

# Procurement Webinar

Hosted by the

Virginia Transit Association

**Virginia Transit Association**  
1108 East Main Street, Suite 1108  
Richmond, VA 23219  
804.643.1166  
[www.vatransit.com](http://www.vatransit.com)

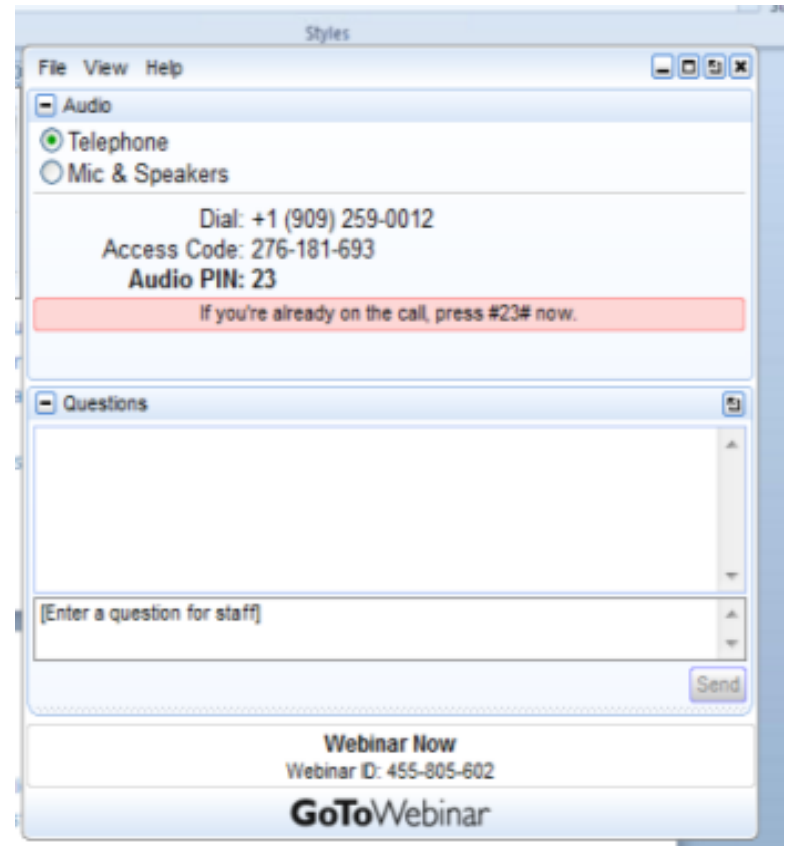


*The Voice of Public Transportation in Virginia*

# Procurement Webinar

- **Questions:**

Type questions into the box at bottom of webinar panel. Panelists will address all questions at end of webinar (include panelist name.)



# Procurement Webinar

- **Panelists**

- **Tony Tarone**, Director, Office of Program Management & Oversight, Federal Transit Administration
- **Jay Fox**, Regional Counsel, Federal Transit Administration
- **Anthony Romero**, Procurement Specialist, Federal Transit Administration
- **Jamie Motley**, Director of Financial Planning and Budget, Virginia Department of Rail and Public Transportation

# FTA

FEDERAL TRANSIT ADMINISTRATION

## **Procurement Webinar for the Virginia Transit Association**

presented by  
**FTA Region III Staff**  
February 25, 2015



U.S. Department of Transportation  
Federal Transit Administration

# Use of Existing Contract Rights, Joint Procurements & Schedules

A **piggyback** is the assignment of an existing contract right

# Use of Existing Contract Rights

- Generally Disfavored
  - Recipients are expected to limit their procurements to the amount of property and services required to meet their reasonably expected needs
- Requirements
  - Assignee must ensure that the terms and conditions of the existing contract/options comply with Federal requirements
  - Options must have been evaluated before awarding the underlying contract (otherwise it's a sole source)
  - Negotiated option prices must be reasonably determined from the terms of the contract (otherwise it's a sole source)

A **joint procurement** is when two or more grantees use a single solicitation document to enter into a single contract for specified deliverables

# Use of Joint Procurements

- Generally Encouraged
  - Procurement of goods and services jointly with other recipients usually provides pricing and administrative efficiencies
- Requirements
  - One grantee may take the lead, but all grantees must ensure that the terms and conditions of the existing contract/options comply with Federal requirements
  - Contracts may be expressed as a total minimum or total maximum , but still must meet reasonable expectations at the time the contract was awarded – in other words contracts must avoid excess added to permit assignment



A **schedule** is a negotiated arrangement with several vendors providing an option for acquisition at established prices

# Use of State Schedules

- Buying Cooperatives (2011)
  - Purchases disallowed for lack of State participation, absence of finite quantity (anticipated needs), and lack of competition
- Out-of-State Schedules (2013)
  - FTA grantees located outside of a State's borders are not permitted to purchase from that State's schedule
  - The restriction does not include joint procurements, or piggybacking (when permitted), with State transportation entities (i.e., NJ Transit)
  - Restriction is based upon 49 CFR 18.36(a), which provides deference to a State when procuring property and services

Piggybacking, joint procurements,  
and the use of **schedules** are sources

Using a source means you must  
ensure **compliance**

Failure to ensure compliance risks  
both **disallowances** and **litigation**

# Buy America – Now and Looming

## **Buy America Basics - 49 CFR 661.5(a)**

No funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

# Buy America Basics - 49 CFR 661.5(d)

- ✓ All of the manufacturing processes for the manufactured product must take place in the United States
- ✓ All of the components of the product must be of U.S. origin
- ✓ A component is considered of U.S. origin if it is manufactured in the United States, **regardless of the origin of its subcomponents**

# Buy America Basics

- ✓ FTA Buy America requirements (49 USC § 5323(j)) apply to FTA projects
- ✓ FTA Buy America requirements are different than the Buy American Act (41 USC § 8301)
- ✓ FTA Buy America requirements are different than FHWA Buy America requirements (23 USC § 313)

# Boothe Letter - September 7, 2012

## Issues

- 1) Whether FTA can apply its Buy America rules to utility contracts that are within the scope and budget of an FTA-funded project
- 2) Whether the application of Buy America to utility contracts constitutes a change in policy that is subject to the notice and comment requirements of 49 U.S.C. § 5334

## Boothe Letter - September 7, 2012

### Application of Buy America

FTA may obligate money for a project "only if the steel, iron, and manufactured goods used in the project are produced in the United States." Buy America rules apply to the entire project. Application to the entire project means that all contracts necessary to complete a project must include Buy America provisions.



# Evolution of FTA Circular 4220.1F

- 4220.1F is a guidance document that summarizes Federal law and provides interpretive guidance
- Revisions driven by changes in law
  - Veterans employment (hiring preference)
  - Intelligent Transportation Systems (23 USC 517(d))
  - Record Keeping (49 USC 5325(g))
- Revisions clarifying policy
  - Use of State Schedules
  - Adequate third party contract provisions

# FTA Clauses and Contract Terms

## **FTA Required and Model Contract Clauses**

[http://www.fta.dot.gov/12831\\_6195.html](http://www.fta.dot.gov/12831_6195.html)

## **Omni Circular – Required Contract Provisions**

2 CFR Part 200, Appendix II

# Invitation for Bids (IFB)

v.

# Request for Proposals (RFP)

An **IFB** (sealed bid) leads to an award to the responsible bidder, whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.

# Invitation for Bids (IFB)

v.

# Request for Proposals (RFP)

An **RFP** (competitive proposal) is generally accepted when the procurement does not lend itself to sealed bids, and the recipient expects more than one source will be willing and able to submit an offer or proposal.

# Appropriate Use of IFBs

- Precise Specifications
  - A complete, adequate, precise, and realistic specification or purchase description is available
- Adequate Sources
  - Two or more responsible bidders are able to compete
- Fixed Price Contracts
  - Procurement lends itself to a firm fixed price contract
- Price Determinative
  - Selected based on price and price-related factors
- Discussions Expected To Be Unnecessary

# Appropriate Use of RFPs

- Performance and/or Function Specifications
  - The property or services to be acquired are described in a performance or functional specification.
- Uncertain Number of Sources
- Price Alone is Not Determinative
  - Contract award need not be based exclusively on price or price-related factors. The relative importance of cost or price may vary.
- Discussions Expected
  - Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals

# Sole Source Procurements

(other than by Full and Open Competition)

A **Sole Source** procurement may be justified when supplies or services are available from only one responsible source, and no other supplies or services will satisfy the requirements. Changes beyond the scope of the contract are sole source awards.

# Bases For Sole Source Awards

- Unique Capability or Availability
  - The offeror demonstrates a unique or innovative concept or capability not available from another source
- Single Bid or Proposal
  - Requires a determination of adequate competition
- Unusual or Compelling Urgency
  - An unusual or urgent need that justifies a limited solicitation to avoid serious “injury” to the grantee.
- Authorized by Law
  - A request for guidance from the FTA is highly recommended



# Options 101

- Ensure that your ICE includes separately any possible options that might be exercised during the course of the contract
- List options as separate line items
- Ensure bidders are aware that line items are options which may or may not be exercised during the contract
- Include options in initial written cost or price analysis
- Before an option is exercised, a written cost or price analysis must be conducted to ensure “fair and reasonable”
- Make certain that the “Changes” clause is included in both the solicitation and the contract

# Cardinal Changes

A **Cardinal Change** is a major deviation from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

# Cardinal Changes

- **Rolling Stock**
  - Major change in quantity
  - Substitution of major end items not contemplated when competition for the original award took place
  - Change in type of vehicle (i.e., high-floor to a low-floor vehicle, passenger capacity, type of engine)
  - Extension of contract term length (sole source)
- **Construction**
  - Performance outside of the original Scope of Work
  - Significant changes in time and/or material

# Contact Info

**Federal Transit Administration  
Region III  
1760 Market Street  
Philadelphia, PA 19103-4124  
215-656-7100  
[jay.fox@dot.gov](mailto:jay.fox@dot.gov)**

# Procurement Webinar

**Virginia Department of Rail and Public Transportation**

**Jamie Motley, Director of Financial Planning and Budget**

<http://www.drpt.virginia.gov/about/Contract%20Summary%20for%20Website.htm>



*The Voice of Public Transportation in Virginia*

# Procurement Webinar

## Questions and Answers

# Procurement Webinar

## Contact Information

Tony Tarone

215-656-7072

[tony.tarone@dot.gov](mailto:tony.tarone@dot.gov)

Jay Fox

215-656-7258

[jay.fox@dot.gov](mailto:jay.fox@dot.gov)

Anthony Romero

215-656-7061

[Anthony.romero.CTR@dot.gov](mailto:Anthony.romero.CTR@dot.gov)

Jamie Motley

804-786-3440

[jamie.motley@drpt.virginia.gov](mailto:jamie.motley@drpt.virginia.gov)



*The Voice of Public Transportation in Virginia*

# Procurement Webinar

Thank You  
For Attending!

**Virginia Transit Association**  
1108 East Main Street, Suite 1108  
Richmond, VA 23219  
804.643.1166  
[www.vatransit.com](http://www.vatransit.com)



*The Voice of Public Transportation in Virginia*