



**PROCUREMENT MANUAL
FOR
SUB-RECIPIENTS**

***Please submit comments/suggested revisions to
VIA Procurement Department.
Revisions will be published as needed.***

PROCUREMENT MANUAL FOR SUB-RECIPIENTS

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PROCUREMENT MANUAL

- I. **PURPOSE.** This manual provides guidelines to sub-recipients for procuring goods and services with funds provided by the Federal Transit Administration through Grant Programs. **Sub-recipients must follow the procedures in this manual including all referenced attachments.**

These guidelines should enable the sub-recipient to accomplish the following objectives:

- Obtain the best buy in terms of cost, quality, schedule, and safety;
- Comply with Federal, state, local, and agency procurement requirements; and
- Ensure amicable relations between the sub recipient and its suppliers of goods and services.

- II. **GENERAL.** The guidance herein is summarized from more detailed Federal, State, Local, and VIA regulations which take precedence. The Federal Transit Administration (FTA) Circular 4220.1F, Third Party Contracting Requirements, sets forth the requirements the sub-recipient, contractors, and sub-contractors must follow in soliciting, awarding, and administering federally funded contracts. The sub-recipient may also reference the FTA's Best Practices Procurement Manual, the Federal Acquisition Regulation (FAR) and State regulations. These guidelines will be referenced throughout this document.

The underlying principle of public (governmental) procurement is competition. The sub-recipient is responsible for encouraging meaningful offers from all entities and increasing competition at reasonable expense. The sub-recipient should seek to expand the opportunity for Disadvantaged Business Enterprises (DBEs) to compete equally in procurements. The sub-recipient's overall objectives are to obtain the best quality and service at minimum cost, to guard against favoritism and profiteering at public expense, and to provide equal opportunities to participate in public business. Situations considered to be restrictive of competition include:

- Unreasonable qualification requirements for firms to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies; and
- Noncompetitive awards to any person or firm on retainer contracts.

The sub-recipient is responsible for dealing directly with suppliers and vendors on procurement related issues. The sub-recipient must be careful when contacting vendors especially for specific information regarding products or services such as pricing, availability, etc. Communication with vendors regarding potential purchases must be limited to collecting information to aid in the development of scopes of work/scopes of services and price estimates. This must be done in a manner that does not reveal the sub-recipient's cost estimate for a project or give a vendor an unfair advantage over others that may be interested in competing for the purchase.

- III. **PROCUREMENT THRESHOLDS.** The methods used to procure goods and services are often determined by the dollar value of the purchase.

- A. **Micro Purchases – Informal (\$3,000 or Less).** Competitive quotations are not required if it can be determined and documented that the vendor's price is fair and reasonable. Informal quotes (telephone or fax) may be obtained in certain circumstances to ensure that a price is

fair and reasonable. Purchases under \$500 are generally made without a check for “fair and reasonable” since the cost of verification offsets the potential savings.

B. Small Purchases – (More than \$3,000, but less than \$50,000). Small purchase procedures require obtaining price or rate quotations from an adequate number of qualified sources. Informal quotes (telephone or fax) are obtained whenever possible for purchases between \$3,000 and \$50,000.

Some procurements of this size may also require formal solicitation. Examples are procurements with detailed specifications or drawings that do not lend themselves to telephone or fax solicitations.

C. Formal Procurements (\$50,000 and above). Solicitations for purchases with an estimated value of \$50,000 or more must be published in a newspaper of general circulation for two consecutive weeks. Therefore, most purchases exceeding \$50,000 are solicited using formal procurement methods: Invitation for Bids (IFB), Request for Proposals (RFP).

IV. Sole Source Purchases. A sole-source procurement (procurement by noncompetitive proposals/bids) is one where an equivalent product is unavailable and consideration is limited to one manufacturer, one product, or one service provider. Federal procurement regulations limit the use of sole source procurements and require that such procurements be thoroughly documented. Sub-recipients must justify sole source procurements in writing. The justifying memo for sole source procurements must:

- 1) Describe the need for the commodity or service and
- 2) Explain the reason competing or comparable products or services are not satisfactory.

V. METHODS OF FORMAL PROCUREMENTS

A. Sealed Bids (Formal Advertising). Bids are publically solicited, and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitations for bids, is the lowest price. The Common Grant Rule for government recipients states a preference for the sealed bids procurement method for acquiring property, construction and services. The use of sealed bids is appropriate if:

- 1) A complete, adequate, precise, and realistic specification or purchase description is available.
- 2) Two or more responsible bidders are willing and able to compete effectively for the business.
- 3) The procurement generally lends itself to a firm-fixed price contract.
- 4) The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation.
- 5) Discussions with one or more bidders after bids have been submitted are expected to be unnecessary.

B. Competitive Proposals (Request for Proposals). This is an acceptable method of procurement when the nature of the procurement does not lend itself to sealed bidding and when the sub-recipient expects that more than one source will be willing and able to submit an offer or proposal. Competitive proposals should be used when any of the following circumstances are present:

- 1) The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than the price alone are present.
- 2) Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- 3) Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

Although the lowest price is not the sole determinant (the award is made to the proposal that an evaluation committee finds is most advantageous to the sub-recipient) it carries a considerable weight in the evaluation. The evaluation is performed using price and other predetermined and weighted technical criteria that are published in the RFP. Proposals are submitted in two packages: the technical proposal (how the offeror intends to perform the service) and the price proposal (the offeror's price for performing the service).

C. Qualifications-Based Competitive Proposal Procedures (Brooks Act). Used when contracting for Architectural and Engineering (A &E) services. These proposal procedures can only be used for the following services.

1. Program Management
2. Construction Management
3. Feasibility Studies
4. Preliminary Engineering
5. Design
6. Architectural
7. Engineering
8. Surveying
9. Mapping, and
10. Services that require performance by a registered or licensed Architect or Engineer

This procurement method is similar to the RFP method. However, the price is excluded as an evaluation factor, and negotiations are conducted with the most qualified firm only.

VI. PROCESSING PROCUREMENTS WITH AN ESTIMATED VALUE OF \$25,000 OR MORE.

Following are steps to be followed when processing a formal procurement.

A. Procedures.

STEP 1. The sub-recipient identifies a need and then develops a detailed statement of work/scope of services and an Independent Cost Estimate (ICE).

1. **Statement of Work/Scope of Services.** This is a clear and complete description of the item needed, the work to be performed, or the services to be rendered. It defines specifications, quantities, required delivery dates, shipping instructions, and any other information necessary to make a procurement decision.
2. **Independent Cost Estimate (ICE).** An ICE is the detailed estimate of sub-recipient's cost in obtaining the desired supplies or services, and it is a Federal requirement for procurements. It is a logical element of the procurement process. It is cost-effective to have an independent cost estimate at some time before receiving bids or proposals.

The sub-recipient may obtain such estimates from published competitive prices, results of competitive procurements, or estimates by in-house or outside estimators. However, the ICE must be established using a method independent from the prospective offerors

The ICE provides a basis for evaluating bids and proposals, negotiating contracts, and supporting award decisions. A properly prepared ICE aids in determining that the offered price is fair and reasonable. An ICE must never be revealed to potential or actual offerors as disclosure would undermine the competitive process and seriously affect the sub-recipient's "fair and reasonable" objectives.

STEP 2. The sub-recipient identifies the funding source(s) for the purchase.

STEP 3. The sub-recipient assembles the procurement package. The package **must** include:

1. Funding Source;
2. ICE;
3. Statement of Work/Scope of Services;
4. A Sole Source Justification (if applicable).

The sub-recipient provides the name of the Project Manager.

STEP 6. VIA's Procurement Department reviews the procurement package and determines which procurement method will be used. The sub-recipient and VIA's Procurement Department agree to a procurement timeline. If the procurement is to be an RFP, the sub-recipient provides the names of persons who will serve on an Evaluation Committee.

STEP 7. VIA's Procurement Department will conduct the solicitation or provide guidance to the sub-recipient for conducting the solicitation. If VIA's Procurement Department conducts the solicitation, a VIA Contract Administrator will be assigned to the project. VIA's Contract Administrator chairs the pre-bid/proposal meeting (if applicable) and serves as VIA's point of contact for all bidder/proposer questions and issues arising during the solicitation. The sub-recipient attends all pre-bid/proposer meetings and helps provide answers to questions raised in these meetings and in the Request for Approved Equals (RFA) period of the procurement. If the procurement is an RFP, the sub-recipient chairs the Evaluation Committee, and VIA's Contract Administrator serves as the procurement advisor to the committee. After the bids or proposals are evaluated and all negotiations are complete, VIA's Contract Administrator processes the procurement for contract award. A copy of the executed contract is provided to the sub-recipient.

B. Formal Procurement Time Lines: Timelines play an integral role in the procurement process. Many projects have critical paths in their relation to other missions. Therefore, it is important to develop a schedule for the mission and to include adequate time for the procurement process in the schedule. VIA's Procurement Department will help sub-recipients plan reasonable timelines so projects meet all approval criteria.

The following timelines should be used when planning for a procurement. These timelines do not include time required for seeking Board, Committee or Council approvals (estimate a minimum additional thirty days). These timelines prescribe minimum processing times after VIA's Procurement Department receives a complete procurement package. Actual time may be more or less depending on project complexity, availability of VIA personnel and dollar

value of the project. Procurement staff will negotiate timelines to ensure the sub-recipient's objectives are met.

Requests for Proposals - \$50,000 or greater - 120 workdays from the time the procurement package (including the completed ICE form) is delivered to Procurement to the date the NTP is issued.

Sealed Bids - \$50,000 or greater - 90 workdays from the time the procurement package (including the completed ICE form) is delivered to Procurement to the date the NTP is issued.

Request For Quotations - Under \$50,000 - 14 to 30 workdays from the time the procurement package (including the completed ICE form) is delivered to Procurement to the date the NTP is issued.

Fax Quotes - Under \$50,000 - up to 14 workdays from the time the procurement package (including the completed ICE form) is delivered to Procurement to the date the NTP is issued.

Change Order/Modification - 14 workdays from the time the procurement package (including the completed ICE form) is delivered to Procurement to the date the NTP is issued.

SAMPLE OF PROCUREMENT PHASES	IFB (sealed bid)	RFP
Assemble/Review/Print/Advertise/ Issue Solicitation	15 days	15 days
Solicitation Period (Pre-Bid Meetings, Vendor Clarifications [RFAs])	30 days	45 days
Bid/Proposal Evaluations	30 days	45 days
Award Notice/Bonds and Insurance/ Pre-Project or Construction Conferences	15 days	15 days
Total Days	90 days	120 days

PROCUREMENT DEPARTMENT

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ATTACHMENT A

**SOLE SOURCE PROCUREMENT
JUSTIFICATION MEMO**



◀ ACTION ◀ INFO ONLY
RESPONSE/ACTION DUE BY:

INTER-OFFICE CORRESPONDENCE

TO: Manager
Procurement

FROM: John Smith

SUBJECT: Request for Sole Source
(Proprietary) Procurement

DATE: January 10, 2010

Request approval for the proprietary procurement of **(Item)** from **(Manufacturer)** in accordance with FTA Circular 4220.1F.

This proprietary procurement is necessary because **(explain the need for the specification, i.e. which part or parts of the stated specification restricts the requisition to one manufacturer or provider)**.

This procurement is justified because **(explain the reason competing products are not satisfactory)**.

(NOTE: A proprietary purchase is one where equivalent product competition is unavailable. A written justification must be provided when specification requirements limit consideration to one manufacturer, one product, or one service provider. Please use this format for justifying sole source purchases.)

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ATTACHMENT B
INDEPENDENT COST ESTIMATE (ICE)

INDEPENDENT COST ESTIMATE (ICE)

To help in achieving a fair and reasonable price (and to provide good financial management) an Independent Cost Estimate (ICE) is required. An ICE is the detailed estimate of the cost of the supplies or services to be acquired. The estimate is independent in that it is the sub-recipients own, in-house estimate and is not based on information obtained from contractors or vendors from whom sub-recipients will solicit bids or proposals.

FTA Circular 4220.1F, paragraph 10 requires grantees to perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

The ICE is essential information for procurement planning. It gives the procurement official some indication of the complexity of the project and the degree of investment that offerors will want to make in the procurement process, thus allowing planning of procurement time and personnel. It is also the basis for determining which procurement procedures apply to the project. If the cost estimate exceeds \$25,000, for example, certification and bonding requirements apply.

In effect, the ICE is the forecast of the price that the purchaser believes a responsible, prospective contractor should propose for performing the specified work.

An ICE is used for several purposes, including:

- Justification for budget requests
- Acquisition planning
- Evaluation of proposals
- Support for negotiations and renegotiation objectives
- Support for award decisions

Do not reveal the ICE to potential or actual offerors. Disclosure of the ICE would undermine the competitive process and seriously affect the "fair and reasonable price" objective of VIA's Procurement Department.

The ICE should not be the sole basis for making a "fair and reasonable price" determination. A breakdown of cost elements should accompany the cost estimate. This cost information is important as it provides a basis for discussion during negotiations. An ICE for services should generally include direct costs (personnel, equipment, supplies, travel, etc.), indirect costs (overhead), and a profit or fee (see attached samples 1 & 2).

One way of preparing an estimate is using a previous, related effort for which costs are available, and comparing the total effort for the proposed project with that of the previous effort. This method may be used, but changes in the economy, technology, and other factors that may affect cost or prices need to be considered.

There are many sources of cost information you may use in preparing the ICE. These include:

- In-house databases
- Published competitive prices
- Past VIA activities, both previous cost estimates and procurement history
- Similar on going contracts

Cost estimating reference materials
Other public agencies' procurement history and other data bases
You and your co-workers' knowledge and experience
Professional associations
Requests for Information (RFIs) to private industry

Equipment procurements. Equipment estimates can often be prepared from published price lists or from past competitive procurements updated with inflation factors. Care must be taken with specialized equipment that the source of estimates is not disproportionately obtained from one supplier.

Services procurements. In-house personnel may not be qualified to estimate the cost of a major professional service contract. In such cases a professional cost estimate may be obtained from a firm not interested in the final procurement. Industry standards are available to estimate design as a percent of construction. Other agencies are a valuable source of cost estimating information if they have undertaken similar projects.

Construction procurements. Generally, estimates are obtained from in-house personnel who have participated in design or past construction efforts. Estimates can also be obtained from firms already under contract.

Format for ICE. VIA's Procurement Department is required to perform and document a cost or price analysis for all procurements in excess of \$500 and for all contract change orders/modifications to assure that a reasonable price is obtained. In procurements where bids were solicited, the competitive process itself can substantiate the reasonableness of price. However, in all negotiated procurements (RFPs), most contract changes, and in sealed bids where price competition is insufficient, a detailed cost analysis is required. When these types of procurements are expected, the ICE should be formatted to breakout the cost elements (see attached samples 1 & 2).

The ICE is based on the specific contents of the specification or statement of work. Therefore, it may or may not correlate to the amount budgeted or available for the requirement. Once the ICE is properly prepared and it is then determined the ICE exceeds the funds budgeted or available, then either additional funds should be added or some modifications of the statement of work/scope of services (i.e., reduce the scope) thus allowing the ICE to approximate the funds available.

Although it may seem self-evident that the sub-recipient has at least implicitly prepared a cost estimate in deciding to proceed with a procurement, many projects can change in scope without clear communication among the people responsible. An ICE prepared when the sub-recipient first undertook the project could alert all involved that the project had grown beyond the scope originally intended. A deliberate decision to reduce the scope or revise the cost estimate can be made at each step of the project's development.

If this balance cannot be achieved while still producing a likely mission usable product, there is little point in expending the administrative and calendar time in what predictably will be a futile effort to fulfill the mission requirement. Suspending the requirement and rethinking, replanning and re-budgeting the mission to be accomplished should then be considered.

Sub-recipients are responsible for developing the ICE. However, VIA's Procurement Department maintains records of past VIA activities as well as published competitive pricing and similar ongoing contracts. VIA Procurement staff will be glad to assist sub-recipients upon request.

PRICE/COST BREAKDOWN FORM

1. **DIRECT LABOR**

Function or Position Title	Estimated Rate/Hour	X	Total Estimated Hours	=	Cost Total
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____

Total Direct Labor \$ _____

2. **FRINGE BENEFIT & LABOR BURDEN** (Cost of sick pay, holidays, vacations, other paid absences, employer contribution for FICA, Unemployment, workers' compensation insurance, health insurance and pension expressed as a percentage of direct labor cost. Actual Fringe Benefit rate may vary.)

Function or Position Title	Fringe Benefit Rate (%)	X	Direct Labor Costs	=	Benefit Cost
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____
_____	_____		_____		_____

Fringe Benefit Total \$ _____

3. **DIRECT EXPENSES** (expendable materials directly related to the project, e.g. printing, long distance telephone calls, office supplies. Mark-up or handling charges can not be added).

Expense	Cost
_____	_____
_____	_____
_____	_____

Total Direct Expenses \$ _____

4. **TRAVEL** (Includes only travel directly related to project. For auto, use VIA's mileage reimbursement rate)

Cost

Transportation (Rate _____)

Total Travel Costs \$ _____

5. **SUBCONTRACTORS**

Name & Address of Subcontractors	Subcontracted Work	Cost
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	

Subcontracts Total \$ _____

6. **GENERAL AND ADMINISTRATIVE EXPENSE** (General expenses like office supplies, telephone, rent, utilities, taxes, insurance and any other like costs expressed as a % of direct labor.)

Rate (%)	Direct Labor Cost	General Administrative Costs
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	

G & A Expense Total \$ _____

TOTAL ESTIMATED COST (Add totals from items 1,2,3,4, 5 & 6) **\$** _____

7. **FIXED FEE OR PROFIT**

_____ % x _____ **Total Profit \$** _____
 (Profit as %) x (Total Estimated Cost less Items 3, 4 & 5)

TOTAL PROPOSED PRICE
(Total Estimated Cost plus Total Profit)

\$

(Sub-Recipient)
 Independent Cost Estimate
 for
 Flag Pole Painting Services

	<u>Annual Costs</u>	<u>Quantity</u>
<u>Labor</u>		
Full Time Wages	\$ 189,250.00	12 Employees
Fringes	<u>61,506.25</u>	
Total Labor	\$ 250,726.25	
 <u>Other Operating</u>		
Materials & Supplies		
Job Cards	\$ 500.00	
Paint & Primer	7,500.00	
Sand Paper	5,000.00	
Masking Tape	5,445.00	
Paint Brushes	1,400.00	
Miscellaneous	1,000.00	
Vehicle Costs for Trucks		13 trucks
Maintenance, Labor	8,400.00	
Maintenance, Parts	4,620.00	
Lubricants	135.00	
Fuel	<u>9,880.00</u>	
<i>Total Other Operating</i>	\$ 43,380.00	
 <u>Depreciation</u>		
Service Trucks	\$ 70,870.00	
<i>Total Depreciation</i>	\$ <u>70,870.00</u>	
Total	\$ 365,476.25	

Assumptions:

1. The annual salary is based on salaries currently being paid to contractors by like agencies.
2. The fringe rate is based on fringe rates currently being paid to contractors by like agencies.
3. The vehicle costs were provided by VIA's Maintenance Fleet & Facilities.
4. The acquisition costs of replacement trucks were provided by GSC contract pricing for 1999.
5. Staffing of daily operation:

	Flag Pole Cleaners/Painters
Mon. - Fri.	10
Sat. - Sun.	2

PROCUREMENT DEPARTMENT
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ATTACHMENT C
CONTRACT ADMINISTRATION

CONTRACT ADMINISTRATION

Purpose: The purpose of contract administration is to ensure that both the contractor and the sub-recipient perform according to the requirements of the contract. The obligations of each party are written into the contract document. However, a certain amount of monitoring and management control is necessary for every contract effort. Contract administration involves all relationships between the sub-recipient and the Contractor regarding contract performance from the time the contract is awarded until work is completed and accepted, payment is made, and disputes resolved.

Objectives of the Contracting Process: Effective contract administration ensures that the three fundamental objectives of the contract process are met:

- Subrecipient receives the goods and services defined in the specifications;
- Subrecipient receives the goods and services within the time frame specified; and
- Subrecipient receives the goods and services at the agreed upon price, therefore protecting the sub-recipient's financial interests

Participants in Contract Administration: Depending on the contract's complexity, personnel from a number of resources (Fiscal Management, Legal, and Internal Audit) may become involved in aspects of contract administration. The two individuals having the most frequent and direct involvement are the Contract Administrator (CA) and the Project Manager (PM).

The CA generally does not have the material knowledge or expertise to solely administer all contracts. Successful contract administration, therefore, depends on the technical knowledge, cooperation, and contributions of the sponsoring department/division whose personnel have identified the necessity for the procurement and developed the scope of services (specifications). The sub-recipient designates a PM for each requested contract procurement and identifies that person within the requisition package sent to VIA's Procurement Department. The PM works with the CA throughout the contract to ensure the sub-recipient receives and pays for that which was contracted.

Roles of the Contract Administrator (CA): The CA is that person designated by VIA's Procurement Manager to enter into and administer the Contract and make determinations and findings up to his/her level of authority, in regard to the Contract on behalf of sub-recipient. The CA coordinates the activities of the different staff members in administering the contract. The CA is responsible for handling the VIA's business relationship with the Contractor. Specifically, the CA is responsible for:

- Conducting negotiations;
- Keeping the contract and contract file up to date;
- Clarifying contract requirements during post-award;
- Establishing and maintaining adequate records;
- Authorizing changes in the contractual obligations of both parties;
- Entering into new agreements during the performance of the contract; and
- Settling disputes that arise during contract performance;
- Documenting the contractor's performance by use of performance surveys;

Roles of the Project Manager (PM): The PM is that person designated by sub-recipient to act as the technical representative or advisor to the CA during contract performance and gives

directions regarding the technical specifications, to the Contractor. The PM is responsible for providing the day-to-day and/or technical oversight of the contract. The PM determines whether the Contractor performs according to the contract's requirements (and notifies the CA when the Contractor does not). Specifically, the PM is responsible for:

- Understanding the requirements of work statements and specifications;
- Monitoring and in some cases, documenting the contractor's performance;
- Serving as the focal point for all correspondence and directions concerning technical direction;
- Providing technical guidance to the contractor and keeping the CA advised of any changes;
- Making sure all technical direction is recorded in writing;
- Maintaining a file of all technical instructions that are issued, as well as all deliverables received;
- Keeping the CA informed of significant events involving the contract;
- Insuring that all goods or services received are in accordance with the contract (including on-site visits, review and completion of reports, assessment of service documents, etc.);
- Verifies and documents performed services;
- Approving payments/invoices by accounting staff to ensure payments are within the amounts identified in the contract; and
- Recommending contract modifications/amendments.

In certain complex and technical contracts (such as bus buys or engineering projects), the PM may provide technical assistance and serve as the focal point for all correspondence and direction concerning the technical aspects of the contract. In such cases careful coordination is required between the CA and the PM to avoid misunderstandings with the Contractor as to the sub-recipient's position.

A PM cannot under any contract:

- Modify the stated terms of the contract;
- Direct the Contractor to start or stop work unless authorized in writing by the CA;
- Direct the Contractor to perform work not specified in the contract;
- Execute any supplemental agreements; nor
- Render any decisions on contractual disputes or questions of fact.

The extent of administrative activity by the PM will vary from one contract to another, depending on such factors as the complexity of the purchase, the contract type, and the quality of relationship between the two contractual parties. The one constant requirement for all contracts is the need for effective communication, coordination, and cooperation among VIA and the sub-recipient.

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ATTACHMENT D

GLOSSARY

GLOSSARY

Addendum/Addenda: Written revision(s) to solicitations issued before the bid opening or proposal receipt, which are incorporated into the contract documents.

Amendment: An alteration, by written addendum, to a solicitation. Distinction: An amendment alters solicitations, and modifications alter contracts (See also Modification and Addendum).

Approved Equal (also “Or Equal”): A substitute offered by a prospective Bidder which is accepted, in accordance with procedures stipulated in the solicitation documents, as equal to or better than a designated process or manufacturer’s brand-name product.

Best and Final Offer (BAFO): An offer submitted by the proposer after written or oral discussions have been conducted. This is not applicable to Invitations for Bid (sealed bids).

Bid: Offer of a Bidder to provide goods, services or work in response to an Invitation for Bid.

Bid Opening: The public opening of bids submitted in a sealed bid (Invitation for Bid or IFB) procurement. The IFB specifies an exact date and time for opening, after which bids can not be received.

Bidder: Any individual or duly authorized representative of a firm, partnership, corporation, or combination thereof submitting a Bid for the work solicited in a Bid Solicitation Package. Technically this term applies only to an offeror on a sealed bid (Invitation for Bid) procurement, but it is frequently misused to refer to an offeror on any procurement.

Bidders List: A compilation of names of prospective Bidders for a particular solicitation.

Bidding Time: The time allowed prospective bidders to prepare and submit their bids-- the time between solicitation issuance and bid opening. All Invitations for Bid (IFBs) must allow a reasonable bidding time, generally not less than thirty days.

Brand-Name Product: A commercial product described by brand name and make, model number, or other appropriate nomenclature by which the product is offered for sale to the public by the particular manufacturer, producer or distributor. The brand name is used for the purpose of establishing identification and to establish the essential, salient characteristics of the desired item.

Capital Equipment: Equipment having a useful life of at least one (1) year that costs a minimum of \$5,000 itself.

Centralized Purchasing: The placement of the authority and responsibility to perform the purchasing functions (solicitation, bid/proposal analysis, vendor negotiation, and source selection) within a single department. At VIA, this authority and responsibility has been vested in the Procurement Department. Centralized purchasing minimizes duplication of effort; maximizes purchased savings; and assures technical proficiency in a specialized, regulatory-complex field.

Change Order: A written, document issued to the Contractor by the Contract Administrator specifying a change in the work and adjustments in the total contract price and schedule. Changes of work that are outside the scope of the basic contract are not authorized. If VIA and

Contractor are unable to agree on the price of a Change Order, VIA may issue a unilateral Change Order which would be subject to the claim provisions of the contract for final resolution.

Competitive Bidding: The process of inviting and obtaining bids from competing sources in response to advertised competitive specifications, by which an award is made to the lowest and best bidder meeting the specifications. The process contemplates giving potential bidders a reasonable opportunity to bid, and requires that all bidders be placed on an equal plane. Each bidder must bid on the same advertised specifications, terms, and conditions in all the items and parts of a contract. The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best goods and services at the lowest practicable price. Competitive bidding cannot occur where contract specifications, terms, or conditions prevent or unduly restrict competition, favor a particular vendor, or increase the cost of goods or services without providing a corresponding benefit to VIA or the sub-recipient (See also "Invitation for Bid" and "Full and Open Competition").

Competitive Proposal (Negotiation): A formal procurement method involving a Request for Proposal (RFP). The RFP is publicized, and each of the resultant proposals is evaluated on its technical merit. Negotiations are normally conducted with more than one of the sources submitting offers, and award is made to the firm whose offer is most advantageous to VIA or the sub-recipient, price and other factors considered. A fixed-price or cost-reimbursable type contract is awarded. Unlike an RFP, an Invitation for Bid (IFB), the other formal procurement method, is awarded based on price and negotiations are not allowed (See Invitation for Bid and "Non-Competitive Negotiation").

Complete Procurement Package: All of the required documents and authorizations (approvals by authorized officials) that are necessary for Procurement to initiate action on procurement. These include: a completed and signed requisition; funding citation (departmental account or Determination of Funding form); Independent Cost Estimate (ICE); scope of work (specifications, and drawings as appropriate); insurance requirements, DBE goal; and sponsoring department's project manager. Upon receiving the complete procurement package, Procurement initiates and maintains the official procurement file (See Procurement File).

Consultant: See "Contractor."

Contract: A written agreement executed by VIA or the sub-recipient and a Contractor which sets forth the rights and obligations of the parties in connection with the furnishing of goods or services and which includes the Contract Documents. The contract becomes effective by written bilateral acceptance of contracts, modifications, and supplemental agreements, or by performance, or by written bilateral acceptance for Purchase Orders. A contract includes the contract itself and any bid documents, general conditions, special conditions, drawings, bonds, insurance, addenda, change orders, amendments, or other documents incorporated by reference (See "Purchase Order").

Contract Administration: A system for ensuring that Contractors (and VIA or the sub-recipient) conform to the terms, conditions, and specifications of the contract and for ensuring adequate and timely follow-up.

Contract Administrator (CA): The individual responsible for coordinating the administration of the contract and handling VIA's business relationship with the contractor. Specific responsibilities include negotiations; entering into new agreements; authorizing changes in the contractual obligations of both parties; settling disputes; and ensuring both parties meet the terms of

agreements. The Contract Administrator partners with the Project Manager to ensure VIA or the sub-recipient receives the goods/services defined within the specifications, within the time frame specified, and that VIA's financial interests are protected. At VIA specific personnel within Procurement have been designated and authorized to perform as CAs (See "Contract Officer" and "COTR").

Contract Closeout: The process of documenting the contract file to show that the required goods/services have been rendered and that all payments for such goods/services have been received by the contractor.

Contract File: See "Procurement File."

Contract Modifications: Any written change in the terms of a contract. A contract modification requires the signature of both parties (Grantee and Contractor) and is most typically used to incorporate into the contract a negotiated equitable adjustment resulting from the issuance of a change order. It can reflect any other agreement between parties modifying the terms of the contract. This supplemental agreement is a bilateral modification to the contract by both parties. Distinction: Modifications alter contracts and amendments alter solicitations. All modifications must lie within the original scope of the contract or non-competitive (sole source) procurement results (See "Change Order", "Amendment", and "Sole Source Procurements").

Contracting Officer (CO): The President/CEO, or such person(s) as the President/CEO designates, having authority to approve contract actions. At VIA, Contract Administrators perform as Contracting Officers for contracts valued up to \$20,000. The Contract Administrator II has an authority up to \$50,000. The Procurement Department Manager and VP of Fiscal Management act as Contracting Officers for contracts in excess of \$20,000 (See "Contract Administrator" and "Contract Manager").

Contractor: A firm or individual with whom a formal contract is entered into for the provision of goods or services. The term "Consultant" is sometimes used instead of Contractor.

Cost Analysis: Review and evaluation of the separate cost elements and profit of an offeror's total price to determine whether they are allowable. Allowable costs are allocable (chargeable to the contract's elements of work) and reasonable (does not exceed what would be incurred by a prudent person in the conduct of competitive business). A cost analysis is required for professional consulting and A&E services contracts. Cost analysis is also required (unless price reasonableness can be established on catalog/market prices or prices set by law/regulation) whenever adequate price competition is lacking; for sole source procurements; and for contract modifications (See "Price Analysis").

Fair and Reasonable Price: One that is fair to both parties, considering the agreed-upon terms, promised quality, and timeliness of contract performance.

Fair Market Price: Price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition.

Full and Open Competition: The guiding principle of public purchasing (and Federal procurement law) that one seek and encourage meaningful interest and offers from all entities and rule out offerors only for valid business reasons (cost, quality, and delivery). The primary purpose is to obtain the best quality and service at minimum cost. Secondly, this principle

guards against favoritism and profiting at the public expense and provides equal opportunities for public business participation.

Invitation for Bid (IFB) (also “Sealed Bids”): The procurement process by which sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the Solicitation Packages, is lowest in price (See “Responsive” and “Responsible”).

Method of Procurement: A broad term describing how goods and services are procured. The two basic methods are sealed bidding (Invitation for Bid) and competitive negotiation (Request for Proposal).

Micro Purchases: The Federal category of procurements (between \$0 and \$2,999) for the acquisition of supplies, nonpersonnel services, or construction. Procurements within this category are not required to be competed if Procurement determines that the price is fair and reasonable.

Non-Competitive Procurement: The procurement process by which a bid/proposal is solicited from only one source (sole source) or, after solicitation of multiple prospective sources, only one source is located. Negotiations are held with the source, and following satisfactory cost/price analysis, a contract is awarded (See “Competitive Proposal” and “Sole Source”).

Notice of Award (NOA): Letter issued to all bidders stating to whom the contract has been awarded and the effective date of the contract. For non-construction contracts, the NOA usually authorizes the Contractor to commence performance; for construction contracts and other high dollar contracts requiring bonding (i.e., buses, AVL), the NOA is simply a notification and a Notice to Proceed is issued to the Contractor authorizing work to begin.

Notice to Proceed (NTP): Written, post-award direction (primarily in construction contracts) to commence delivery, installation, services, or the work provided for in the contract (See “Notice of Award”).

Offer: A bid or proposal submittal (See “Bid” and “Proposal”).

Offeror: A firm or individual submitting a bid or proposal.

Or Equal: A substitute for a brand name product identified in the specifications which is offered by a prospective bidder and which is accepted as equal to or better than the brand-name product.

Originating Department: (also “User” and “Using Department”): See “Sponsor.”

Performance Evaluation: A periodic evaluation of a contractor’s performance in meeting its obligations under the contract.

Pre-Bid or Pre-Proposal Conference: Conference during which representatives of Procurement, User Department, and other departments/divisions as needed (Risk Management, DBE, Legal, etc) meet with prospective bidders or proposers regarding the preparation of their bids or proposals. Questions posed by bidders/proposers are answered in writing and sent to all holders of Bid Solicitation Documents.

Price Analysis: Process of examining and evaluating the reasonableness of a bidder's or proposer's price without evaluation of the separate cost elements and proposed profit.

Procurement File (Also Contract File): Essential documentation maintained by Procurement relating to the procurement. The file will contain internal memoranda, requisition, Determination of Funding form, scope of work, specifications, independent cost estimate (ICE), insurance and DBE documentation, advertisement(s), invitation letter, original IFB or RFP document, bids or proposals received, proposal evaluation committee memo, bid tabulation sheet, negotiation memoranda, proposal evaluation forms and memoranda, price or cost analysis, Board recommendation memoranda, signed contract, notice to proceed or purchase order, payment approval letters and memoranda, Change Order paperwork, and contract closeout forms. The more complex (and costly) the procurement, the more extensive the file documentation (See "Contract File").

Procurement Solicitation Package: The document set VIA issues when seeking bids or proposals for the intended work. Documents include, but are not limited to, Information for Bidders/Proposers, the Scope of Work (Specifications), Standard and Special Contract Terms and Conditions, and any Contract Drawings, Technical Specifications, or Addenda.

Project Manager (PM): An individual appointed from the using department who is responsible for the day-to-day management and/or technical oversight of the contract. This individual appointed by the VP of the sponsoring department, checks whether or not the Contractor performs according to the contract requirements. The PM is an equal partner with the Contract Administrator in ensuring that VIA's or the sub-recipient's interests are protected (See "Contract Administrator").

Proposal: A written response to a Request for Proposal (RFP) Solicitation Package.

Proposal Evaluation: In contracting by negotiation, the process of assessing both an offeror's proposal and the offeror's ability to successfully accomplish a prospective contract

Proposer: Any individual, firm, partnership, corporation or combination thereof submitting an offer in response to a Request for Proposal (RFP).

Purchase Order (PO): A contractual document offered by VIA to buy certain supplies or nonpersonnel services or construction from sources, upon specified terms and conditions.

Qualifications Based Procurement Method (A&E): A special procurement method for obtaining Architecture and Engineering (A&E) type services (including program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and other services which require performance by a registered or licensed architect or engineer) as defined in Federal Statute 40 U.S.C. (Brooks Act). This procurement is based on the offeror's qualifications, not price.

Quotation (or Quote): A statement of current prices for items being obtained under informal purchase procedures.

Request for Proposal (RFP): A competitively negotiated (other-than-sealed-bid) procurement or the solicitation document used in this method of procurement.

Responsible: The determination of a bidder/proposer to have the financial resources, judgment, skill, integrity, experience and ability to fulfill successfully the requirements of the contract.

Responsive: The determination that a bid/proposal conforms to all technical, business, and legal requirements of the solicitation.

Salient Characteristics: Those qualities of an item that are essential to ensure that the intended use of the item can be satisfactorily realized. The term is mainly used in connection with a brand-name-or-equal description, which should set forth those “salient” physical, functional, or other characteristics of the referenced product that an equal product must have to meet the Authority’s needs.

Sealed Bids: See "Invitation for Bids."

Single Bid: The situation resulting from the receipt of only one bid or only one responsive bid at the bid opening. If the bid price is determined reasonable, the bid is responsive, and the bidder responsible, a contract may be awarded to the offeror of the single bid (See “Bid Opening”, “Responsive”, and “Responsible”).

Site Visit: Conducted tour of project site to acquaint prospective bidders with the existing conditions at the site of the proposed work or visit to a potential contractor’s business prior to award.

Small Purchases: The Federal category of procurements (between \$2,500 and \$24,999) for the acquisition of supplies, nonpersonnel services, or construction; however, Texas law requires formal procurements on acquisitions greater than \$25,000.

Sole Source: The only source (vendor) known to be able to perform a contract, or the one source among others that, for justifiable reasons, is found to be the most advantageous for the purpose of contract award. This is a type of non-competitive procurement, the use of which is tightly restricted and requires extensive justification and cost analysis (See "Non-Competitive Negotiation").

Solicitation: A document sent to prospective contractors requesting the submission of offers or information. This generic term includes IFBs, and RFPs.

Special Terms and Conditions: Clauses within a solicitation and a contract that set forth legal, business, and technical requirements that are particular to that contract.

Specifications (Also “Statement of Work” or “Scope of Services”): Complete, clear description defining the supplies or services being procured. Specifications fall into two general categories: performance specifications that set forth the minimum acceptable performance standards expected of the end product, and design specifications that describe in detail the tasks to be performed and products to be delivered.

Splitting: Dividing a purchase requisition or procurement with the intent of avoiding the \$2,500 competition requirement or other dollar thresholds (Prohibited by Federal and State regulations).

Sponsor: The term used for any organizational entity within VIA that initiates a request for procurement action, evaluates bids/proposals for technical competence, and partners with Procurement to ensure VIA obtains the benefits of the resultant purchase/contract.

Sub-Recipient: A state or local governmental authority, a private non-profit organization or, an operator of public transportation that receives a grant under section 5310 indirectly through a recipient.

Standard Contract Terms and Conditions: Clauses within a solicitation and a contract that set forth the rights and responsibilities of the contracting parties and are standard in all contracts of a specific type, e.g. construction, purchase or repair.

Technical Evaluation: The evaluation of the technical aspects of a proposal submitted in a competitive proposal procurement (RFP).

Technical Evaluation Memorandum: A document prepared by the Evaluation Committee of an RFP (or the User Department for an IFB) supporting the analysis of the Bidders'/Proposers' technical qualifications and ability to perform to the requirements of the solicitation.

Technical Specifications: The technical requirements of a contract which stipulate what work is to be performed, how the work is to be performed, and technical standards the Contractor must meet.

Termination for Convenience: A contract clause setting forth rights to completely or partially terminate or cancel performance of the work under the contract if the Contacting Officer determines that termination is in VIA's or the sub-recipient's best interest.

Termination for Default: A contract clause setting forth VIA's or the sub-recipient's right to completely or partially terminate or cancel a contract because of the Contractor's failure to perform its contractual obligations.

User (Also "Originating or Using Department"): See "Sponsor."

Vendor: A seller of goods. The term can mean the person or firm selling goods to VIA or the sub-recipient or to the person or firm selling goods to a VIA or the sub-recipient contractor.

Work: The completed performance required by the Contract documents, and includes all necessary labor and materials and equipment incorporated or to be incorporated in such performance.