

## **Virginia Recreational Trails Program**

### **Procurement Procedures**

All project contractors, suppliers, vendors, and project equipment and materials are subject to the Commonwealth of Virginia's construction and professional services procurement requirements and the federal contract requirements outlined in form [FHWA 1273](#), as well as other applicable state and federal procurement regulations.

All RTP projects must comply with the federal aid procurement requirements of [2 CFR 200.317-327](#), the [Virginia Public Procurement Act](#) (VPPA), and local procurement standards. The Commonwealth of Virginia [Construction and Professional Services Manual](#) (CPSM) sets forth the standards, policies, and procedures to be followed by state agencies and institutions in procuring professional design and construction services. If local procurement standards conflict with state or federal standards, please contact RTP Recreation Grants staff to determine appropriate procedures to follow. Both 2 CFR 200 and the VPPA have allowances that permit a locality to follow certain alternative procurement procedures, but those procedures must be adopted as policies in writing *prior to* the solicitation and procurement.

### **Contracts and Purchases**

Contracts must be awarded to entities licensed to work in Virginia. Contracts must not be awarded to any vendor which is debarred or suspended or is otherwise excluded for or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." Cost plus agreements are not allowed.

Solicitation documentation must contain notice that ***"partial funding for the project is being provided by the Recreational Trails Program of the Federal Highway Administration administered in Virginia by The Department of Conservation and Recreation and must be undertaken in accordance with the Recreational Trails Program guidance of the FHWA, 2, 23 and 49 CFR, and the Build America and Buy America Acts."***

### ***Design and Engineering Contracts***

Design and engineering (professional services) contracts must be secured by competitive negotiation. Copies of the final RFP, executed contract, response and evaluation summary, and summary of DBE/SWaM efforts must be provided to DCR for project filing records.

### ***Construction Contracts***

Construction contracts must be secured by competitive sealed bidding. Contracts must be awarded to the lowest responsive and responsible bidder. Federal funding prohibits negotiation with the lowest bidder. If only one bid is received, the project must be re-bid.

A draft copy of the invitation for bid (IFB) should be provided to DCR for administrative review during the solicitation process. Copies of the final IFB, a bid spreadsheet showing the lowest responsive and responsible bidder, executed contract, and description and documentation of the effort exerted by the RTP recipient to include

DBEs and SWaMs in the bidding process, as outlined later in this document, must be provided to DCR for project filing records.

Form [FHWA 1273](#) includes required contract provisions for federal-aid construction contracts funded by FHWA. These should be incorporated wholly or by reference into bid documents and construction contracts. Section IV of FHWA 1273 outlines the applicability of the Davis-Bacon Act and [23 U.S.C. 113](#), prevailing rate of wage. Generally, only projects within the right-of-way of a federal-aid highway are subject to these two provisions.

Note that FHWA approval of all environmental review/ NEPA documentation is required *before* advertising for construction contracts.

### ***On-Call and/or Previously Procured Contractors***

If the project contains elements or contractors that are part of a procurement that has already taken place, the subgrantee must verify that the applicable state and local procurement procedures were followed. DCR may request documentation of past procurement records, to include: documents listed at the end of this guide as required records for new RTP procurements, as well as proof of advertisement (a screen shot or report showing that the RFP or IFB was posted in a public location), the letter of award on the contract, and the contract agreement.

### ***Small Purchase Procedures***

Public bodies may utilize methods of procurement other than competitive negotiation or competitive sealed bidding, such as small purchase procedures, if the procedures have been adopted in writing and are in compliance with the allowances in 2 CFR 200 and the Virginia Public Procurement Act. In most circumstances the adopted small purchase procedures must be submitted to DCR and a minimum of three price or rate quotations must be obtained.

### ***Equipment Purchases***

Equipment may be eligible for grant reimbursement if specific conditions are met:

- The equipment is Buy America compliant or the project is covered by the Buy America small grants waiver discussed later in this document.
- The equipment meets the definition of equipment in [2 CFR 200](#).
- The equipment purchase is included in the scope of the signed grant agreement.

The grant recipient and purchased equipment are subject to [2 CFR 200.313](#), which includes certain use limitations, management requirements, and mandatory status reporting every two years until the equipment value falls below \$10,000. When the equipment is no longer needed, specific disposition procedures must be followed and federal funds may need repaid to FHWA in proportion to the equipment's depreciated value.

### **Advertising for Construction and NEPA Completion**

**FHWA approval of all NEPA documentation is required *before* advertising for construction.** Please see the RTP Environmental Review Guidance document posted on the DCR RTP website at <https://www.dcr.virginia.gov/recreational-planning/trailfnd> for full list of environmental review requirements. The complete environmental review package and certification form must be submitted to DCR for review, and DCR will submit the package to FHWA on the entity's behalf. Do not advertise the bid package until receiving notice of FHWA approval of NEPA documentation.

Costs associated with posting solicitation documents such as publishing an IFB in a newspaper are eligible for grant reimbursement. Tare sheets and/or website screen prints must be provided along with proof of purchase as discussed in the RTP Reimbursement Request Guide available at the [DCR RTP website](#).

### **Small, Women-owned, and Minority-owned Businesses (SWaM) and Disadvantaged Business Enterprises (DBE)**

All RTP recipients must take appropriate and reasonable steps to provide DBE and SWaM businesses with the maximum opportunity to compete for and perform contracts for trail projects receiving aid through the program. These steps shall include: placing qualified small and minority businesses and women's business enterprises on solicitation lists, and assuring that small, minority businesses, and women's business enterprises are solicited whenever they are potential sources.

This can be completed by using the Virginia Small Business & Supplier Diversity Directory at <https://www.sbsd.virginia.gov/directory/>, searching for pertinent engineers or contractors in the general project area, and directly sending the RFP or IFB documentation to the listed businesses. Alternatively, the subgrantee may use the eProcurement Marketplace (eVA) at <https://www.eva.virginia.gov/> and, if DBE and SWaM businesses have viewed the solicitation, print the list of all businesses that viewed the posting. An additional option is to post the RFP or IFB in a local or regional minority or specialty newspaper. Provide DCR with proof of correspondence for project records showing due diligence was completed.

### **Buy America Requirements**

RTP-funded projects are subject to Buy America and Build America, Buy America domestic sourcing requirements for iron, steel, construction materials, and manufactured products permanently incorporated into the project ([23 USC 313](#), [23 CFR 635.410](#), and [Infrastructure Investment and Jobs Act Section 70901](#)). However, the applicability of these requirements to each project depends on the date of grant authorization and the federal funding amount, according to FHWA's current Buy America [program guidance](#):

- For projects authorized after August 15, 2023 and which include less than \$500,000 of total federal funding, a small grants waiver issued by the U.S. Department of Transportation exempts compliance with domestic sourcing requirements for iron, steel, construction materials, and manufactured products.

- Projects authorized before August 16, 2023 or that include \$500,000 or more of federal funding must comply with domestic sourcing requirements for iron and steel. There is a \$2,500 allowance for non-domestic iron and steel on the project, including delivery fees. Material certification documentation is required to prove materials above this allowance were sourced and manufactured in the U.S.
- Projects authorized between November 2022 and August 15, 2023, including those with less than \$500,000 of federal funding, and those authorized after August 15, 2023 that include \$500,000 or more of federal funding must comply with domestic sourcing requirements for construction materials. There is no allowance for non-domestic construction materials. The Office of Management and Budget defines construction materials as:

*articles, materials, or supplies that consist of only one of the items listed... (i) Non-ferrous metals; (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); (iii) Glass (including optic glass); (iv) Fiber optic cable; (v) Optical fiber; (vi) Lumber; (vii) Engineered wood; and (viii) Drywall.*

Currently, cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives are not defined as construction materials.

- A separate waiver exempts all RTP projects from compliance with domestic sourcing requirements for manufactured products, but the waiver is currently under review and may be modified or revoked in the future.

Entities are responsible for ensuring all materials are in compliance with the applicable regulations for their project and that all suppliers and contractors understand and follow these requirements.

Note that Buy America specifically applies to certain federal-aid projects and is different than Buy American, which covers direct federal procurements.

### **Required Document Submissions and Recordkeeping**

Procurement documents must be submitted to DCR for administrative review before proceeding in the procurement process and/or for project file records.

### ***Administrative Review***

Following must be submitted for DCR administrative review:

- Draft of IFB solicitation for construction (before public posting)
- Bid summary sheet / Proposal summary sheet (before awarding contract)
- Full environmental review package (must be submitted and FHWA approved *prior to* advertising for construction)
- As requested: verification or documentation of any procurement of services occurring before project authorization

### ***Project Records***

The subgrantee must maintain records sufficient to detail the history of all procurements. These records should include, but are not limited to: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

In addition to keeping with their own project records, the subgrantee should provide the following documents to DCR as they are completed:

- Copy of the final solicitation/advertisement (tare sheet and/or website screen print)
- A copy of the final Invitation for Bid or Request for Proposals,
- Bid/response spreadsheet listing all bids/responses received,
- Executed contract,
- Summary of the RTP recipient's efforts to comply with the RTP DBE and SWaM Policy. It is essential that there is documentation that the process was competitive and fair.

**Recipients are responsible for ensuring that all contracts are in compliance with federal and state laws concerning the solicitation of supplies, equipment, and services. When conflicts exist, DCR must be contacted for consultation with the FHWA. If any project components or services are not procured per the applicable standards, those expenses will not be eligible for RTP reimbursement and the project may be withdrawn and any previous payments received returned to FHWA.**