



March 16, 2015

To: Fox Cities Transit Commission
Finance Committee

From: Deborah Wetter, General Manager

Subject: Approve Valley Transit Procurement Manual

Background:

During Valley Transit's Federal Transit Administration (FTA) 2013 triennial review, we received several findings related to procurement. The FTA informed us that we could no longer use the City of Appleton procurement policies as written procedures for Valley Transit because all state and federal requirements are not incorporated within the City's documents. The corrective action for this finding was that Valley Transit would provide the FTA with written procurement policies and procedures along with a description of how the policies would be implemented.

Following the triennial review, Deb Ebben attended several FTA sponsored procurement classes to learn the rules and regulations that needed to be incorporated into Valley Transit's procurement manual. After several revisions, the FTA approved the attached Valley Transit procurement manual. Upon FTA approval, Valley Transit is required to ask its governing boards, the Fox Cities Transit Commission and the City of Appleton Common Council to approve the manual. All employees who are authorized to make purchases on behalf of Valley Transit must follow the rules set forth in the Valley Transit Procurement Manual.

Recommendation:

Approve the Valley Transit Procurement Manual



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION V
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Michigan, Minnesota,
Ohio, Wisconsin

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March 9, 2015

Ms. Deborah Wetter
General Manger
City of Appleton *d.b.a.* Fox Valley Transit
801 Whitman Avenue
Appleton, WI 54914

Re: Federal Transit Administration FY 2013 Triennial Review – Close Out Letter

Dear Ms. Wetter:

The Federal Transit Administration (FTA) has received and reviewed your responses to the FY 2013 Triennial Review Final Report. The City of Appleton *d.b.a.* Fox Valley Transit has submitted the appropriate documentation to resolve all of the deficiencies identified in the aforementioned report.

Please consider your FY 2013 Triennial Review to be closed. If you have questions, please contact Cyrell McLemore at Cyrell.McLemore@dot.gov or (312) 886-1625, or me at (312) 353-2789.

Thank you for the cooperation shown to us throughout the Triennial Review process.

Sincerely,

A handwritten signature in black ink, appearing to read "Marisol R. Simón".

Marisol R. Simón
Regional Administrator, FTA Chicago



PROCUREMENT MANUAL



PREPARED BY VALLEY TRANSIT
January 2015

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CHAPTER I
INTRODUCTION

Valley Transit, a department of the City of Appleton, provides a range of transportation services for the general public in Fox Cities region, which includes the Cities of Appleton, Kaukauna, Menasha, Neenah, Villages of Kimberly, Little Chute, Towns of Buchanan, Grand Chute, Menasha and the Counties of Calumet, Outagamie and Winnebago. Valley Transit provides fixed route service along with complimentary ADA paratransit and various ancillary paratransit services.

Valley Transit procures goods, inventory items, consultant and professional services as necessary to fulfill the purposes of Valley Transit. As a direct recipient of Federal Transit Administration funds, Valley Transit is required to comply with certain federal rules and regulations when it procures items with the use of these federal funds. In order to ensure a fair and competitive system and to comply with industry best practices, Valley Transit has adopted this Procurement Manual. It represents the minimum standards that must be met by Valley Transit contract administrators.

CHAPTER II
PROVISIONS APPLICABLE TO ALL PROCUREMENTS

General Principles

Procurement Policy. The policies contained in this Procurement Manual are intended to maintain the integrity of Valley Transit's procurement processes, while ensuring that purchases are made in a cost effective, timely manner; with fair and open competition; and in accordance with all applicable laws and regulations.

Conflicts of Interest. No preferential treatment may be given to any contractor. It is Valley Transit's goal to avoid actual or perceived conflicts of interest in contracts and to promote full and open competition. In the case of a real or apparent conflict of interest, the Valley Transit employee, officer, board member or agent with the actual or perceived conflict must not participate in the selection, award, or administration of such contract. The following standards of conduct govern employees engaged in the selection, award or administration of federally funded contracts:

- The officers, employees, board members and agents of Valley Transit must not solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements.
- A conflict of interest is deemed to exist if the employee, officer, board member or agent of Valley Transit, his/her partner, any member of his/her immediate family, or an organization that employs or is about to employ any of the foregoing, has a financial or other interest in the proposed contract.
- A conflict of interest will not be deemed to exist where the financial interest is insubstantial.

Valley Transit may take disciplinary action up to and including dismissal for violations of these standards by officers, employees, board members or agents of the recipient.

Competition. Procurement transactions should be conducted in a manner that, to the extent practical, promotes open and free competition. Awards will be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to Valley Transit.

- *Restraint of Trade.* Valley Transit employees, officers, and agents must not support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- *Organizational Conflicts of Interest - Exclusion from Competition.* Contractors who participate in the development or drafting of Valley Transit's specifications, requirements, statements of work, invitations for bids, or requests for proposals will be excluded from competing for such procurements. In order to mitigate potential organizational conflicts of interest, Valley Transit user and procurement personnel shall conduct a review of pending requisitions/projects to ensure that such conflicts are identified and eliminated. An organizational conflict of interest occurs when any of the following circumstances arise:
 - 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.
 - Unequal access to information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - 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.
- *Geographic Preferences.* Procurement transactions using Federal funds will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids proposals, except in those cases where applicable Federal statutes or regulations expressly mandate or permit geographic preference.
- *Arbitrary Action.* Arbitrary actions in the procurement process are prohibited. Examples could include award of a contract to other than the low bidder without appropriate justification and rejection of bids or proposals without rational reasons.

Requirements/Prohibitions Related to Contract Selection and Reimbursement Methods. Valley Transit must comply with the following prohibitions and requirements related to selecting the type of contract or basis for reimbursement for federally funded procurements.

- *Responsive offers.* Valley Transit will only make awards to responsive offers from responsible offerors. A responsive offer is one that complies with all material requirements of the solicitation. A responsible offeror is one possessing the technical, physical, financial and ethical capacity to successfully perform a specific contract.
- *Cost plus a percentage of cost.* Valley Transit must not utilize the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting.
- *Time and materials.* Valley Transit must not utilize the "time and materials" contract unless Valley Transit determines that no other contract type is suitable and the contract explicitly specifies a ceiling price that the bidder or offeror may only exceed at its own risk.
- *Cost reimbursement.* Where Valley Transit chooses to enter a "cost reimbursement" contract, its employees, officers, and agents must comply with the applicable provisions of Federal Acquisition Regulation (FAR) Part 31. Specifically, Valley Transit must utilize the guidelines in FAR Part 31 to determine whether the contractor's proposed costs are reasonable, allowable, and allocable.
- *Advance payments.* Advance payments of federal funds are prohibited unless prior written concurrence is obtained from the federal funding agency.
- *Progress payments.* If progress payments are used for a selected contract, such payments must be made on the basis of costs incurred or, for construction contracts only, on the basis of percentage of completion of the relevant project. Valley Transit

must obtain adequate security (i.e., title to work in progress; letter of credit) for any progress payments made.

- *Contract terms.* Valley Transit will enter into contracts with performance periods that do not exceed the time necessary to accomplish the purpose of the contract. Pricing, competition, fairness and public perception will be used to determine the contract period, with rationale documented in the procurement file. The period of contract performance for rolling stock and replacement parts may be a multi-year contract, with an option not exceeding five (5) years to buy additional buses or replacement parts, as defined in FTA C4220.1F. Rolling stock and replacement parts procurements shall be limited to Valley Transit's material requirements for the applicable contract period.

Debarment and Suspension. Valley Transit must not contract with parties debarred or suspended from Federal programs under DOT regulations, "non-procurement Suspension and Debarment," 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4. Valley Transit's employees, officers, and agents shall conduct this check prior to forming a contract for procurement. These records may presently be checked at www.sam.gov.

Federal Clauses. Valley Transit must comply with all applicable Federal laws and regulations. Some of the laws and regulations affect third party contractors, other laws and regulations will affect the nature of the property or services to be acquired or terms under which the property or services must be acquired. Valley Transit will use the matrix in the Appendix of this procurement manual as a reference for applicable clauses. The matrix will be reviewed and updated annually.

Revenue Rolling Stock Pre-Award and Post-Delivery activities. When purchasing revenue rolling stock with FTA funds, Valley Transit must comply with applicable requirements of 49 U.S. Section 5323(m) and those provisions of FTA regulations "Pre-Award and Post-Delivery Audits, 49 CFR Part 663 that do not conflict with 49 U.S. Section 5323(m).

The pre-award audit includes a Buy America certification, a purchaser's requirements certification, and where appropriate, a manufacturer's Federal Motor Vehicle Safety certification. A pre-award purchaser's certification is a certification that the rolling stock is the same product described in the solicitation specification and the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the specification set forth in the solicitation.

Valley Transit must ensure that a post-delivery audit is complete before title to the rolling stock is transferred. A post-delivery audit includes a post-delivery Buy America certification, a post-delivery purchaser's requirements certification and a manufacturer's Federal Motor Vehicle Safety Standard self-certification. A post-delivery requirements certification is a certification that a resident inspector was at the manufacturing site throughout the period of manufacture of the rolling stock, monitored and completed a report on the manufacture of the rolling stock. The report should include accurate records of all vehicle construction activities, address how the construction and operation of the vehicles fulfills the contract specifications and record of visually inspection and road testing the vehicles.

CHAPTER III
PROCUREMENT PLANNING AND ADMINISTRATION

1. Contract Administration System

Valley Transit's contract administration system is intended to manage procurement activities and help ensure that contractors engaged by Valley Transit perform in accordance with the terms, conditions and specifications of their respective contracts.

Activities. Contract administration may involve a variety of activities, including but not limited to: monitoring project progress; monitoring financial status of contractors; ensuring contractor compliance with quality assurance requirements; and evaluating adequacy of engineering efforts.

Evaluation. Valley Transit will evaluate contract performance and, as appropriate, document whether contractors have met the terms, conditions and specifications of the contract.

Responsibilities. Valley Transit will identify an individual who will be responsible for the maintenance of procurement records for each project.

2. Procurement Planning

Valley Transit staff should plan procurements in advance to best address the needs of Valley Transit. The Common Grant rules require the recipient of FTA funds to maintain and make available written records detailing the history of each procurement. Planning a procurement process should include:

Avoidance of Duplicative Procurements. In order to avoid purchasing unnecessary items, Valley Transit staff should keep records of and regularly review planned procurements.

Analysis of Alternatives to Purchase. Procurement activity will be reviewed by the Valley Transit Administrative Manager at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Where appropriate, analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.

Contract Type. In determining the type of contract to be utilized, staff should consider price, risk, uncertainty, and responsibility for costs. The type of contract used should reflect the cost risk and responsibility assumed by the contractor or supplier. Contract types include, but are not limited to, the following:

- *Firm fixed-price contracts.* This contract type provides a firm contract price, without the right to cost adjustments except in specific circumstances as set forth in the contract terms and conditions.
- *Cost reimbursement/cost-plus-fixed-fee contracts.* This contract type includes an estimate of the total contract costs, to be paid on a reimbursement basis, which amount cannot be exceeded without Valley Transit approval, plus a negotiated fixed fee.
- *Time and materials/labor hour contracts.* These contract types are based on payment

for direct labor hours at specified, fully burdened hourly rates, and, as applicable for materials at agreed upon cost. This type of contract must not be utilized unless Valley Transit determines that no other contract type is suitable. If used, a ceiling price should be included in the contract, with provisions specifying that the contractor exceeds this ceiling at its own risk, unless prior written approval of Valley Transit is obtained for an increase in the ceiling price.

- *Revenue contract.* A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. To ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, Valley Transit should conduct revenue contracting as follows:
 - Limited contract opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then Valley Transit will use a competitive process to permit interested parties an equal chance to obtain the limited opportunity.
 - Open contract opportunities. If, however, one party seeks access to a public transportation asset, and Valley Transit is willing and able to provide contracts or licenses to other parties similarly situated, then competition would not be necessary.

Procurement Type. The Valley Transit staff responsible for the applicable procurement will determine which method of procurement is to be utilized based on the criteria set forth in this Procurement Manual. Procurement methods include, but are not limited to, the following:

- *Micro purchases* Micro purchases do not require multiple quotes, formal bidding procedures or non-competitive procurement findings. For federally funded procurements, the threshold for micro purchases is \$3,000. The City of Appleton's requires two quotes for purchases over \$1,000 (See small purchases below). Procurements should not be split (i.e., segmented into smaller contracts to fall under the micro purchase thresholds) to avoid competition and should be distributed equitably among qualified suppliers.
- *Small purchases.* For federally funded procurements, the threshold for a small purchase is \$100,000, but the City of Appleton's requirements are more stringent. Small purchases have several thresholds; \$1,000 - \$4,999, \$5,000 - \$15,000 and purchases over \$15,000.
 - \$1,000 - \$4,999, Two quotes are required
 - \$5,000 – 14,999, Three written quotes are required
- *Small and Large purchases \$15,000 and over.* When making a purchase for \$15,000 or more, one of the following procurement methods should be used:
 - *Low bid competitive procurement.* A low bid competitive procurement pursuant to issuance of an invitation for bids (IFB) may be used where a complete, adequate, and sufficiently generic specification is developed; adequate

competition is available in the marketplace (two or more responsive and responsible bidders will compete); and the procurement lends itself to a firm-fixed price contract. An IFB will be used when required by the applicable funding source based on the project type and anticipated contract value.

- *Competitively negotiated procurement.* A competitively negotiated procurement pursuant to issuance of a Request for Proposals (RFP) or Request for Qualifications (RFQ) may be used where a low bid competitive procurement is not appropriate or desirable for the solicitation, including, but not limited to, the procurement of professional services including architect, engineering, construction management, accounting, legal and other similar services, and the contract is anticipated to exceed the small purchase threshold. Joint procurements utilizing competitively negotiated procurement are allowed. All architect and engineering (A&E) projects will follow the Brooks Act; use of RFQ procurement and price negotiation with the most qualified candidate.
- *Non-competitive procurement/Sole source.* Procurements may be made through solicitation of a proposal from only one source. For federally funded procurements, Valley Transit must perform a cost and profit analysis prior to making the award, which analysis must be included in the procurement file. An amendment to an existing contract that is beyond the scope of the original procurement, including any negotiated options, or that increases the contract amount over the small purchase threshold (“tag-on”) is subject to this section.
- *Piggybacking.* Valley Transit may “piggyback” on a contract/solicitation process completed by another entity that complies with the requirements of this manual, if the procurement allows another entity to purchase the same supplies or equipment under the original contract/solicitation process.
- *Emergency; Unusual and Compelling Urgency.* If Valley Transit has an unusual and urgent need for the property or services, such that Valley Transit would be seriously injured by having to comply with competitive procurement requirements. Valley Transit may also enter into a contract in a non-competitive manner when the public exigency or emergency will not allow for the delay of engaging in a competitive procurement.

3. Procurement Specifications

In order to provide for fair, unbiased review and evaluation of competitive proposals, Valley Transit solicitations for goods and services over the small purchase threshold should provide clear specifications.

Specification Requirements for Procurements. All competitive solicitations should provide, as applicable:

- **Clear Descriptions.** A clear and accurate description of the technical requirements for the material, product, or service to be procured.
- **Preference for Performance Specifications.** A description of the requirements which

the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. The specifications should include the range of acceptable characteristics or minimum acceptable standards.

- Quality Requirements. A description of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- Nonrestrictive Specifications. Technical requirements for the procurement that do not contain features which unduly restrict competition.
- Use of “brand name or equal” purchase descriptions only if:
 - An adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration; and
 - When minimum needs are carefully identified and those salient physical and functional characteristics of the brand name product are clearly set forth in the solicitation.
- The preference, to the extent practical and financially feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

Exclusionary or Discriminatory Specifications. Valley Transit, its employees, officers, and agents must not use federal funds to support an exclusionary or discriminatory specification. In conformity with this mandate:

- Valley Transit will not impose unreasonable business requirements for bidders or offerors.
- Valley Transit will not impose unnecessary experience requirements for bidders or offerors.
- Valley Transit will not require excessive prequalification of contractors.
- Valley Transit will not impose excessive bonding without the original recipient’s and the funding agency’s written concurrence.
- Valley Transit will not specify a brand name product without allowing offers of an equal product.
- Valley Transit will not specify in-State or local geographic preferences, except to comply with State licensing requirements or in the case of procuring architectural engineering or disaster relief services.

4. Independent Cost Estimate

An independent cost estimate must be completed prior to the solicitation/receipt of bids or proposals for federally funded procurements in order to assist with determining price

reasonableness. The independent estimate must be prepared without knowledge of the contractor's proposed pricing. Depending on the procurement type and scope, independent cost estimates may be completed by Valley Transit staff, by independent third-party staff, or by a firm retained to complete the estimate. Methods of completing the independent cost estimate vary based on the procurement and include:

- Checking historical records or published price guides.
- Completing a detailed and in-depth estimate, such as required for preparing an engineer's estimate for a construction contract.

5. Contractor Selection

Responsible Contractors. Valley Transit will only award contracts to responsible contractors who possess the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. An evaluation committee or procurement officer will determine if a contractor is responsible. In making this determination, Valley Transit will ensure that the prospective contractor satisfies the following criteria:

- Have a satisfactory record of integrity and business ethics by checking references and work history.
- Be neither debarred nor suspended from Federal programs by checking the System for Award Management (SAM) website.
- Be in compliance with the Common Grant Rules affirmative action and FTA's Disadvantaged Business Enterprise requirements by including verbiage in contracts and monitoring the contractor for compliance.
- Be in compliance with applicable licensing and tax laws and regulations.
- Have, or can obtain, sufficient financial resources to perform the contract as required by 49 U.S.C. Section 5325(j)(2)(D).
- Have, or can obtain, the necessary production, construction, and technical equipment and facilities.
- Be able to comply with the required delivery or performance schedule.
- Be able to provide a satisfactory current performance record, a satisfactory past performance record, sufficient resources, adequate past experience and past deficiencies not the fault of the provider.

Information collected in solicitation should include:

- Description/references of similar work performed in the preceding five year period, including work in progress
- For contracts over \$250,000, certified financial statements for the preceding three year period. If certified statements are not available, acceptable financial documentation would be required.
- Description of plant, equipment, machinery, etc. necessary to support work.
- Compliance certification for DBE requirements, tax/licensing laws, criminal history and debarments/performance issues.

Utilization of Specific Businesses and Disadvantaged Business Enterprises (DBE). It is the policy of Valley Transit that disadvantaged business enterprises (DBEs), as defined in 49 C.F.R.

Part 26, shall have an opportunity to participate in awards of its contracts and subcontracts. Valley Transit employees, officers, and agents shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises in federally funded procurements. As feasible, Valley Transit should do the following to promote participation:

- Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- Make information on forthcoming opportunities available and arrange timeframes for purchases and contracts to encourage and facilitate participation by such organizations.
- Consider in the contract process whether firms competing for larger contracts intend to subcontract with such organizations.
- Consider contracting with consortiums of such organizations when a contract is too large for one of these firms to handle individually.

6. Cost and Price Analysis.

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the recipient must make independent estimates before receiving bids or proposals. The cost or price analysis is based on the independent cost estimate, which is developed before a solicitation is issued. For contract modifications, the independent estimate must be prepared without knowledge of the contractor's proposed pricing. The analysis must be included in the project file.

Cost Analysis. Cost analysis is the review and evaluation of each element of cost to determine if the expense is reasonable and allowable. A cost analysis must be performed under the following conditions:

- When the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost.
- When adequate price competition is lacking, including sole source procurements unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.
- Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- Prior to the use of a cost-type contract, Valley Transit will make a determination that the contractor's accounting system is adequate to properly segregate and bill costs, and also adequate to allocate indirect costs in accordance with generally accepted accounting principles. In no event shall fixed indirect cost rates, that are not subject to audit and adjustment, be used in a cost-type contract, as such agreements constitute an unlawful cost-plus-percent-of cost method of compensation. Provisional indirect billing rates may be used by must be subject to later audit and adjustment.
- As required by 49 U.S.C. Section 5325(b)(2), the following requirements apply to a third party contract for program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services:
 - The third party contract or subcontract must be performed and audited in compliance with FAR Part 31 cost principles.
 - The recipient and the third party contractor, its subcontractors and subrecipients, if any, must accept FAR indirect cost rates for the one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.
 - After a firm's indirect cost rates established as described in the above paragraph are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or defacto ceilings.

Price Analysis. A price analysis looks at the price as a whole without examination of its various components. Acceptable methods of price analysis include the comparison of price quotations submitted, market prices and similar indicia, together with discounts. A price analysis may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed contract price.

Federal Cost Principles. The FTA recognizes that recipients may have difficulty obtaining information necessary to conduct a proper cost or price analysis. As applicable, Valley Transit should utilize the guidelines provided in Federal Acquisition Regulations, Part 31, to determine whether proposed costs are reasonable and allowable.

7. Contract Award

Approval Authority. Final authority for procurement rests with Valley Transit's Fox Cities Transit Commission and The City of Appleton Common Council (governing boards) except as delegated by the City of Appleton Mayor to the Valley Transit General Manager.

General Manager Approval Threshold. The General Manager is authorized to approve and enter into contracts, including contract amendments, on behalf of Valley Transit under his/her single signature authority where the expenditure is less than fifteen thousand dollars (\$15,000). Segmentation of contracts to avoid this threshold is not permitted.

Option Contracts. If the exercise of an option under an existing contract entered into by the General Manager under his/her Single Signature Authority will result in a total contract value in

excess of the Single Signature Authority threshold, approval of the governing boards is required.

Contract Amendments. Where an amendment to an existing contract entered into by the General Manager under his/her Single Signature Authority will result in a total contract value in excess of the Single Signature Authority threshold, approval of the governing boards is required.

Governing Board Approval. The governing boards are the only entity permitted to award contracts valued at fifteen thousand dollars (\$15,000) or more and are not for the renewal or re-award of existing, previously approved and budgeted, ongoing operational requirements.

8. Procurement Records

All negotiated contracts in excess of the micro-purchase threshold must include a provision permitting Valley Transit, the federal awarding agency, the Comptroller General of the United States, or any other duly authorized representatives, to access any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

Valley Transit will keep and maintain, in accordance with its records retention policy, a file or record for each federally funded procurement. FTA's Master Agreement requires that during the course of the project and for three years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts and supporting materials relating to the project. All rolling stock records must be kept for three years after retirement of the asset. Procurement files must include the following:

- The rationale for the method of procurement.
- The basis for the contract type selected.
- The basis for contractor selection.
- The justification for lack of competition where competitive bids or offers are not obtained.
- The basis for the award cost or price.

9. Protest Procedures

Applicability. These protest procedures apply to all Valley Transit formal competitive procurements (RFPs, RFQs and IFBs), unless different procedures are included in the procurement documents. Procurements that intend to utilize the protest procedures set forth herein should include a reference to these procedures. As used in this section, an "interested party" is any person or entity that has timely submitted a bid or proposal in response to a formal procurement. Protests may only be filed by an interested party.

Guidelines for Protests.

- *Strict compliance.* Strict compliance with the protest procedures is required. No

statement by Valley Transit employees, officers, or agents will modify or otherwise alter the protest procedures. Only Valley Transit's governing boards are authorized to modify these procedures, or the protest procedures set forth in the applicable procurement documents.

- *Exhaustion of Remedies Required Prior to Pursuing Protest with Federal Funding Agency or any legal action in any court or tribunal.* The protest procedures are intended to constitute administrative remedies that must be exhausted prior to an interested party commencing any legal action or requesting review by any applicable federal funding agency.
- *Deadline.* Protests must be filed promptly after the basis for the protest is known, but no later than:
 - Protests relating to the procurement solicitation must be submitted in writing no later than five (5) working days from the date of the first published advertisement.
 - Protests relating to the evaluation process must be submitted in writing no later than five (5) working days from the postmarked date of written evaluation correspondence sent by the General Manager to the Provider.
 - Protest relating to the award must be submitted in writing no later than five (5) working days from the date of the award.
 - Protests relating to post-award issues must be submitted in writing no later than five (5) working days from the date that the protestor verbalizes the concern to the General Manager.
 - Requests for reconsideration (if data becomes available that was not previously known, or there has been an error of law or regulation) or appeal to a higher level must be submitted in writing no later than seven (7) working days from the date of the initial determination.
- *Contents Of Protest.* Protests must clearly identify the interested party and the procurement involved in the protest. Protests must completely and succinctly state each and every ground for protest in detail, its legal authority for each protest allegation, and the factual basis for such protest. The protest must include all factual and legal documentation in sufficient detail to establish the merits of the protest. Items that are not included in a protest shall be deemed waived and uncontested.
- *Filing Of Protest.* Protests must be delivered to the Valley Transit offices during normal business hours (but in no event later than 5:00 p.m.) on or before the applicable deadline. Protests must be directed to the attention of the General Manager of Valley Transit.

Resolution. Protests will be decided on the basis of written submissions and any other fact finding determined necessary or appropriate by Valley Transit. Valley Transit may establish a protest evaluation team, and may consult with its legal counsel.

General Manager Response.

Upon receipt of a written protest, the General Manager will meet with the protestor within five

(5) working days and attempt to resolve the matter informally. If information provided at the conference is to be considered in the protest decision it must be submitted in writing within three (3) days of the conference. The General Manager will respond in writing within five (5) working days of the meeting to each substantive issue raised in the written protest.

If the protestor is not satisfied and indicates an intention to appeal to the next step, the General Manager will temporarily suspend the procurement process, provided that the protest has been timely filed before award, unless it is determined that:

- The items to be procured are urgently required;
- Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make prompt award will otherwise cause harm to Valley Transit.

Each prospective Provider will be advised of the pending protest if the protest is filed before award.

Decision On Protest. The General Manager will issue a written decision regarding the protest within thirty (30) days after the filing of the detailed statement of protest.

Local Appeal Procedure. If the protestor makes a timely appeal of the General Manager's decision the matter will be forwarded to the Fox Cities Transit Commission (FCTC) for their review. The protestor will be notified in writing of the date that the appeal will be heard. The recommendation of the FCTC will then be forwarded to the Appleton Common Council for ultimate local disposition of the protest.

FTA Funded Procurements. When the protest involves an FTA funded procurement, the contract administrator will disclose information regarding the protest to FTA, and will keep the FTA informed about the status of the protest. If the protest alleges that Valley Transit has failed to follow its written bid protest procedures, the protestor may ask that FTA review the protest in accordance with FTA C4220.1F. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of Valley Transit's final decision. The FTA will generally limit its review of protests to those situations where a grantee, (i) does not have protest procedures, (ii) has not complied with its protest procedures, or (iii) has not reviewed a protest when given the opportunity to do so, or in cases of violations or federal law or regulation.

10. Bonding Requirements

Construction. Valley Transit, City of Appleton shall specify bonds in compliance with (1) FTA requirements for construction or facility improvement contracts in FTA 4110.1F, Chapter IV, 2. H., and (2) Section 770.14 of the Wisconsin Statutes.

Non-Construction. For non-construction contracts, bonding requirements are discouraged except where applicable law or regulation provides for such bonding, or Valley Transit, City of Appleton determines that such a requirement is necessary as part of the risk management plan for a project.

11. Payment Provisions

Advance Payments. The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from the FTA. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services, rents and subscriptions. FTA approval of such advance payments is required when the amount exceeds \$100,000.

Progress Payments. Progress payments are to be made only for costs incurred in the performance of the contract. When progress payments are used, Valley Transit must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis.

12. Liquidated Damages

Risk Management. Valley Transit shall determine whether to use or not to use a liquidated damages provision for a specific procurement, as part of an overall risk management program.

Calculation. The amount of liquidated damages must be reasonably calculated to reflect anticipated damages Valley Transit might suffer as a result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine. Liquidated damages may be imposed for an entire contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate. All liquidated damages recovered under an FTA funded contract will be credited to the project unless FTA agrees otherwise.

CHAPTER IV
PROCUREMENT CLASSIFICATIONS

1. Micro-purchases

Micro purchases do not require multiple quotes, formal bidding procedures or non-competitive procurement findings. For federally funded procurements, the threshold for micro purchases is \$3,000, but the City of Appleton's requirements are more strict with a threshold of \$1,000. Procurements should not be split (i.e., segmented into smaller contracts to fall under the micro purchase thresholds) to avoid competition.

Micro-purchases may be made by obtaining a single proposal or quotation from a commercial vendor that makes available to the public, in significant quantities, equipment, materials or supplies. Award may be made if it is determined that the price is fair and reasonable, and that there are no significant differences in quality or price among available vendors. The determination of price reasonableness must be recorded on a checklist on the receipt. Valley Transit will distribute micro-purchases equitably among qualified suppliers.

Micro-purchases are exempt from Buy America requirements. The Davis Bacon Act (40U.S.C 3141) applies to construction micro-purchases in excess of \$2,000.

2. Small purchases \$1,000 to \$14,999

For federally funded procurements, the threshold for a small purchase is \$100,000, but the City of Appleton's requirements are more stringent. For small purchases in this range, the following requirements apply:

- \$1,000 - \$4,999, Two documented verbal quotes are required
- \$5,000 – 14,999, Three written quotes are required

Small purchases in this range may be made by obtaining the required number of quotes. Award may be made if it is determined that the price is fair and reasonable, and that there are no significant differences in quality or price among available vendors. The determination of price reasonableness must be recorded on a checklist on the receipt.

Small purchases in this range are exempt from Buy America requirements. The Davis Bacon ACT (40U.S.C. 3141) applies to construction purchases in excess of \$2,000.

3. Purchases \$15,000 or more

When making a purchase for \$15,000 or more, a formal procurement method should be used. The following is list of general standards that every competitive solicitation should adhere to:

- The procurement should be publicized in a manner intended, at a minimum, to notify potential sources in Valley Transit's service area of the nature and type of the solicitation and the date for responses.
- Every reasonable effort should be made to encourage the maximum number of responses. Pre-qualification or other methods of restricting responses shall not be used unless required for security or public safety reasons or by law.

- The solicitation document shall contain, at a minimum, instructions on how the response is to be prepared and submitted; the deadline for submittals and other key dates in the process (such as the date and time of a pre-bid or pre-proposal conference); the basis upon which an award will be made; a statement reserving Valley Transit's needs and the technical requirements to be met by the successful offeror; a set of terms and conditions intended to be used for any resulting contract; and representations and certifications as required by law or deemed necessary by Valley Transit
- The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to Valley Transit's needs. The minimum bid period for competitive procurements will normally be 30 days, except in cases of urgency a shorter time may be specified. Whenever a period shorter than 30 days is considered necessary, every effort will be made to contact prospective bidders to ensure they can submit bids or proposals in the desired response time.
- Responses to any questions from prospective sources, or any amendments to the solicitation, shall be distributed to all parties known to have received the solicitation. Should the amendment substantially change the terms of the solicitation, the period for receipt of offers shall be extended to allow offerors to change their proposals accordingly.
- New contracts or agreements for services or equipment over \$15,000 must have a recommendation by the Fox Cities Transit Commission and approval of the Common Council. New contracts or agreements are defined as those which:
 - Are for services or equipment procured on a special or one-time basis;
 - Are not for the renewal or re-award of existing, previously approved and budgeted, ongoing operational requirements; or
 - Are not defined by either of the prior statements but have an anticipated total contract cost in excess of \$100,000.

CHAPTER V
FORMAL PROCUREMENT METHODS

1. Competitive Sealed Bidding – Invitation for Bid (IFB)

Bids can be publicly solicited through a formal Invitation for Bid (IFB) with a fixed-price contract (lump sum or unit price) being awarded to the lowest priced responsive bid from a responsible bidder. All bids are publicly opened at the time and place prescribed in the IFB and bidders are afforded a suitable opportunity to examine all bids received after they are opened. Sealed bid procurements should be used when the following circumstances are present:

- A complete, adequate, precise, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the business.
- The procurement generally lends itself to a firm fixed price contract.
- The successful bidder can be selected on the basis of price.
- 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 only.

Options. Valley Transit may include in any procurement, an option providing Valley Transit the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract. The option quantities must be evaluated as part of the contract award. Prior to exercise of an option, Valley Transit must ensure and document in the file that the exercise of the option is in accordance with the terms set forth in the contract, and that the exercise of the option results in a procurement that is more economical and/or advantageous than otherwise available in the marketplace..

Procurement Procedures. The following procedures apply to sealed bid procurements:

- The invitation for bids is publicly advertised.
- Bids are solicited from an adequate number of known suppliers.
- The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- Bidders are allowed sufficient time to prepare bids before the date of bid opening.
- All bids are publicly opened at the time and place prescribed in the invitation for bids.
- A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder.
- Any or all bids may be rejected if there is a sound, documented business reason.

Single responsive bid. In the event that a single responsive bid is received from a responsible bidder, Valley Transit may negotiate with the bidder to ensure that a fair and reasonable price is obtained. If the responsive bid from the lowest responsible bidder exceeds available funds, Valley Transit may negotiate with the apparent low bidder to obtain a contract price within available funds, provided that Valley Transit has established in writing conditions and procedures for such negotiations prior to issuance of the IFB and summarized them therein. The scope cannot be modified or altered in a manner that might have attracted additional bidders if the negotiation is incorporated into the contract.

2. Competitive Negotiation – Sealed Proposals (RFP/RFQ)

A competitively negotiated procurement pursuant to issuance of a Request for Proposals (RFP) or Request for Qualifications (RFQ) may be used where a low bid competitive procurement is not appropriate or desirable for the solicitation, including, but not limited to, the procurement of professional services including architect, engineering, construction management, accounting, legal and other similar services, and the contract is anticipated to exceed the small purchase threshold. All architect and engineering (A&E) projects will follow the Brooks Act; use of RFQ procurement and price negotiation with the most qualified candidate.

Valley Transit may exercise flexibility in the formulation of the RFP/RFQ, so long as it is in compliance with the procurement specification requirements and other provisions of this manual. The RFP/RFQ should contain the scope of work and the model contract to be used with the successful offeror, or should identify key contractual components/requirements if a model contract is not available at the time of RFP/RFQ distribution.

Competitive proposals should be used when any of the following circumstances are present:

- 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 price alone are present.
- Uncertainty about whether more than one bid will be submitted in response to an invitation for bids.
- Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

Procurement Procedures. The following procedures apply to procurements by competitive proposals:

- The request for proposals is publicly advertised.
- All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
- Proposals are solicited from an adequate number of qualified sources.
- A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- The offerors whose proposals are found by the Valley Transit to be within the competitive range, or may be reasonably made to be within the competitive range, will be notified and any questions and/or requests for clarifications provided to them in writing. Each such offeror may be invited for a private interview(s) and discussions with the Procuring Agency to discuss answers to written or oral questions, clarifications, and any facet of its proposal.
- In the event that a proposal, which has been included in the competitive range, contains conditions, exceptions, reservations or understandings to any Contract requirements as provided in "Form for Proposal Deviation", said conditions, exceptions, reservations or understandings may be negotiated during these meetings. However, Valley Transit shall have the right to reject any and all such conditions and/or exceptions, and instruct the

offeror to amend its proposal and remove said conditions and/or exceptions; and any offeror failing to do so may cause Valley Transit to find such proposal to be outside the competitive range.

- No information, financial or otherwise, will be provided to any offeror about any of the proposals from other offerors. Offerors will not be given a specific price or specific financial requirements they must meet to gain further consideration, except that proposed prices may be considered to be too high with respect to the marketplace or unacceptable. Offerors will not be told of their rankings among the other offerors.
- Technical evaluations are completed before sealed price proposals are opened.
- The methodology for price evaluation and compilation of final scores will be defined on a procurement by procurement basis.
- Price proposal is evaluated and combined with technical evaluation for an overall score.
- An award is made to the responsible offeror whose proposal is most advantageous to Valley Transit's program with price and other factors considered.

After the issuance of the RFP/RFQ, Valley Transit contract administrators may host an informational conference or open a written question and answer period for the benefit of offerors.

Evaluation. The project manager will appoint at least three persons who have knowledge of the procurement's subject matter/technology to evaluate technical proposals. Technical personnel may be from other public agencies if necessary. The project manager will ensure the following:

- All Committee members will submit individual scoring sheets, along with narrative evaluations – scoring mechanics will be defined for individual procurements.
- Evaluation factors that will be considered, along with the relative importance of each in the solicitation will be included in the RFP. Price will not be assigned a weight as an evaluation factor, but will be considered as a separate factor along with the weighted technical factors for award of the contract.
- The evaluation committee will review bids and offers submitted in accordance with the specified criteria and score the proposals in accordance with a pre-determined scoring method. The committee will include a narrative of the qualitative differences among the proposals listing technical strengths, weaknesses, performance risks and ambiguities.
- After the technical evaluation is complete, pricing will be compared and a final recommendation for approval will be made. When determining the recommendation, a "best value" approach will be taken by comparing the technical strengths and weaknesses with the prices offered to determine the best value. Where the procurement is for A&E services, the selection process will not involve prices.

Best and Final Offers (BAFO). After all interviews have been completed, each of the offerors in the competitive range will be afforded the opportunity to amend its proposal and make its BAFO. The request for BAFOs shall include:

- Notice that discussions/negotiations are concluded.
- Notice that this is the opportunity for submission of a BAFO.
- A common date and time for submission of written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs.

- Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFOs and is subject to the late submissions, modifications, and withdrawals of proposals provisions of the Request for Proposal.
- Notice that if offerors do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous Offer will be construed as their BAFO.
- Any modifications to the initial proposals made by an offeror in its BAFO shall be identified in its BAFO. BAFOs will be evaluated by Valley Transit according to the same requirements and criteria as the initial proposals. Valley Transit will make appropriate adjustments to the initial scores for any sub-criteria and criteria which have been affected by any proposal modifications made by the BAFOs. These final scores and rankings within each criteria will again be evaluated by Valley Transit and considered according to the relative degrees of importance as defined in the established evaluation criteria.
- Valley Transit will then choose the proposal which it finds to be most advantageous based upon the evaluation criteria. The results of the evaluations and the selection of a proposal for any award will be documented in a report.
- Valley Transit reserves the right to make an award to an offeror whose proposal it judges to be most advantageous based upon the evaluation criteria, without conducting any written or oral discussions with any offerors or solicitation of any BAFOs.

Negotiation with Top Ranked Firm; Award. As appropriate based on the solicitation procedures set forth in the RFP/RFQ, Valley Transit may negotiate with the top ranked firm(s) and may:

- Award a contract to the offeror whose proposal is most advantageous to Valley Transit with price and other factors considered, as determined based on the factors set forth in the RFP/RFQ.
- Award a contract on the basis of best value to Valley Transit, provided that the solicitation documents establish that award may be made on the basis of best value.
- For procurement of architectural and engineering services, which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services, Valley Transit will follow the Brooks Act “qualifications-based” procurement method. This method entails conducting a two-step procurement process (RFQ) that does not consider price in the initial evaluation of proposals. Valley Transit will first negotiate with the most qualified offeror. If agreement cannot be reached with the most qualified firm, Valley Transit will negotiate with the next firm(s) until agreement is reached on a fair and reasonable price.

Options. Valley Transit may include in any procurement, an option providing Valley Transit the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract. The option quantities must be evaluated as part of the contract award. Prior to exercise of an option, Valley Transit must ensure and document in the file that the exercise of the option is in accordance with the terms set forth in the contract, and that the exercise of the option results in a procurement that is more economical and/or advantageous than otherwise available in the marketplace.

3. Noncompetitive Proposals – Sole Source

Noncompetitive (Sole Source) procurements are accomplished through solicitation and acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph. Guidance as to what is “within the scope” of a contract may be found in the FTA Best Practices Procurement Manual, Section 9.2.1 – Contract Scope and Cardinal Changes. “Tag-ons” are defined by the FTA as additions to the scope of work or deliverable items that were not included in the original contract competition, and which must be treated as sole source additions to the contract. Tag-ons are not to be treated as changes within the scope of the contract.

Justification. Contract files must contain written explanation of sole source justification. Procurement by noncompetitive proposals may be used when only one source is practicably available and the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- A unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to Valley Transit only from one source.
- Patent or data rights restrictions preclude competition.
- When a follow-on contract for the continued development or production of highly specialized equipment and major components thereof would result in a substantial duplication of costs (such as software upgrade).
- When awarding to another contractor, a follow-on contract for continued development or production of a highly specialized equipment would result in unacceptable delays.

Special provisions. Sole source purchases over \$5,000 but less than \$15,000 must be approved by the City of Appleton Purchasing Manager. Any sole source purchase over \$15,000 must have a recommendation by the Fox Cities Transit Commission and approval of the Common Council.

4. Architectural and Engineering (A&E)

Valley Transit will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for A&E services. The Brooks Act requires that:

- An offeror’s technical qualifications be evaluated
- Price be excluded as an evaluation factor
- A pricing proposal be requested from, and negotiations be conducted only with the most qualified offerer
- Failing agreement on price, the proposal must be rejected and negotiations conducted with the next most qualified offeror, until a contract award can be made to the most qualified offeror whose price is fair and reasonable.

The Brooks Act qualifications-based procurement method can only be used for the procurement of A&E services which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services, where any amount of Federal funds is utilized.

5. Joint procurement

The FTA uses the term “joint procurement” to mean a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum.

Joint procurements are encouraged by the FTA because it offers the advantage of combining or “pooling” procurements with other agencies in order to obtain better pricing. Joint procurements are typically done with a competitive proposal written to fit the needs of all agencies participating in the procurement. Joint procurements solicitations must include total minimum and maximum quantities which are state in the solicitation and contract.

6. Assignment of Contract Rights “piggybacking”

FTA expects its recipients to limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. The FTA expects recipients to be able to justify the quantities it procures. Although the FTA does not encourage the practice, a recipient may find it useful to acquire contract rights through assignment (“piggyback”). If this procurement type is used, Valley Transit must determine that the original contract price remains fair and reasonable and the original contract provisions are adequate for compliance with all Federal requirements. It is Valley Transit’s responsibility to ensure the existing contract contains an assignability clause and all required FTA contract clauses and certifications (Buy America, etc.) If the existing contract does not contain both an assignability clause and required contract clauses, it may not be used.

7. State or Local Government purchasing schedules or purchasing contracts

The FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government and its subordinate government entities, to acquire specific property or services in the future at established prices.

The Common Grant Rule for governmental recipients encourages recipients to enter into this type of agreement, but the FTA does not authorize grantees to consider intergovernmental purchasing schedule to be the type of State or local intergovernmental agreement to which this rule refers to. The FTA recognizes joint purchases to be the only type of intergovernmental agreement suitable for use by its grantees.

8. Design-Build Projects

A design-build project is a project under which Valley Transit would enter into a contract with a seller, firm or consortium of firms to both design and build a public transportation facility. The design-bid-build procurement method requires separate contracts for design services and for construction. Design services must use qualifications based procurement procedures and construction must use competitive procurement procedures. The construction may include sealed bidding or competitive negotiation procurement methods, as appropriate.

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction.

Procurement Method Determined by Value. First, the various contract activities to be undertaken must be separated and classified as design or construction. Next calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.

- Construction Predominant. The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based “Brooks Act” procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.
- Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the “Brooks Act,” 40 U.S.C. Sections 1101 through 1104, as described in subsection 3.e of this Chapter.

Selection Processes. The design-build procurement may be structured using one or more steps as described below:

- One-Step Method. The design-build procurement can be done in a single step.
- Two-Step Method. For large design-build projects a two-step selection process may be used. This method consists of:
 - The first step is a review of the prospective contractors’ technical qualifications and technical approach to the project. The recipient may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.
 - Review of Complete Proposals. The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified. By using this two-step method, it will not be necessary to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to the recipient.

Appendix

Procurement Checklist

Project _____ Project Manager _____

Process/Assignment

BEFORE THE PROCUREMENT PROCESS:

Procurement Method(IFB, RFP, RFQ) _____

Justification of method _____

Sole Source Justification (attach extra pages – if needed) _____

	<u>Employee assigned</u>	<u>Target comp date</u>
Determine/Write Scope of Work/Specs	_____	_____
Project Manager-develop evaluation process*	_____	_____
Independent Cost Estimate	_____	_____

PROCUREMENT PACKAGE PREPARATION:

Draft complete RFQ/RFP/IFB document** _____

Review and include Protest Procedures/Certs _____

Identify potential bidders/vendors (prepare list) _____

Bid document reviewed by VT staff _____

Bid document reviewed by Legal/COA Purchasing _____

WisDOT review/approval if bid/RFP is funded _____

with WisDOT FTA grant _____

CONDUCTING THE PROCUREMENT:

	<u>Employee assigned</u>	<u>Target comp date</u>
Finalize bid document	_____	_____
Email vendors & post on web	_____	_____
Advertisements-legal notice	_____	_____
File notarized copy of ad from paper	_____	_____
Conduct Demos / Pre-Bid Meeting	_____	_____
Receive & document approved equals/requests	_____	_____
Question/answer period	_____	_____
Prepare Addendums & distribute to all vendors	_____	_____
that received original bid & post on web	_____	_____

PROPOSAL REVIEW AND AWARD PROCESS:

	<u>Employee assigned</u>	<u>Target comp date</u>
Evaluate bids - responsiveness	_____	_____
Evaluate bids - Proof of Insurance, DBE, certs	_____	_____
Bid bonds (construction)	_____	_____
Review evaluation process & criteria, separating	_____	_____
technical & price evaluations	_____	_____
Evaluate/Score technical requirements - Team	_____	_____
Evaluate/Score price & financial capability	_____	_____
Receive & file pre-award audit report (buses)	_____	_____
Negotiate lower price/better product	_____	_____
Reference Check	_____	_____
Offeror is not on Excluded Parties List system	_____	_____
Price/Cost Analysis	_____	_____
Notify Selected & Rejected Bidders/Proposers	_____	_____
Protest period	_____	_____
FCTC/FC/ACC approve to award contract	_____	_____

POST AWARD AND POST DELIVERY ACTIVITIES:

	<u>Employee assigned</u>	<u>Target comp date</u>
Issue Contract (PO w/certs or contract)	_____	_____
Monitor & file Progress reports	_____	_____
Monitor & file prevailing wage payrolls	_____	_____
Project Delivery, receive packing slips	_____	_____
Receive and file signed post delivery audit report	_____	_____
Monitor Vehicle Title/Registration	_____	_____
Payment of invoice(s)	_____	_____
Request/file affidavits of completion (const)	_____	_____
Payment of retainage	_____	_____
Drawdown funding (WisDOT or FTA)	_____	_____

*Evaluation process must include members of technical team & technical scoring method which matches the bid document.

**Bid Document must include all boilerplate (terms & conditions, timeline and FTA certifications & assurances) and items to be evaluated in order of importance.

INDEPENDENT COST ESTIMATE

Project Manager:

Project Description/Name:

Delivery/Completion Date:

Total Estimated Price/Cost:

Date of Estimate:

Background			
Background of the project:	[Replace this text with a brief description of the project background. Identify the source of the project request.]		
Method			
	Yes	No	Comments
Published catalog or price list (attach pertinent catalog or price list pages)	<input type="checkbox"/>	<input type="checkbox"/>	
Recent prices for same or similar item/service (identify contracts, purchase orders, sources and attach any pertinent documents)	<input type="checkbox"/>	<input type="checkbox"/>	
In-house engineering or technical estimate	<input type="checkbox"/>	<input type="checkbox"/>	
Independent Third Party estimate (attach estimate)	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	[Replace this text with explanation of other]

Additional Information

[Replace this text with additional information.]

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

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.

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

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Veterans Employment				>\$2,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.