases the cost of the contract and restricts competition, particularly by disadvantaged business enterprises.

(FTA C4220.1F, VI, 2.a.(4))

11) Organizational Conflict of Interest

An organizational conflict of interest occurs when any of the following circumstances arise:

- a. Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.*
- b. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.*
- c. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors or similar documents.*

FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

(FTA, C4220.1F, VI, 2.a.)

12) Arbitrary Action

Recipients are prohibited from taking any arbitrary action when awarding contracts. Arbitrary actions include lack of adhering to the requirements contained in the procurement solicitation when awarding contracts. An arbitrary action can also be found when there is lack of documentation for awarding a contract to other than the low responsive and responsible bidder or the most qualified proposal when price and other factors are considered.

(2 CFR 200.319 (a))

13) Brand Name Restrictions

Procurement documents must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all

possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ‘brand name or equivalent’ description may be used as a means to define the performance or other salient requirements of the procurement. The specific features of the named brand which must be met by offerors must be clearly stated.

(2 CFR 200.319 (c)(1))

14) Geographic Preferences

Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal Statutes expressly mandate or encourage geographic preference. Specifically, an FTA recipient is prohibited ...from limiting their bus purchases to in-State dealers.

(FTA C4220.1F, VI, 2. a. (4) (g))

15) Contract Term Limitation

Five-Year Limitation. A recipient may enter into a multi-year contract to buy rolling stock with an option not exceeding five (5) years to buy additional rolling stock or replacement parts, 49 U.S.C. Section 5325(e)(1). The recipient may not exercise that option later than five (5) years after the date of its original contract. FTA interprets this five-year period as covering the recipient’s “material requirements” for rolling stock and replacement needs from the first day when the contract becomes effective to its “material requirements” at the end of the fifth year.

(FTA C4220.1F, IV, 2.e.(10))

16) Written Procurement Selection Procedures

The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2 CFR 200.318 General procurement standards)

17) Solicitation Prequalification Criteria

Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and included enough qualified sources to ensure maximum full and open competition. Grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of solicitation to its closing date.

(FTA C4220.1F, VI, 1.c.)

20) No Splitting (Micro-purchase)

The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.

(FTA C4220.1F, VI, 3.a.(2) b.)

21) Fair and Reasonable Price Determination (Micro-Purchase)

Micro-purchases may be made without obtaining competitive quotations if the recipient determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area, and should not be split to avoid the requirements for competition above the micro-purchase threshold.

(2 CFR 200.320 (a))

22) Micro-Purchase Davis-Bacon

Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

25) Adequate Competition – Two or More Competitors

The Recipient, when using small purchase procedures, should obtain price of rate quotations from an adequate number of qualified sources. Adequate competition exists when two or more responsible bidders are willing and able to compete effectively for the business. Upon receiving a single bid or proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

(FTA 4220.1F, VI, 2., 3.)

26) Firm Fixed Price (Sealed Bid)

The procurement generally lends itself to a firm fixed price contract.

(FTA C4220.1F, VI, 3.c.(1)(c))

27) Selection on Price (Sealed Bid)

The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken.

(FTA C4220.1F, VI, 3.c.(d))

28) Discussions Unnecessary (Sealed Bid)

Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

(FTA C4220.1F, VI, 3.c.(1)(e))

29) Advertised/Published (Sealed Bid) (RFP)

Procurement by Sealed Bids/Invitation for Bid (IFB). If this procurement method is used the invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

(FTA C4220.1F, VI, 3c. (2))

30) Adequate Number of Sources Solicited

Adequate Sources. *Two or more responsible bidders are willing and able to compete effectively for the business.*

(FTA C4220.1F, VI, 3.c.(1)(b))

Adequate Sources. *Proposals are solicited from an adequate number of qualified sources.*

(FTA C4220.1F, VI, 3.d.(2)(c))

31) Sufficient Bid Time (Sealed Bid)

Sufficient Time. *Bidders are allowed sufficient time to prepare bids before the date of bid opening.*

(FTA C4220.1F, VI, 3.c.(2)(d))

32) Bid Opening (Sealed Bid)

If this procurement methods is used, ...all bids are publicly opened at the time and place prescribed in the invitation for bids.

(FTA C4220.1F, VI, 3.c.(2)(e))

33) Responsiveness (Sealed Bid)

A firm fixed price contract award will be made in writing to the lowest responsible and responsive bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest

(FTA C4220.1F, VI, 3.c (2)(f))

34) Lowest Price (Sealed Bid)

If this procurement method is used:

A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.

(FTA C4220.1F, VI, 3.c.(2)(f))

35) Rejecting Bids (Sealed Bid)

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

(FTA C4220.1F, VI, 3.(a)(2)(g))

36) Evaluation

The recipient will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees. All evaluation factors will be identified in the procurement documents along with their relative importance; numerical or percentage ratings or weights, however, need not be disclosed.

(FTA C 4220.1F, VI, 3.d. (2))

37) Price and Other Factors (RFP)

If the procurement method is used the following requirement apply: An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.

(FTA C4220.1F, VI, 3.d.(2)(e))

38) Sole Source if Other Award is Infeasible

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following

circumstances apply: (1) The item is available only from a single source; (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or (4) After solicitation of a number of sources, competition is determined inadequate.

(2 CFR 200.320 (f))

39) Cost Analysis (Sole Source)

Recipients must perform cost or price analyses in connection with every procurement action exceeding the applicable Simplified Acquisition Threshold after receiving bids, but before awarding a contract. Note that effective June 20, 2018, the Simplified Acquisition Threshold increased from \$150,000 to \$250,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

(2 CFR § 200.323)(FTA Circular 4220.1F Chapter VI 6. a. Cost Analysis)(FTA Circular 4220.1F Chapter VI 6. b. Price Analysis)

40) Evaluation of Options

Recipients' contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

Recipients may include options in contracts that reflect reasonably foreseeable needs. If a recipient chooses to use options, the option quantities or periods in the bid must be evaluated in order to determine contract award. If the option quantities on a rolling stock or replacement parts purchase appear to exceed the recipient's reasonably foreseeable needs, the recipient may not assign those options to other recipients.

The price associated with exercising the option needs to be defined at the outset, either as a specific price or as a percentage increase of the base price. The evaluation of options should be documented in writing and should be part of the cost or price analysis undertaken by the recipient for the overall procurement. Documentation awarding the contract should indicate that the award is for the base contract as well as identified options.

(2 CFR 200.318(d)) (FTA C4220.1F Chapter VI 7. b. (1))

43) Exercise of Options

Recipients' contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

Recipients may include options in contracts that reflect reasonably foreseeable needs. If a recipient chooses to use options, the option quantities or periods in the bid must be evaluated in order to determine contract award. If the option quantities on a rolling stock or replacement parts purchase appear to exceed the recipient's reasonably foreseeable needs, the recipient may not assign those options to other recipients.

The price associated with exercising the option needs to be defined at the outset, either as a specific price or as a percentage increase of the base price. The evaluation of options should be documented in writing and should be part of the cost or price analysis undertaken by the recipient for the overall procurement. Documentation awarding the contract should indicate that the award is for the base contract as well as identified options.

(2 CFR 200.318(d))

44) Out of Scope Changes

When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.

(FTA C4220.1F, VI, 3.i.(1)(b))46) Progress Payments

Grantees may use progress payments provided the following requirements are followed:

- (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract*
- (2) When progress payments are used, the grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment*

(FTA C4220.1F, IV, 2.b.)

47) Time and Materials Contracts

The Uniform Guidance regulations for government recipients permits the use of time and material contracts only:

- 1. When to Use. After determining that no other contract type is suitable; and*

2. Firm Ceiling Price. *If the contract specifies a ceiling price that the contractor may not exceed except at its own risk. FTA strongly encourages non-governmental recipients to use similar procedures.*

(FTA C4220.1F, VI, 2.c.(2)(b))

48) Cost Plus Percentage of Cost

The Uniform Guidance regulations expressly prohibit the use of the cost plus a percentage of cost and cost plus a percentage of construction cost methods of contracting.

(FTA C4220.1F, VI, 2.c.(2)(a))

50) Piggybacking

Recipients are encouraged to utilize available state and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, recipients must ensure all federal requirements, required clauses and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document.

(FTA C4220.1F, V, 7.a.)

51) Qualifications Exclude Price (A&E and Other Services)

Qualifications-Based Procurement Procedures Required. *The recipient must use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. For example, a contractor performing program management, project design, construction management, or engineering services in which that contractor would select the finished products to be acquired for an FTA assisted construction project must be selected through qualifications-based procurement procedures.*

(FTA C4220.1F, VI, 3.f.(1))

52) Serial Price Negotiations (A&E and Other Services)

Qualifications-Based Procurement Procedures. *The following procedures apply to qualifications-based procurements:*

- (a) Qualifications. *Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.*

- (b) Price. Price is excluded as an evaluation factor.
- (c) Most Qualified. Negotiations are first conducted with only the most qualified offeror.
- (d) Next Most Qualified. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

(FTA C4220.1F, VI, 3.f.(3))

53) Bid Security (Construction Over \$100,000)

FTA require bonds for all construction contracts exceeding the simplified acquisition threshold unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

- (a) Bid Guarantee. Both FTA and the Uniform Guidance regulations generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

(FTA C4220.1F, IV, 2.h.(1)(a))

54) Performance Security (Construction Over \$100,000)

FTA requires bonds for all construction contracts exceeding the simplified acquisition threshold unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

Performance Bond. Both FTA and the Uniform Guidance regulations generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.

(FTA C4220.1F, IV, 2.h.(1)b.)

55) Payment Security (Construction Over \$100,000)

Bonding. FTA requires bonds for all construction contracts exceeding the simplified acquisition threshold unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

Payment Bond. The third party contractor should obtain a standard payment bond for 100 percent of the contract price. A "payment bond" is obtained to ensure that

the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:

- a. Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million,*
- b. More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or*
- c. More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.*

(FTA C4220.1F, IV, 2.h.)

57) Vehicle Pre-Award Review

A recipient purchasing revenue service rolling stock with Federal funds must conduct pre-award and postdelivery audits verifying compliance with Buy America provisions, purchaser's requirements, resident inspector requirements, and FMVSS. The recipient is required to keep records, including pre-award and post-delivery certifications, which show that the regulations have been followed. The audits require the recipient to complete two certifications (Buy America and Purchaser's Requirements) at the pre-award stage and three certifications (Buy America, Purchaser's Requirements, and FMVSS) at the post-delivery stage.

Although procurements of rolling stock of \$150,000 or less are not subject to Buy America requirements, these contracts still must comply with the pre-award and post-delivery purchaser's requirements and FMVSS audits required by 49 CFR Part 663.

Pre-Award Audits and Certifications Recipients may purchase vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each "order" of vehicles, have a pre-award audit before the order is placed. One pre-award audit may suffice, provided that there is no change in vehicle configuration, i.e., no change that is expected to have a significant impact on vehicle handling and stability or structural integrity, between successive deliveries of vehicles.

If a recipient is using another recipient's procurement contract for purchasing revenue vehicles (i.e., "piggybacking"), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the recipient must review the audit and prepare its own signed certification.

Compliance with purchaser's specifications: The recipient must complete a pre-award purchaser's requirements certification verifying that the manufacturer's bid specifications comply with the recipient's solicitation requirements and that the proposed manufacturer is responsible and capable of building the bus to the solicitation specifications. The pre-

award certification may be based on the recipient's determination that the vendor is responsive and responsible. The requirement to conduct an audit for compliance with purchaser's requirements and sign a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold or Buy America threshold. The pre-award audit is required before a recipient enters into a formal contract with a supplier.

Compliance with Buy America: If the procurement is more than \$150,000, at the pre-award stage, the recipient must complete: ☐ A compliance certification verifying that the rolling stock will contain the required minimum percent domestic components, by cost, and that final assembly will take place in the United States; or ☐ An exemption certification indicating that the recipient has a letter from FTA granting a waiver from the Buy America requirement.

The recipient or an independent third party must conduct the Buy America audit. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

For rolling stock contracts entered into before October 1, 2015, the domestic content must exceed 60 percent. For rolling stock contracts entered into on or after October 1, 2015, the applicable domestic content percentage under 49 U.S.C. § 5323(j)(2)(C) will be based on the scheduled delivery date of the first production vehicle (i.e., the first vehicle intended to carry passengers in revenue service), final acceptance notwithstanding. Thus, if a recipient or group of recipients as part of a joint procurement enter into a contract for rolling stock on or after October 1, 2015, then the new FAST Act provisions applicable for the date of delivery of the first production vehicle shall apply. Accordingly, if the first production vehicle is delivered in FY2018 or FY2019, the domestic content must be more than 65 percent, and if the first production vehicle is delivered in FY2020 or beyond, the domestic content must be more than 70 percent. If the scheduled delivery date is delayed such that the domestic content requirement is increased, recipients must comply with FTA's September 1, 2016 policy guidance on the implementation of the phased increase in domestic content.

Compliance with FMVSS: The recipient must receive a certification from the vehicle manufacturer at the pre-award stage that the vehicles being procured comply with FMVSS issued by the National Highway Traffic Safety Administration (49 CFR Part 571).

49 U.S.C. 5323(j); 49 CFR 663

58) Post Delivery Audits and Certifications

Compliance with purchaser's specifications: The recipient must complete a post-delivery purchaser's requirements certification verifying that the buses delivered meet the contract specifications. This must be completed before a bus title is transferred to the recipient or before a bus is placed into revenue service, whichever is first. The post-delivery certification is based on the recipient's visual inspections and road tests and, if required,

the resident inspector's monitoring of the final assembly process and final report of manufacturing activities. The requirement to conduct an audit for compliance with purchaser's requirements and sign a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold or Buy America threshold.

Recipients are required to have a resident inspector during final assembly process if they meet the following criteria: ☐ Recipient is purchasing any number of rail vehicles.

☐ Recipient is in an urbanized area with a population of more than 200,000 and is purchasing more than 10 buses.

☐ Recipient is in an area with a population of 200,000 or less and is purchasing more than 20 buses.

FTA does not require in-plant inspectors for unmodified vans manufactured by the automobile companies. FTA requires only a visual inspection and road test after delivery for such procurements.

In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size. One in-plant inspector can meet the requirement for multiple recipients. The inspector may not be an agent or employee of the manufacturer. The inspector must prepare a report providing accurate records of all vehicle construction activities and summarizing how the construction and operational characteristics of the vehicles met (or did not meet) the contract specifications.

Compliance with Buy America: Required post-delivery certification includes disclosure by the manufacturer of the final assembly location; a listing of the component and subcomponent parts, the cost (actual or percent of total) of such components and subcomponents and the country of origin; a description of final assembly activities; and the cost of final assembly. Final assembly costs are not to be included when calculating the percent of domestic content of the vehicle.

The recipient or an independent third party must conduct the Buy America audits. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

Compliance with FMVSS: The recipient must complete, at the post-delivery stage, a certification that the recipient has received from the vehicle manufacturer at both the pre-award and post-delivery stages a certification that the vehicles comply with the FMVSS issued by the National Highway Traffic Safety Administration (49 CFR Part 571). The requirement to conduct an audit for compliance with FMVSS and sign a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold or Buy America threshold.

49 U.S.C. 5323(j); 49 CFR 663

59) Change Orders

Recipients use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 2 CFR Part 200, and FTA Circular 4220.1F, “Third Party Contracting Guidance.”

A change order is an order authorized by the recipient directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. Change orders must be approved by authorized recipient officials. Change orders are, in effect, sole source procurements. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

Competitors sometimes protest the issuance of changes when they believe that a new competitive procurement process should have been used for the changed work. The criterion is whether the change was within the scope of the original competition, i.e., what the competitors should have anticipated to be within the scope of the competition. An important factor to be considered is whether the original solicitation adequately advised offerors of the potential for the type of changes during the course of the contract that in fact occurred, or whether the modification is of a nature which potential offerors would reasonably have anticipated under the changes clause.

Recipients must develop an ICE and perform a cost or price analysis in connection with every contract modification or change order over \$150,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

To be eligible for FTA assistance under the recipient’s award or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its award or cooperative agreement, and reasonable for the completion of project scope.

FTA Circular 4220.1F Chapter VII 2. a.

60) Subrecipient Oversight

When a recipient passes through funding to a subrecipient, competitive procurement requirements may apply to the subrecipient. Typically, this requirement would apply to any subrecipient which performs primary project activities normally performed by the recipient directly. In such circumstances, the procurement process of the subrecipient should meet Federal requirements contained in the FTA Master Agreement, including Buy America, debarment and suspension, and lobbying requirements. Furthermore, a recipient needs to have a mechanism to ensure subrecipient compliance.

Some recipients provide written guidelines or standard terms and conditions to subrecipients for direct procurements. Some recipients review subrecipients' direct procurements, particularly for vehicles, equipment, and construction. Such reviews,

which generally focus on bid evaluation and selection, may be used to ensure that FTA (and state) requirements are met.

Monitoring of compliance with FTA third party contracting requirements will require a review of procurement procedures, either through site visits or a periodic review of written procurement manuals. The recipient is not required to review each subrecipient's procurement to ensure compliance with Federal requirements. The recipient may review selected procurements on a periodic basis in conjunction with a site visit or other general review of compliance with Federal requirements.

2 CFR 200.331

61) Revenue Contracts

Revenue contracts are those in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA-assisted property. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. In the case of joint development, FTA will work with the recipient to determine appropriate procedures, as necessary.

FTA Circular 4220.1F Chapter 2. b. (4)

62) Single Bid

With a single bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. Upon receiving a single bid or proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and should include a survey of potential sources that chose not to submit a bid or proposal.

“Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal. a. Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the

procurement will qualify as a valid competitive award. b. Inadequate Competition. FTA acknowledges competition to be inadequate.”

FTA Circular 4220.1F Chapter VI 3. i. (1) (b) 2.

63) Certifications (TVM, Lobbying, Buy America)

Transit Vehicle Manufacturer (TVM) Certification: As part of their DBE program, all recipients must require that each TVM, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. Only those TVMs listed on FTA’s certified list or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid. The recipient is required to include a provision in its bid specifications requiring the TVM certification as a condition of permission to bid. The certification should reference 49 CFR Part 26 (not Part 23).

A list of certified TVMs that have submitted required DBE information to FTA is available at the FTA website: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-tvms-list>. However, this list is not exclusive and recipients should consult with FTA to verify the status of TVMs not currently on the website. Prior to award, evidence that this website has been checked or evidence of communication with FTA’s Office of Civil Rights to validate TVM certification, should be included in applicable procurement files. FTA has instructed TVMs to submit to recipients a copy of their FTA approval letters along with the TVM certifications.

The TVM definition is codified at 49 CFR 26.5. Note that producers of vehicles that receive postproduction alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered to be TVMs. Further, to the extent to which a vehicle remanufacturer is responding to a solicitation for new or remanufactured vehicles with a vehicle to which the remanufacturer has provided post-production alterations or retrofitting, that remanufacturer is considered a TVM. Again, only certified TVMs are eligible to bid on FTA-assisted procurements. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered TVMs.

Lobbying Certification: Recipients are required to include a lobbying certification in agreements, contracts, and subcontracts exceeding \$100,000. Signed certifications regarding lobbying must be obtained by the recipient from subrecipients and contractors. Subrecipients retain their contractors’ certifications and contractors retain subcontractors’ certifications. The recipient is responsible for ensuring that they fulfill the requirements in applicable direct procurements exceeding \$100,000.

Buy America Certification: Buy America regulations require that all steel, iron, and manufactured products used in the project are produced in the United States. Solicitations for steel, iron, and manufactured products must contain a Buy America certification, unless the procurement is subject to a general waiver or the small purchase

waiver. Buy America requirements also apply to capital leases for rolling stock and related equipment. Buy America requirements applicable to rolling stock procurements are discussed in more detail in Part D, Revenue Rolling Stock Procurements.

The small purchase waiver is now included in 49 U.S.C 5323(j)(13) and provides that the term "small purchase" means a purchase of not more than \$150,000. On September 16, 2016, the FTA Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver. The statutory language is clear that the small purchase waiver applies to purchases of \$150,000 or less, regardless of the size of the project. Therefore, purchases made with FTA financial assistance, including capital, planning, or recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient or subrecipient. This provision of the FAST Act applies to all purchases made after October 1, 2015. The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, recipients are not permitted to break up procurements in order to stay under the \$150,000 threshold. Finally, if a solicitation may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary.

Buy America statute applies to:

- All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds,

- Contractors and subcontractors if the contract or subcontract is more than \$150,000, including labor and options,

- Purchases made using an intergovernmental agreement and jointly purchased manufactured products, and

- Purchases of used items.

For all procurements more than \$150,000, the recipient shall include in its bid or request for proposal an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR §§ 661.6 or 661.12 of this part, as appropriate. Recipients should include only the applicable Buy America certification. Inclusion of both certifications for both rolling stock and non-rolling stock procurements is discouraged and may result in confusion on the part of the contractor as to the applicable Buy America requirements.

Recipients may not obtain signed Buy America certifications after contract award for its own contracts or contracts of other recipients to make the contracts eligible for Federal funding. Recipients may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for Federal funding. The recipient should consider the full GSA-type contract amount, not the amount of its

purchase, when determining whether Buy America requirements apply to those purchases.

If a bidder or offeror cannot certify compliance with Buy America requirements, the recipient must seek a waiver of the Buy America statute before it may award the contract to the bidder or offeror. Buy America waivers are available on one of the following grounds: applying Buy America requirements would be inconsistent with the public interest; the materials produced in the United States are not produced in a sufficient and reasonably available quantity or are not of a satisfactory quality (i.e., non-availability waiver); or including domestic material will increase the cost of the overall project by more than 25 percent.

49 CFR 26.49 (a); FTA Circular 9030.1E Chapter V 11.; APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS. (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); 49 CFR 661.6; 49 CFR 661.12

64) Bus Testing

The recipient must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle. Testing applies to buses and modified vans used in transit service, including, but not limited to, new bus and van models using alternative fuels such as methanol, ethanol, compressed natural gas (CNG), hydrogen, and electricity (if stored and/or generated on-board the vehicle).

FTA does not require a vehicle manufacturer to test its model before bidding. However, recipients of FTA funds acquiring any bus model must certify that an example of that model will have been tested and the recipient will have received a copy of the resulting test report prepared on the bus model before the final acceptance of the first vehicle. Effective October 31, 2016, the effective date of the revision to 49 CFR part 665, recipients must certify that the bus models submitted to Altoona following the effective date received a passing score before FTA funds can be spent on that vehicle.

Bus testing is not required for unmodified mass-produced vans (provided they are only offered to FTA recipients in the 4-year/100,000-mile service life category). Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

49 CFR 665.7

Appendix E

PRTCT/VRE CONTRACTS REVIEWED

Location/Number	Type	Description	Contractor	Amount
PRTC/SP18-21	Small Purchase	Inspect 31 MCI Coaches	Transit Resource Center	\$68,655.00
PRTC/20190164-00	Small Purchase	Vicon Camera Replacement	EAI Security Systems	\$9,716.70
PRTC/20180226-00	Small Purchase	Apollo Camera for MCI Coaches	Apollo Video Technology	\$8,502.72
PRTC/20190191-00 PRTC/20190195-00	Small Purchase	Transit Master Antenna Upgrade	ROK Brothers, Inc.	\$7,400.00
PRTC/20190251-00	Small Purchase	GFI Fareboxes	GFI Genfare	\$86,005.00
PRTC/20190145-00	Small Purchase	Camera Installation Inspection	Apollo Video Technology	\$5,667.00
PRTC/SP18-22	Small Purchase	Schedule Racks for MCI Coaches	Transit Information Products	\$10,000.00
PRTC/20180159-00	Small Purchase	PRTC Branding & Website Redesign	Institute of Research	\$45,900.00
PRTC/20190099-00	Small Purchase	Redesign Omniride Website	Redmon Group, Inc.	\$64,199.44
PRTC/20190124	Small Purchase	Radio for 5 MCI Coaches	Advance Technology	\$3,745.00
PRTC/20190333-00	Small Purchase	Replace Camera for Employee Lot	EAI Security Systems	\$4,354.00
PRTC/20190071	Small Purchase	Diesel Filters for MCI Coaches	First Transit, Inc	\$12,392.00
VRE/018-014	Sealed Bid	Purchase 20 automated electric motor parking brake systems	Wabtech Passenger Transit	\$176,680.00
VRE/019-002	Sealed Bid	Railcar End Body Door Diaphragm Kits	Central Sales & Service, Inc	\$97,660.50
VRE/019-004	Sealed Bid	Passenger Car Truck Overhaul Service	UTCRAAS, LLC	\$2,939,145.12

VRE/019-007	Sealed Bid	Railcar HVAC Component Overhaul Services	TIA Systems, LLC	\$2,505,600
PRTC/17-04	Competitive Proposals	Website Development, Programming, Hosting and General Technical Support	Redmon Group, Inc	\$86,779.44
VRE/017-016	Competitive Proposals	Installation and Integration of Security Cameras and Access Control System	RPI Group, Inc	NTE \$1,000,000.00
PRTC/18-02	Competitive Proposals	Fleet Audit & Technical Fleet Services	American Service Corp dba Transit Resource Center	\$103,400.00 A Year
PRTC/19-06	Competitive Proposals	Purchase of 31 MCI Commuter Buses	MCI	\$18,008,520.00
VRE/018-007	Competitive Proposals	Automatic Passenger Counting System	Infodev EDI Inc	\$1,090,911.00
VRE/019-005	Non-Competitive Proposals	Positive Train Control Software & Licenses	Metrocomm, LLC	\$3,446,557.00

Appendix G

Copy of Management Comment Letter